
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE MANAGEMENT SYSTEM AND OTHER MEASURES) BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough MP)
FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE MANAGEMENT SYSTEM AND OTHER MEASURES) BILL 2007

OUTLINE

Amendments are made to the family assistance law for the purposes of a new online-based Child Care Management System (CCMS). The CCMS will standardise and simplify child care benefit administration, reduce the time required for making payments to approved child care services, reduce the administrative burden on services and improve the management of child care information relevant to the determination of individuals’ child care benefit entitlement.

Amendments are also made to the absence provisions, the provisions relating to the way hours of care are calculated for child care benefit purposes, and the part-time % rate component of child care benefit.

Further amendments will introduce three new sanctions for failure of an approved child care service to comply with conditions of continued approval.

A civil penalty and infringement notice scheme is introduced in this bill. The amendments provide that the Minister may seek a civil penalty order from the Federal Court of Australia or the Federal Magistrates Court where an approved child care service contravenes a civil penalty provision. The civil penalties scheme will operate in conjunction with an infringement notice scheme. An infringement notice that is issued to an approved child care service will provide the service with the option of paying the lesser penalty set out in the notice or proceeding to a court to determine liability.

There are also amendments that relate to the information gathering powers, the location of records, and the fee charging practices of services. The amendments also enable the Secretary to write directly to the parents of children at child care services that are not complying with their obligations under the family assistance law, to suspend immediately the approval of a service in certain limited circumstances, and to establish committees for the purposes of the family assistance law.

Further amendments will reduce overpayments of child care benefit occurring because an individual who is eligible for child care benefit for a child has delayed notifying the Secretary when the child starts attending primary school, improve the recovery of debts owed by child care services operated by unincorporated bodies or associations (such as partnerships), limit the fees charged by services in certain restricted circumstances, limit the retrospective approval of a child care service, and standardise the appeal period for certain decisions affecting services.
Financial impact statement

Financial impact:               Total resourcing
2006-07        $ 40.4m
2007-08        $ 40.8m
2008-09        $ 3.7m
2009-10        $ -2.3m
1. BACKGROUND

The Child Care Benefit (CCB) program was introduced on 1 July 2000. Arrangements for administering and monitoring CCB have changed very little since that time.

1.1. CCB by fee reduction

CCB is designed to assist families with the cost of child care. Where families are accessing approved care,1 CCB can be received as a fee reduction. This means that the child care services, based on information provided (by mail) by the Family Assistance Office (FAO) about the customer, calculates an estimated value of the CCB, and reduces the fees they charge the family by that amount. The service then forwards details of these fee reductions, and of the child care used, to the FAO.

At the end of the financial year the fee reductions received by the family during the year are reconciled against their CCB entitlement (calculated based on the child care they used, their actual taxable income and taking into account a range of other circumstances). Any difference is paid to or recovered from the family.

To facilitate fee reductions for families’ approved child care, services are currently required to calculate and pass on fee reductions to families. Services fund these fee reductions from an advance payment provided to them by FAO, calculated quarterly and paid in monthly instalments. After the care has been provided the service needs to provide details of the fee reductions paid to families and the child care used, also on a quarterly basis. The advances and fee reductions are acquitted, and future advances adjusted to account for inaccuracies. The usage data is used at the end of the income year to reconcile the CCB entitlements of the families.

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1 Long day care, family day care, in-home care, Commonwealth-funded occasional care, outside school hours care and vacation care, approved under s.195 of the A New Tax System (Family Assistance) (Administration) Act 1999.
2. PROBLEM

2.1. Current system

Child care services regularly exchange significant amounts of information with government, and this exchange is primarily conducted by mail (letters, disks and paper forms).

Child care services provide usage data on a quarterly basis. This time lag makes it difficult for the government to use the information effectively for decision making and planning. Data provided by services may be up to 6 months old when received by government. The data currently reported does not enable assessment of the supply and availability of child care places. These data delays also compound at each stage. The FAO reports expenditure information to the Department of Families, Community Services and Indigenous Affairs (FaCSIA) annually, but as a result of the advance and acquit processes, expenditure data is normally 12 to 18 months old. This further limits the Government’s ability to monitor the efficiency of the program.

The child care sector is diverse, ranging from technologically enabled multi-outlet businesses to not-for-profit community based services without access to information technology more sophisticated than a telephone.

Child care is continuing as the subject of significant media and public interest. A program to modernise and improve child care processes and practices is necessary to address the issues the sector faces and to provide decision makers with access to robust information.

2.2. Impetus for change

The current arrangements for the administration of CCB by child care services clearly have significant impacts on government. Unavailable and inadequate data may result in policy decisions around child care being insufficiently informed. Decision-making, planning and budgeting may be significantly hampered by the lack of timely and accurate information, and the government’s capacity to detect non-compliant or fraudulent practice is limited. The development and implementation of a child care management system seeks to provide the government with access to information which will enable better informed policy and more efficient use of child care expenditure.

There is currently a heavy reliance on manual forms of communication between child care services and FAO, such as through helpdesk inquiries, fortnightly letters from FAO to services to inform services the recent changes to customers’ eligibilities and quarterly acquittal information provided on paper forms or on disks. This not only affects the efficient and effective management of the child care program by government, it also imposes significant administrative burdens on child care services.
It can also be difficult for parents seeking child care to find information on available and appropriate care, and for agencies such as Centrelink and the Job Network to facilitate access to care to enable parents to take up employment, training or study opportunities. To address this, FaCSIA has extended the function of the Child Care Access Hotline (CCAH) to improve access to information regarding the availability of child care. Child care services are required to report information on usage and availability to government on a weekly basis via telephone or the internet. These improvements to the CCAH have been in place since 3 July 2006 and better information is now becoming available to the parents and the Government. However, this information remains very basic. It is subject to potential reporting error, as services self assess usage and availability information. Parents are able to access availability information for their locality via the CCAH, but it does not address the need for ongoing management information, nor improvements required by child care services to collect and transmit information.

Currently parents also have very limited access to up to date information about their child care usage and payments.

In addition there is some misalignment in the administration of CCB across agencies. The CCB program as a whole is the responsibility of FaCSIA. The FAO deals with families, and have been set up in Medicare Australia offices, Centrelink Customer Service Centres and Tax Office Shopfronts across the country, offering a range of family assistance payments, including CCB. Centrelink provide much of the ‘back of office’ requirements for FAO, such as mainframe systems and answering telephone enquiries. However, responsibility for dealing with services is split across two agencies. Services are approved for CCB purposes by FaCSIA, who are also responsible for the compliance of services with legislative requirements. However, services report usage to the FAO (specifically Centrelink), who pay and acquit advances.
3. OPTIONS

Three options were considered in assessing the costs and benefits of the Child Care Management System (CCMS) project:

- continue with the status quo;
- limited action; or
- development and implementation of the CCMS.

3.1. Continue with status quo

This approach would maintain arrangements for child care services to calculate and pass fee reductions to families, continue the current advance/acquit payment and reporting cycle, and retain the current division of roles and responsibilities between FaCSIA and the FAO. Shortcomings in data availability for families and government would continue to be partially addressed through the operation of the CCAH.

FaCSIA’s existing responsibilities are to:

- assess child care services’ applications for the CCB providers status and administer approvals of child care services;
- manage and administer the Child Care Support Program (CCSP), including Quality Inclusion and Community Support programs;
- manage the number of allocated places for in-home care and occasional care;
- provide support to child care services through publications such as Child Care Services Handbook, Legislation Guide for Family Assistance Act, and helpdesks inquires;
- provide policy advice to Centrelink, the FAO and child care services;
- manage compliance activities in relation to approved child care services;
- manage and administer the CCAH.

The FAO’s current operational responsibilities are to:

- determine CCB eligibility in accordance with CCB eligibility rules;
- process advance and acquit forms from child care services and provides advance CCB payments to child care services for the purpose of child care fee reduction to parents;
• manage compliance activities in relation to CCB families;
• provide day to day support to approved child care services, through helpdesk function and managing opening and closing of child care services;
• approve registered carers;
• provide CCB payments to parents for registered care used;
• manage backdating and adjusting CCB payments as necessary;
• make CCB payments to families that elect to receive CCB via lump sum;
• carry out the CCB reconciliation process for families at the end of the financial year; and
• manage the advance/acquit process for child care services for the purposes of CCB.

The current responsibilities of approved child care services are to:

• provide care to children in a safe and nurturing environment;
• report quarterly child care usage data to Centrelink for CCB acquittal process;
• report weekly availability and usage data to CCAH;
• report vacancy and usage information for CCSP funding;
• provide information to parents about their CCB eligibility; and
• calculate parents’ CCB in order to provide fee reduction.

3.2. Limited action

A second option, of doing only the minimum required to address particular issues, was also considered. This option focused on improving the technology capability of all child care services.

Under this option FaCSIA would provide a personal computer to child care services without basic computing facilities. Where child care services already had the necessary technology, a one-off incentive payment would be provided, equivalent to the cost of a personal computer. Child care services would then bear the cost of establishing an ongoing internet connection.
The provision of appropriate hardware was targeted at facilitating child care services’ compliance with the weekly usage and availability reporting requirements required for the CCAH. The assistance provided under this option would have enabled the simplification and partially automation of the reporting process that is currently undertaken by child care services. However this option would not gather any more sophisticated data than that which is currently provided.

The CCB payment cycle would remain an advance/acquit process but could have operated on a more frequent (for example weekly rather than quarterly) basis, enabled by the electronic reporting of usage data. This had the benefit to the Government of significantly reducing working capital requirements and manual processes associated with the existing advance/ acquit system.

This option was considered at the beginning of the development of the CCMS proposal. However, given its limitations, a final model for this option was not defined (for example, defining the duration of a more frequent advance/acquit cycle).

3.3. Recommended option – CCMS

This option involves the development and implementation of a national CCMS.

Under this option, an interface will be established for reporting actual usage data by child care services on a weekly basis, removing the existing manual reporting process and reducing the government resources required for data validation. The advance/acquit system will also be replaced by a weekly arrears payment cycle, based on actual usage data.

The data will be of greater detail than the other options and will include actual weekly usage and fees charged in close to a real-time environment. The administrative burden on child care services will be reduced, including the need for services to calculate parents’ CCB fee reductions. It will remain the responsibility of child care services to provide accurate attendance information and they will receive CCB fee reduction payments upon provision of information in the required format.

To facilitate this all providers will some receive assistance with software upgrades and internet connections. In addition, some child care services will be brought online through provision of funds towards the cost of purchasing a computer where need. All approved child care services will need to operate under the CCMS as a condition of their ongoing approval.
This option also includes an enrolment amount, which will be paid to services when they enrol a parent-child combination (where that parent-child combination is matched against FAO records, indicating a possibility that they will claim CCB either by fee reduction or a lump sum claim at the end of the financial year). While the child care service continues to provide care, this enrolment amount will remain with the child care service. The enrolment amount is repaid by the service when the child ceases care. This provides a ‘float’ which may be used as the service wishes, such as to offset timing differences in the service’s billing cycle and the fee reduction payment cycle.

The arrears payment cycle and electronic reporting will reduce the level of inappropriate CCB payments from human error or fraud, and the improvements in data quality and timeliness will assist targeted compliance programs. In addition, interfaces between the FAO and FaCSIA will allow all information gathered to be readily available between agencies.

Parents will have access to meaningful child care attendance and CCB payment information for each of their children through an online statement facility, which will increase families’ visibility of the Government’s significant investment in child care and provide a valuable compliance mechanism. This type of information is only possible under a payment in arrears model.

The CCMS option has the further benefit of aligning the operational functions of FAO and FaCSIA with their departmental responsibilities. The FAO will continue to be responsible for determining child eligibility, family entitlement and interacting with families, but in the majority of cases will no longer have any direct relationship with child care services. FaCSIA will assume responsibility for making payments to child care services, and monitoring compliance based on the entitlement information supplied by the FAO.

This option addresses a range of challenges currently being faced by the child care sector:

- Forms of communication between child care services, parents and the FAO are improved to assist the management of child care by the Government.

- The Government’s decision making, planning and budgeting is improved from receipt of more detailed, more accurate and more timely information.

- Policy decisions can be made with more detailed and up to date information.

- More timely and detailed information assists the detection of fraudulent or inappropriate practice by child care services or parents.
4. IMPACT ANALYSIS – COSTS, BENEFITS AND RISKS

4.1. Who is affected by the problem and who is likely to be affected by the proposed solution?

4.1.1. Child care services

There are around 10,400 child care services approved for CCB purposes. All approved child care services will be affected by the CCMS proposal.

There are a number of types of care provided by the child care sector:

- **Long day care** is a centre-based form of child care providing all day or part-time care for children of working families and the general community. Long day care services provide care mostly for children not yet attending school, but may also provide care for school children before and after school and during school holidays. Community organisations, local councils, private operators, employers or non-profit organisations may run these services.

- **Family day care** services support and coordinate a group of family day carers who provide child care in their own homes for other people’s children. The service also assists parents to select an appropriate family day carer for their child. A family day care service can provide flexible care, including all-day care, part-time, casual, before and after school care, and care during school holidays.

- **Outside school hours care** services provide care before and/or after school and/or during vacation time. These services often operate in school grounds. They may also be in other locations such as community centres, halls, neighbourhood houses, recreation centres or other types of child care services (for example family day care).

- **Occasional care** is centre-based child care that supports families by providing flexible care for children. Families can access occasional care regularly on a sessional basis, or irregularly. While occasional care is available to all children, most of the children in care will not have started school. Community organisations, non-profit organisations or local councils may run occasional care services.

- **In home care** services provide a targeted form of child care where an approved carer provides care in the child’s home. It aims to provide care for children within the family unit, and is only available for families who do not have access to an existing child care service, or where an existing service cannot meet their needs such as parents who work irregular hours.

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2 FaCSIA Annual Report 2005-06
4.1.2. Child care software providers

There are currently around 25 providers of software specifically designed for or customised to use by child care services. Currently it is not necessary for child care services to use specific software, as CCB related dealings with government can be conducted entirely through paper processes. However, use of specialised software is common, with only a very small percentage of services across the country regularly submitting paper based claims.

The CCMS will make it necessary for all child care services to use appropriate software to communicate with FaCSIA.

The software currently available varies greatly in sophistication, ranging from spread sheet based products to integrated child care business management and reporting systems.

4.1.3. Child care users

Over 1 million children used approved child care in 2005-06, with more than 700,000 families receiving CCB in respect of child care provided by approved child care services.3

There are a number of incidental policy changes required to implement the CCMS which may be apparent to families. These are likely to be experienced only by families affected by the change. For example, the changes to absences are only likely to become apparent to families where they exceed 42 absences per year (refer to section 5.3.4 for more detail).

Administrative changes required in the implementation of the CCMS should be largely invisible to parents, although some such changes may be apparent. For example, where child care services bill in advance, under current arrangements services calculate the fee reduction at the time the billing information is prepared. Any variation between the fee reduction provided by the child care service and the actual entitlement (for example, resulting from absences not covered by CCB) are adjusted with the family at the end of the financial year when the family’s CCB entitlement is reconciled.

Under the CCMS the actual fee reduction cannot be calculated by government until usage information has been received (after care has been provided). In this situation child care services can chose to anticipate the fee reduction (using family entitlement data provided to them to calculate an estimated fee reduction), but will be required to adjust for any variation once care has been provided and the actual fee reduction calculated.

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3 2005-06 administrative data.
4.1.4. Government

Clearly government have a significant stake in addressing the problems inherent in current arrangements, and will particularly benefit from improved data quality and availability.

Key agencies affected include FaCSIA, which will be able to access to much improved data, but will be taking on a very significant administrative function, with the CCMS processing records for all children attending care every week.4 The FAO, and in particular Centrelink, will also be affected by these changes, as under the CCMS services will deal directly with FaCSIA. Data received from and provided to services relating to customers will be communicated between FaCSIA and Centrelink systems via data links.

4.2. Cost benefit analysis of options

4.2.1. Continue with status quo

Likely benefits

The primary benefit of continuing with the status quo is avoiding the potential negative consequences of change. All stakeholders - child care services, software providers, users of child care and government - can continue to operate as they do now. The financial costs of system upgrades, the risks of a large scale change process and so on are avoided.

The current arrangements also allow child care services to operate in an almost entirely paper based system, if they choose (aside from telephone or email contact with the CCAH). This allows child care services to avoid the costs of implementing and using technology, although at the cost of potential technological efficiencies (and at increased cost to government for processing of paper claims).

Likely costs

The costs of this option are largely outlined in section 0, in that the problems apparent in the current arrangements will continue. In summary this includes:

- lack of reliable data to inform policy and planning;
- limited ability to conduct compliance checking; and
- lack of control of CCB funds, with large advances remaining with the sector.

4 For example, more than 800,000 children attended approved care in December 2005, and there will be reporting for each child attending approved care each week.
4.2.2. Limited action

Likely benefits

This option addresses some of the immediate concerns of some child care services, such as access to modern computers and the internet, while also avoiding potential costs of substantial change. Some child care services, especially outside school hours care services and family day care services rely on paper copy attendance reporting. This form of reporting is costly and time consuming. Importantly, the provision of computers enables the utilisation of a more comprehensive child care management system in the future. This option may also result in a small increase in the take-up of specialised software (increasing the market for software providers).

This option also facilitates the timely provision of availability and vacancy data to the CCAH. Changing to a more rapid advance/acquit cycle would significantly reduce the government’s working capital requirements, and improve the timeliness of data.

Likely costs

Under this option CCB would continue to operate under a complex advance/acquit system, the majority of data will continue to have significant time lags, and child care services will still be required to carry out complex CCB calculations in order to provide fee reductions for parents. Child care services would continue to rely on the complex and manually driven reporting system and will still need to report a variety of items such as submitting reports to acquit their CCB quarterly advance payment, at a significant cost to the Government.

Although this option caters for the timely provision of availability and vacancy data to the CCAH, it is not the preferred option because it fails to address issues around relating to data quality (current items reported are very basic and subject to reporting error). This impacts the government’s ability to assess supply and demand for child care due to lack of sufficiently detailed and robust information.

This approach could be used to speed up the reporting cycle using current processes. Data collected from the child care services would improve in terms of timeliness, but will continue to only be a subset of the information required to sufficiently inform policy decisions. Also, inefficient communication channels between child care services and government agencies will remain, and the operational functions of FAO and FaCSIA would still not match the respective departmental responsibilities of the two agencies.
Using current advance/acquit processes at an increased cycle speed would also create a number of practical issues. A number of the policy changes in the CCMS aim to increase the efficiency of processing, to support the weekly processing of fee reductions.\(^5\) Greatly increasing the cycle speed (such as to weekly cycles) under existing arrangements is likely to be problematic, and require significant rule changes to support this in the longer term. Longer cycle times (such as monthly cycles) may be more practical in the interim, but reduce the potential benefits of this option. Moving to a shorter advance/acquit cycle would also not reduce the administrative burden on services, as they would still be required to calculate CCB fee reductions, but report on fee reductions on reduced timeframes.

4.2.3. **Recommended option – CCMS**

The recommended option proposes implementation of a national CCMS. This option will provide the Australian Government with more timely, accurate and detailed availability and usage data for policy making and for compliance and performance monitoring. The total funding for this project can be represented as a combined FaCSIA and FAO change in fiscal balance of -$73.2 million over four years.

**Likely benefits**

This option provides a number of benefits to child care services, in that it:

- reduces the current administrative burden, as services will no longer need to calculate families’ CCB fee reductions;
- streamlines the reporting requirements for services, replacing the complex advance/acquit cycle with weekly arrears payments based on actual attendances;
- reduces the likelihood and quantum of incorrect payments to services, as payments will now be based on actual attendance data, as opposed to advances calculated in advance and then acquitted; and
- ensures services have suitable electronic means to migrate to the new system, through training packages and Government contributions to the cost of upgrading their existing hardware and software.

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\(^5\) For example, changes to arrangements for absences (see section 5.3.4 for details) and the ‘first in first served’ principle (see section 5.3.2 for details).
This option provides benefits to software providers, in that it:

- provides an opportunity to upgrade their software, and creates a requirement for services using their product to upgrade to the new version; and

- increases the potential market for their product, as it will now be necessary for all services to use appropriate software in order to submit data.

The families using services will also benefit, in that the CCMS:

- reduces the likelihood of family debts at reconciliation of their CCB entitlements, both as fee reductions will be calculated on actual usage (rather than possibly anticipated usage) and reduces the scope for services making errors in calculating fee reductions, as these are now calculated by the FAO;

- provides parents with access to meaningful child care usage and CCB payment information through online monthly reporting facilities with daily attendance information. Parents will be able to access this information online. This is the only option that enables this to occur and is essential for families to gain an understanding of the actual level of assistance provided by the Australian Government.

The government gains very significant benefits from this option, as the CCMS:

- improves the accuracy and timeliness of child care data (including usage and expenditure) by minimising manual processing through systems interface;

- provides greater efficiencies in the administration of CCB;

- decreases the funds tied up in the current advance/acquit cycle by moving to a weekly arrears payment model;

- reduces financial impact from incorrect claims due to fraud and human error, and aligns payments with FaCSIA’s increased compliance role;

- operational functions of FAO and FaCSIA are aligned with their departmental responsibilities;

- enables a significant amount of child care related information and data to be held by one central agency, improving the reporting ability of FaCSIA;

- generates significant administrative savings for the government; and
• provides for daily attendance records to be submitted and analysed (modified due to consultation – refer to section 5.4.1).

Likely costs

The CCMS option has financial and non-financial impacts on various stakeholders.

This option will have the following costs to child care services:

• Child care services will be required to purchase and maintain new or upgraded software and possibly new or upgraded hardware, and set up and maintain internet access. (Some of these costs will be subsidised).

• Revised administrative processes will need to be developed and implemented in many child care services (although the impact of this will vary greatly between services). This includes training of staff on new or upgraded software, more frequent reporting periods requiring more frequent book keeping, and so on.

• Services will no longer be paid large advances (currently paid monthly). Services who currently use these funds to smooth their cash flows across the month will no longer be able to do so. This cost is mitigated by the enrolment amount, which is a ‘float’ paid in respect of each child enrolled at the service.

• There will be implementation costs for child care services, although implementation assistance funding is expected to result in minimal net costs for services (refer to section 4.3 for details).

Software providers will also experience some costs as a result of the CCMS implementation:

• Software providers will need to upgrade and deploy their software, including revision of their program, and deployment costs such as training and support. These costs (as in any normal business model) will be passed on to services.

• New users of software, particularly those moving into computerised record keeping for the first time, may require higher than usual levels of support from software providers.

The CCMS option also involves some costs to Government:

• As outlined above, implementation of the CCMS includes committed funding of $73.2 million.
• The CCMS is a significant change project, and the government is aware of the impact this change may have on the child care sector to absorb change. For example, services may lose some productivity during the transition as staff adapt to the new process. If the CCMS fails to deliver to expectations, is delivered behind schedule, or the benefits of the CCMS are not realised, these change costs may be exacerbated.

• While the CCMS/software interface will be largely invisible to child care service users, the CCMS may be blamed unfairly for inadequacies in commercially available software. The CCMS model relies on commercial software providers to deliver appropriate and usable software to child care services on time and at a reasonable cost.

• The CCMS moves data communications between child care services and government to a primary, technologically based channel. Provisions for business continuity in case of unexpected failure and exception circumstances need to be included in the design of the CCMS.

• Use of the internet to transfer data between child care services and FaCSIA does raise some data security issues. The design of the CCMS seeks to mitigate these issues.

4.3. Compliance costs of the CCMS on child care services

The CCMS is to be implemented in the context of the existing regulatory regime, under the auspices of family assistance law. Approved services currently must comply with a range of obligations and conditions of continued approval under family assistance law, and this will continue to be the case. It should be noted that an application by the child care service for approval for CCB purposes is a voluntary decision. There is no need to be approved under family assistance law to operate as a child care service (unlike, for example, the requirement for child care services to be licensed under relevant state based regulatory regimes). However, services wishing to offer child care which attracts CCB fee subsidies for families (either as fee reductions or where families claim as a lump sum at the end of the financial year) must be approved.

To support child care services during the transition to the new system, assistance arrangements are being developed. Targeted and capped assistance will be provided to child care services approved for CCB at the time the system is implemented. The details and guidelines for this assistance are being developed in consultation with the child care industry. It is envisaged that assistance will include:

• modest financial assistance towards the acquisition or upgrade of hardware or software;
• advice to assist with the improvement of business processes through Professional Support Coordinators; and

• training and education.

Funding of around $18.8 million has been included in the CCMS budget to support services in their transition to the CCMS, including subsidising the cost of software and hardware. Additional funding was also included to cover implementation costs such as the development of training packages for services and the management of help desk services.

4.3.1. Compliance cost analysis

The costs of compliance with the CCMS have been assessed below against the categories outlined in Business Cost Calculator. The assessment relates to the change in compliance costs created by the CCMS, starting from the base point of compliance with the existing regulatory regime.

Compliance costs have been assessed against a number of categories, as outlined below.

Notification

Prior to or at the point of a child commencing care, the service is required to enrol the parent-child combination via the CCMS. This involves entering the name and date of birth of both the parent and child, and their Centrelink Customer Reference Numbers if known (services should seek this information from families, and already have this information for their current customers). This record is then forwarded via the CCMS interface to FaCSIA, where a data matching process with the Centrelink mainframe is conducted. Relevant information on the family passed to the service if and when the match is successful. Where families do not have a Centrelink record no match will be made. Potentially eligible families may apply to Centrelink to be registered on the mainframe if they do not currently have a mainframe record.

The enrolment process involves minimal (if any) cost to the service, as services currently need to record far more extensive enrolment details than the CCMS requires. In addition, where there is a successful data match with mainframe records, the child care service may opt to receive the enrolment payment in respect of that parent and child. Use of this enrolment amount for the duration of the child’s enrolment at the service should offset any cost which might be incurred.
Education

The CCMS changes will involve some additional educational costs for child care services at the time they transition to the new arrangements. Implementation arrangements being developed by FaCSIA include provision for this cost, both in terms of material outlining the changed legislative and procedural arrangements, and subsidising the cost (including training) of new or upgraded software used by the service. As such, the net costs of this education process for child care services have been assessed as minimal.

Permission

Under the new arrangements, CCB fee reductions will not be able to be passed to parents until usage data has been submitted and the fee reduction calculated. Information relating to the fee reduction and the payment is passed back to the service, which is then required to pass this amount to the parent. Information relating to the fee reduction will also be made available to the service, which needs to be included on receipts provided to parents.

Services are currently required to calculate the rate of the fee reduction based on child care usage. They also need to report usage and fee information, including the full fee charged, fee reductions passed and other details which may have affected the calculated rate of the fee reduction. Under the CCMS, services will no longer be required to calculate fee reductions or maintain records of information supplied by the FAO on the conditional eligibility of the family (which services use in calculating the fee reduction).

While the regularity of the reporting will be increased to weekly from the current quarterly reporting cycle, the volume of data being generated and passed by child care services will be no greater overall.

The impact of these changes will vary depending on the service’s current administrative practices. Where services currently update their records on a weekly or fortnightly basis, there should be little change or even an overall reduction in the cost of administering and reporting on CCB. Where a service chooses to bill their customers in advance, they may chose to continue calculating an estimated fee reduction and anticipate this in their billing process. Reconciling anticipated and actual fee reductions may result in an overall increased cost of reporting. Where services are currently submitting paper based claims, the introduction of computerised administration would be expected to increase their efficiency, although this will be largely dependent on the manner in which they implement the change. For example, a service which continues to manage their business based on paper records, and simply uses the computer as a lodgement system would probably experience an increase in the cost of reporting, as this approach adds the cost of entering data without capitalising on potential efficiencies.
The cost to services of administering and reporting on CCB relate much more strongly to the manner in which services design their business processes and use the technology available to them than to the implementation of the CCMS itself. FaCSIA is working with software providers to support them in their role of setting up and training services in the use of their software products, and encouraging services to adopt administrative practices which maximise the opportunities of the CCMS and upgraded child care business management systems.

While the cost of the administration and reporting will vary between services, given the assistance to be provided to assist services to maximise the opportunities, the overall cost on compliance for this factor have been assessed as minimal.

**Purchase cost**

Services will be required to have appropriate computer hardware and use child care software registered for interaction with the CCMS. This cost is to be subsidised by implementation funding to be provided by FaCSIA. The details of this implementation program are still under development and will be targeted based on need (for example, a service which is already fully computerised will receive less funding than an uncomputerised service). These implementation arrangements are being developed in liaison with the industry through the CCMS Industry Reference Group (detailed in 5.2 below), and it is anticipated the net cost to services will be minimal.

**Record keeping**

The CCMS does not require services to maintain any records they are not already required to keep, and in fact reduces some record keeping requirements. For example, under the CCMS documentation of the reasons for absences will not be required until a child has used 42 absences. Under current arrangements the reason for all absences need to be documented and records such as medical certificates need to be maintained for a number of absence types.

Services are currently required to keep records of sign in and out times for children in their care. This is done as a paper based process in most child care services, with parents signing a paper sheet as they drop off and pick up their children.

The proposed requirement under the CCMS for services to electronically submit sign in and out times for attendances is an additional requirement. In recognition of sector concerns about the cost of computerising these records, this requirement has been reduced to reporting on a sample month each year (see sections 5.3.1 and 5.4.1 for details). The reporting periods for this information will be reviewed as services become used to operating under the CCMS, and as technologies for electronic sign in and out procedures which would eliminate the data entry issue (such as swipe cards and PINs) become more prevalent.
The roll out to all approved services of computer technology to a minimum standard which will occur as a result of the CCMS may assist in the take up of such technologies.

As the overall impact of the CCMS is to reduce record keeping requirements, and the reduction of the sign in and out reporting requirements to a sample month each year, the total cost the child care services of record keeping changes as a result of the CCMS have been assessed as minimal.

**Enforcement**

The records of approved child care services may be inspected by authorised officers at any time. While the records being inspected may change somewhat under the CCMS arrangements, this is an existing requirement. Given that the CCMS does not increased the records a service must keep, there is no enforcement cost relating to the CCMS.

**Publication and documentation**

There are no additional publication and documentation requirements for child care services as a result of the CCMS.

**Procedural**

There are no additional procedural requirements for child care services as a result of the CCMS.
5. **CONSULTATION**

5.1. **Who are the main affected parties?**

The main affected parties are:

- child care services;
- child care software providers;
- the Family Assistance Office/Centrelink; and
- FaCSIA.

Some families will notice the impact of incidental policy changes, however are not directly impacted by the administrative changes. They continue to:

- deal directly with child care services regarding the provision of care;
- be able to received CCB fee reductions; and
- deal with the FAO in relation to their payments and circumstances.

5.2. **Consultation process**

On 18 November 2006, FaCSIA released a series of documents to support the development and implementation of the proposed option. These documents consisted of the *CCMS Information Paper* and the *Draft Service Provider Interface Specifications*.

Both these papers were released via the FaCSIA website and the *CCMS Information Paper* was advertised in national and major metropolitan and large regional newspapers. The *Draft Service Provider Interface Specifications* were advertised in the IT sections of the major metropolitan newspapers in the following week.

Comments on these papers were invited from child care services, software providers, families and the Australian public. Comments were accepted until late December 2006, and could be made to the department in writing, via regular or electronic mail. A dedicated email address (ccms@facsia.gov.au) was established for this purpose.

Consultation forums on the CCMS proposal were conducted in all capital cities and Townsville throughout November and December 2006. Feedback collected through the consultations has been considered in the development of policies and processes to be implemented with the CCMS.
Two reference groups have also been established to work with the Department during the development, testing and implementation of the CCMS:

- The CCMS Industry Reference Group drawn from child care services across the sector, was formed to focus on providing guidance and advice on change management strategies, training and support needs.

- The CCMS Technical Reference Group was established to work with software providers and selected IT staff from within the child care sector to assist with the development of CCMS compatible software.

5.3. Outcomes of consultation to date

A number of child care sector concerns about the CCMS proposal were identified through the consultation process. The ways in which these concerns were addressed is outlined in section 5.4.

5.3.1. Requirement for actual attendance times to be provided on an attendance record

This aspect of the CCMS required services to report the in and out times for each child for each session of care. This provides the Government with comprehensive, accurate and timely data on the child care usage patterns of families, and is essential for establishing compliance patterns and service snapshots without physically visiting a child care service site. However it would increase the administrative burden for services.

The sector’s response to the requirement under the CCMS to record both the charged hours and the in and out times for each child for each day of attendance was particularly intense. There was concern as to the additional workload associated with this requirement. This was considered by services to be a significant impost, in terms of both administration effort and cost.

Suggestions included deferring the collection of actual hours until after the CCMS has been implemented or to only collect actual hours for a sample period during the year (similar to the current census arrangements).

5.3.2. Application of CCB eligibility limits

Families accessing child care are eligible to receive CCB for up to 24 hours each week, except where the care is related to work, training or study, when families are generally eligible for up to 50 hours of care each week.
Families may access more than the 24 or 50 hours of care they have CCB eligibility for. Where the care is provided by two or more different services during the week, the services may not be aware the family has exceeded the limit, and provide fee reductions for the excess hours. This may result in the family being overpaid CCB. As the CCMS uses actual usage to calculate fee reductions, these overpayments can be prevented, by only paying for the first 24 or 50 hours of care claimed.

This approach allows eligibility limits to be applied correctly across all services while ensuring families receive their full entitlement and no more. It also ensures the payment of fee reductions occurs efficiently: once a service submits its attendance records fee reduction amounts can be calculated immediately, without the need to wait for any other services to submit records. However this approach may increase the administrative burden for some services, particularly those which chose to bill in advance (anticipating fee reduction amounts).

The sector expressed a high level of concern at the proposal for a ‘first-in, first-served’ application of CCB eligibility limits under the CCMS. Services believe that it will make it difficult to predict the amount to be paid, because they would not know if another service had already claimed the family’s fee reductions. There was also some comment that families should be able to choose the service that receives their fee reductions. The family day care sector also raised concerns that they may be disadvantaged given their current fortnightly administrative processes.

5.3.3. Availability of the CCB percentage

The CCB percentage is one factor used to calculate a parent’s CCB entitlement. It is based on the family’s income estimate and the number of children in care. Currently services are provided with a family’s CCB percentage, which is used along with other factors such as school age, part time percentage and eligible hours, to facilitate their calculation of fee reductions.

Under the CCMS, it was proposed that services would no longer have responsibility for calculating fee reductions, with this function being performed by the FAO based on weekly attendance records submitted to FaCSIA by services. Services will be required to pass to families the fee reduction amounts as calculated by the FAO.

Given the revised role of services under the CCMS, it was originally proposed that the CCB percentage no longer be provided to them. As the CCB percentage is just one factor used in calculating fee reductions, it may not give a true reflection of future fee reduction amounts. New services that commence operating under the CCMS will have no history of calculating fee reductions and may not fully understand the complexity involved in the calculations.
Feedback from the sector indicated some concern at not having CCB percentages upfront and the impact that it would have on services’ ability to provide families with fee quotes and bill in advance if this is their business practice. There was a strong preference from the sector for CCB percentages to be made available when an enrolment is confirmed to allow services (or their software) to undertake estimates of fee reductions.

5.3.4. Absences

Currently families may receive CCB fee reductions for days when the child is absent from care, for up to 30 days each year, without a documented reason for the absence (known as an ‘allowed’ absence), plus absences due to public holidays. They can also receive fee reductions for any absence which is due to a listed reason and supported with documentation where appropriate (such as illness supported by medical certificates, etc, known as an ‘approved’ absence).

Under the CCMS, CCB will be paid for the first 42 absence days per child per year (no matter what the reason) without the need for documentation. Once the first 42 days are used, CCB will only be paid for any further absences that are for permitted circumstances (as per existing provisions, less public holidays) where evidence is provided by families and maintained by services.

This approach minimises the frequent resubmission of attendances where services revise absences from ‘allowed’ to ‘approved’ following documentation provided after the event. This enables more streamlined payment of fee reductions. It also reduces the burden on parents to obtain documentation for the first 42 days of absences, and on services to maintain records of absence reasons and supporting documentation.

Sector feedback consistently highlighted concern that the proposal for absences under the CCMS may disadvantage families with children that have a long term illness by not allowing for the presentation of medical certificates in the first absence period. This concern arises in the situation where a child may use up the initial period of 42 days due to an extended illness, preventing them from claiming any further absences, for example for a respite holiday or remaining public holidays, for the rest of the year.

The sector also expressed concern that absence provisions discriminate against families using full time care as all families granted 42 days for absences regardless of work status.

Services were also concerned about difficulties in keeping track of absence tally for families that use more than one service. Under the CCMS absence tallies will be maintained by FAO and advised to services and families along with fee reduction advice. Overall the sector response indicated that the level of understanding of existing rules and provisions around absences varies greatly.
5.3.5. Weekly submission of attendance records

Under the CCMS child care usage needs to be submitted weekly, and fee reduction advice and payments to services do not occur until data is submitted.

There was a general perception that this would increase administrative costs to services, especially where administration staff employed for only a small number of hours, for example two days a fortnight or monthly.

The family day care sector has expressed some concern in relation to the weekly reporting requirement under the CCMS. Most family day care (and in home care) schemes have adopted administrative practices based on fortnightly reporting, in line with carer’s timesheets. These are submitted to the family day care scheme each fortnight and depending on the technology used, there can be significant delays for the scheme in receiving information required for the purposes of CCB. The family day care sector is concerned that the imposition of weekly reporting will significantly increase the administrative burden for family day care schemes and carers.

5.3.6. Payment of enrolment amounts

Under the CCMS arrangements, when services enrol a child and that combination of parent and child are recognised by the FAO system (that is, they have a Centrelink Reference Number, or CRN), the service is paid an enrolment payment. This payment is recoverable when the child leaves care. There was general acceptance that the enrolment advance would mitigate the impact on service viability from the move to payments in arrears. However concern that the level of the advance would not be enough to be effective in this.

Feedback from the sector suggests that some services believe they will incur additional administrative cost in managing the payment and recovery of enrolment amounts under the CCMS. It was also noted that the timing of the recovery, particularly where children attend the service less frequently, needed to avoid the necessity to have to repeat enrolments, such as children attending care only during school vacations.

5.3.7. Data and systems issues

The consultations also highlighted a need for assurance on the security and confidentiality of information being transferred from services to FaCSIA. Services want assurances around processes and procedures for business continuity and disaster recovery, such system failures or natural disasters at either the service or FaCSIA end of the system. Issues were also raised around access to broadband connections and whether the system would be able to operate using dial-up connections.
5.3.8. **Support for services**

The availability of targeted financial support was welcomed, though more information regarding the amount to be paid and purpose is required. Concern was raised about the capping of financial support for services and how this will be worked out. Capping at 15 services per operator was not seen as fair in the context of non-government organisations that auspice a large number of services (such as auspicing 80 outside school hours care services across the State) or large local government organisations. Some also suggested that the level of support offered to services that still submit manual CCB claims (about 150 services) should be higher.

It was noted the type and mode of education support provided needed to be simple and accessible, and needs to take account of the different service types, locations and capabilities. Accessibility of the help desk support for services was raised. This included operating hours and numbers and expertise of staff. Services want to talk to a ‘real person’.

The need for the provision of information throughout the development and implementation of the CCMS direct to all services, and not placing a reliance on the internet as a vehicle for information sharing, was also raised. Suggestions included writing directly to services, such as through fact or information sheets.

5.3.9. **Support for parents**

It was noted that information products for families will need to be updated and an emphasis placed on informing families about the application of the eligible hours limits. Access for parents to the Centrelink online statement other than via the internet was raised as an issue.

The ongoing role of services in educating families about CCB was raised, and the need for services to have access to CCB information in order to assist families with claims and understanding their entitlements.

5.3.10. **Software providers**

The need for FaCSIA to work with the software providers was emphasised. Concerns were raised by service providers about the variability of the cost of software, its functionality and the training and support provided.

5.4. **How have stakeholder views been taken into account?**

Various aspects of the CCMS have been modified in response to concerns raised through the consultation process.
5.4.1. Requirement for actual attendance times to be provided on an attendance record

In order to balance sector concerns about the impact of this requirement with the need for Government to have the information it needs, it was agreed that at this stage the reporting of in and out times will be mandatory only for certain periods of time during the year.

This approach:

- reduces the workload for services;
- provides some data for the Department for a sample period each year;
- maintains the requirement for the reporting of some in and out times, and
- allows for the possibility of the time period being increased once all services are used to operating under the CCMS, if desired and supported by appropriate technology.

However, the change is not without disadvantages. Data available is not as comprehensive or consistent and therefore less valuable from both a compliance and policy development perspective. Also, by limiting the reporting period and not having consistent reporting throughout the year, this approach may highlight the additional administrative costs for services of reporting in and out times. This approach requires services to adopt special work practices for only part of the year so may not encourage automation in this area.

5.4.2. Application of CCB eligibility limits

While there was consistent concern expressed, available data indicates that this may be overstated, as illustrated by data for 2005:

- Less than 16,000 families (or 2.4 per cent of all families) eligible for 50 hours per week had claimed more than 50 hours of CCB in a week and used more than one service in that week. This includes families actually approved for more than 50 hours.

- Less than 8 per cent of families eligible for 24 hours per week claimed more than 24 hours of CCB in a week, and used more than one service in that week. Again, this includes families actually approved for more than 24 hours.
As this ‘first in, first served’ principle is critical in enabling the CCMS to process payments in a timely and effective manner, the principle has been maintained as a default setting. However parents, if they wish, will now be able to nominate the number of eligible hours to be paid at each service they attend. A form will be developed for parents to sign at each service identifying the number of hours they want the service to claim on their behalf. This option was suggested by the sector.

This approach will provide services with a greater level of certainty from week to week as to the amount of fee reductions they can expect to be paid. However it does shift responsibility to parents to manage their eligible hours, which may be confusing for some. Families with changing circumstances will need to frequently advise changes to their services. This approach may still create some uncertainty for services if parents misinform the number of hours to claim, as FAO will not pay above 24 or 50 hour limit. FAO will also only pay hours specified by services where parents elect this option. If parents allocate less than their eligible hours to the services, they may be underpaid (although they will receive this when reconciled at the end of the financial year).

5.4.3. Availability of the CCB percentage

Information already proposed to be provided to services when an enrolment is confirmed includes the CCB method (lump sum or fee reduction) and the CCB eligible hours for that parent-child combination. In response to child care sector feedback, the CCB percentage will also be provided to services at the point at which an enrolment with CCB eligibility is confirmed by FaCSIA. This provides a simple solution to a common concern expressed across the sector.

The CCB percentage used by the FAO when calculating fee reduction amounts will be made available to service providers on the advice FaCSIA generates against an attendance record when payments to services are made, so services are provided with updated CCB percentages.

There is an ongoing risk that services will provide inaccurate advice to families in estimating fee reductions. Services will need to be provided with a clear explanation (for example, in the Child Care Service Handbook) as to what the CCB percentage represents, and how fee reductions are calculated.

5.4.4. Absences

To address sector concerns about new absence rules, services will be able to approve additional absences for exceptional circumstances. Once the initial 42 days were used, services will be able approve additional absences based on an exceptional circumstances provision.
This approach provides greater flexibility for dealing with family circumstances. It would, for example, resolve the situation of a long term illness by allowing the payment of CCB for absences beyond the first 42 days where the service considered exceptional circumstances applied. However, it does create service compliance risks and a potential for increased CCB outlays if services apply exceptional circumstances for their own purposes or without the parent’s knowledge. Rigorous guidelines and compliance mechanisms will be developed to mitigate this risk.

5.4.5. Weekly submission of attendance records

The concept of weekly submission of attendance data is a crucial element in the weekly-in-arrears model of fee reduction payments that is being established with the CCMS. Extending the weekly reporting period would jeopardise the efficient and timely payment of fee reductions.

As such, the concept of weekly submission is to be maintained and all services are encouraged to submit their attendance records to FaCSIA on a weekly basis. If however, a service chooses to report fortnightly they can do so, but they will only receive fee reduction advice and payments once they have submitted their attendance data.

This approach allows family day care services to report on a fortnightly basis. However under the first-in, first-served principle outlined above, the services that submitted earlier would have their fee reduction amounts calculated first. Any services that chose to report fortnightly may consider themselves disadvantaged in this regard. It also remains a mandatory requirement for every service to submit vacancy reports on a weekly basis.

In recognition of the unique circumstances of carers provide family day care and in home care, the Department is investigating additional support which may be provided to these carers as part of the targeted support package being developed to assist services to transition to the CCMS. This support could include additional funds to family day care and in home care schemes to assist carers in the timely submission of attendance reports.

5.4.6. Payment of enrolment amounts

To accommodate child care sector concerns, services will be able to nominate whether they wish to receive an enrolment payment for each eligible child. Once a service has indicated they do not wish to receive payment for a particular child, they can not change their mind - a new enrolment would need to be created.

This approach still provides support with cash flow to services that elect to receive payment, while enabling services to ‘opt out’ where they think it will create extra administrative effort, particularly for casual attendances. However this may make the transition to the CCMS more difficult for services that choose not to accept the payment on purely administrative grounds, which may be erroneous.
Due to the nature of occasional care, enrolment payments will not be available. The Department is working with the sector to consider alternate arrangements.

It is expected that the majority of services will continue to nominate to be paid enrolment payments, particularly at the point of transition to the CCMS. However this option enables services to ‘opt out’ should they be concerned about an additional administrative burden.

5.4.7. Data and systems issues

The CCMS is being designed to ensure that the security and confidentiality of information being transferred from services to FaCSIA, and from FaCSIA to services, is a key concern in the design of the CCMS.

The project is also developing processes and procedures for assuring business continuity and disaster recovery contingencies, whether the issue is with services or FaCSIA.

It has also been confirmed that, while a broadband internet connection is preferred, the CCMS will also operate effectively if accessed using a dial up internet connection.

5.4.8. Support for services

In the consultation process a number of issues relating to the support of services during the CCMS implementation were raised, and a number of suggestions provided. This feedback is being considered in the context of developing the implementation support arrangements and communication strategies, together with advice from the CCMS Industry Reference Group and the CCMS Technical Reference Group.

5.4.9. Support for parents

The consultations also highlighted the need to inform families about those aspects of the CCMS implementation which may affect them, such as the application of the eligible hours limits and new absence arrangements. This is being taken into account in development of the CCMS communications strategy.

5.4.10. Software providers

The feedback provided through the consultations also confirmed the importance of working with software providers in managing the CCMS transition. The CCMS Technical Reference Group was established to ensure that the views and concerns of software providers and selected IT staff from within the child care sector are identified and addressed.
6. CONCLUSION

The proposed solution to introduce the CCMS meets the requirements of the Australian Government’s new e-government strategy Responsive Government – A New Service Agenda, which sets the direction for the future use of information communications technology (ICT) in government, to:

- accelerate the improvement of service delivery to citizens and business;
- promote the development of connected and responsive government; and
- improve public administration.

The CCMS will use technology to enhance process and channel efficiency between relevant government bodies, child care services and the families. The CCMS option:

- assists in gaining a better understanding of supply and usage of child care;
- provides timely information on CCB expenditure for different care types;
- provides more timely, accurate and detailed data for policy making and for compliance and performance monitoring; and
- enables an efficient flow of availability, usage and CCB expenditure data between FaCSIA and the FAO as required, ensuring that the required information held by each agency is up to date.

The responsibility of providing accurate attendance information for CCB payments will continue to rest with the child care services, and the providers will only receive CCB payments if they provide correct information in the required format. The system will be designed to support child care services and reduce the risks of incorrect information being submitted. Assistance will be provided to help the transition, such as appropriate software, training and ongoing helpdesk support.
7. IMPLEMENTATION AND REVIEW

7.1. Implementation plan

A CCMS pilot will be conducted with a selected number of services prior to the system being rolled out more broadly. The pilot will simulate business process including training, information and support products, transition processes and helpdesk support.

The CCMS pilot with selected long day care and family day care services will commence from July 2007 and will consist of the following phases;

- firstly, a Simulation Phase where the CCMS will be used by child care services but no live payments will be made; and
- subsequently, a Live Payment Phase where are small group of child care providers will commence using the CCMS for day to day CCB processes.

FaCSIA is working closely with Centrelink, child care services, software providers and reference groups to ensure a comprehensive assistance process takes place during the pilot, so that the system and associated business processes are robust.

Following on from the CCMS pilot, services will be gradually transitioned over to the CCMS. The transition will commence with those services that were participating in the pilot phase.

Final transition arrangements are still being developed. FaCSIA will be working closely with services to ensure that adequate time and information is provided to ensure an efficient transition.

7.2. Evaluation strategy

Evaluations of the CCMS will be undertaken at various points throughout the implementation and once implementation is finalised.

The evaluation will involve an assessment of the impact of the CCMS on the child care sector, analysis of the extent to which the CCMS operates as a functional, integrated system focusing on the effectiveness, efficiency and appropriateness of individual components of the CCMS.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007.

Clause 2 provides a table that sets out the commencement date of the various sections in, and Schedules to, the Act.

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

This Explanatory Memorandum uses the following abbreviations:

- ‘Family Assistance Act’ means the A New Tax System (Family Assistance) Act 1999;
- ‘Family Assistance Administration Act’ means the A New Tax System (Family Assistance) (Administration) Act 1999; and
- ‘CCB’ means child care benefit.
Schedule 1 – Amendments relating to Child Care Management System

Summary

Amendments are made to the family assistance law for the purposes of a new online-based Child Care Management System (CCMS). The CCMS will standardise and simplify CCB administration, reduce the time required for making payments to approved child care services, reduce the administrative burden on services, and improve the management of child care information relevant to the determination of individuals’ CCB entitlement.

Amendments are also made to the absence provisions, the provisions relating to the way hours of care are calculated for CCB purposes, and the part-time % rate component of CCB.

Further amendments will introduce three new sanctions for failure of an approved child care service to comply with conditions of continued approval.

(a) Child Care Management System

Background

In the 2006-07 Budget, the Government announced measures to ensure that the Government’s investment in child care is supported by more responsive management, quality and compliance systems to provide better service to parents using child care. The measures include establishment of a national, online-based system, the CCMS.

The CCMS will bring all approved child care services online to standardise and simplify CCB administration, including the lodgement of child care information by services, and to reduce the time it takes to make payments to services.

Generally, the main features of the CCMS are as follows:

- child care services will be required – as a condition of their continued approval for family assistance purposes – to provide relevant child care information using a purpose-built electronic facility (an electronic interface);

- the provision of information by the Secretary to approved child care services will occur via the electronic interface;

- approved child care services will be required to provide via the electronic interface notification of an enrolment for each child in the care of the service;
- in respect of each enrolment, approved child care services will be required to provide, via the electronic interface, weekly child care usage information relevant to the calculation of ongoing CCB fee reductions for eligible individuals and the determination of eligibility for, and entitlement to be paid, CCB for care provided to all enrolled children; information relating to a particular week will be required to be provided within the following two weeks;

- approved child care services will no longer need to calculate CCB fee reductions for care provided by the service; instead, services will be required to apply fee reductions calculated by the Secretary on the basis of the weekly child care usage information provided by the services;

- if services provide the required child care information relating to a week as soon as the week ends, the payment to services of the fee reduction amounts by which the services will be required to reduce eligible individuals’ fees for the week will be delivered in the following week;

- the Secretary will have the power to recalculate fee reductions where the service corrects or withdraws an attendance record, or where an error occurred in the original calculation;

- the new system of payment of fee reduction amounts to services weekly in arrears will replace the current system of payment to services of quarterly advance amounts that the services acquit in the subsequent calendar quarter;

- a refundable payment, an enrolment advance, will be made available to services in connection with any new eligible enrolment for the duration of the enrolment;

- services will be required to interact with the department using software that is registered, by the Secretary, for CCMS purposes.

The amendments commence, generally, on 1 July 2007. The amendments made by this Schedule will apply to an approved child care service from the day specified by the Secretary as the commencing day for that service, not later than 1 July 2009.

The application of the amendments to individual approved child care services will be preceded by a pilot of the CCMS system, of a few months duration, starting after 1 July 2007, with services participating on a voluntary basis.

Following the pilot, approved child care services will be moved progressively from the current system to the new CCMS system during the transition period, ending on 30 June 2009.
During the transition period, there will be a dual CCB system in operation, with the legislation as currently in force and the legislation as amended applying at the same time to individual services, depending on whether or not they have made the transition to CCMS.

**Explanation of the changes**

**New CCMS process – overview of main changes**

The amendments made in this Schedule mainly affect the process relevant to the calculation of fee reductions for care provided by an approved child care service to a child of an individual in respect of whom a determination of conditional eligibility for CCB by fee reduction is in force. Amendments also affect the way in which the payments of fee reduction amounts are made to services.

Currently, the process is as follows.

If an approved child care service provides care to a child of an individual in respect of whom a determination of conditional eligibility is in force, the service is required (under section 219A of the Family Assistance Administration Act) to calculate fee reductions for sessions of care provided to the child, as provided by the family assistance law, using various determinations (the CCB %, schooling %, limit of hours, special grandparent rate, etc) made by the Secretary under the family assistance law, about which the service is notified by the Secretary. The service is then obligated to reduce the fees to be paid for the sessions by the amount as calculated. The service can charge a conditionally eligible individual only reduced fees.

After each calendar quarter the service is obligated to provide a report that includes information relating to hours of care provided to the child, and all other children in the service’s care, and the amount of fee reductions the service provided in respect of each child.

The service is paid an advance amount at the beginning of each quarter for the anticipated fee reductions the service will provide. Once the report for the quarter is provided by the service, the advance amounts paid for that quarter are compared with the total fee reduction amounts provided in that quarter and the difference is either offset from, or added to, as the case may be, the advance amount for the next quarter.

After the end of an income year during which a service provided fee reductions to an individual, the Secretary makes a determination of entitlement for the individual for that income year. The amount of the entitlement is compared with the total fee reductions provided and reported by the service. Any difference is paid to the individual as a top-up, or constitutes a debt, as the case may be.

As the result of the amendments in this Schedule, the process will be as follows.
As a condition of continued approval for the purposes of the family assistance law, all approved child care services will be required to notify the Secretary online of any new enrolment of a child for care by the service (amendments made by item 82 refer).

Following the notification of an enrolment by a service, and the electronic confirmation of the enrolment by the Secretary, the service will be required, as a condition of its continued approval, to report to the Secretary, online, weekly information about the enrolled child, including information relevant to the calculation of fee reductions (for individuals who are conditionally eligible for CCB by fee reductions) and CCB entitlement for care provided to the child (whether entitlement for CCB by fee reductions or CCB for a past period) (amendments made by item 87 refer).

Once the Secretary has received the service’s report relating to a particular week and a particular child, the Secretary will calculate, for conditionally eligible individuals, the rate and amount of fee reductions for sessions of care provided to the child in that week and pay the amount to the service (amendments made by items 18 and 90 refer). Services will not calculate fee reductions, as is currently the case.

As this process will generally deliver the payment of fee reduction amounts to services in the week following the submission of the relevant weekly information by services, the current quarterly advance payments designed to cover services’ fee reduction expenses during the calendar quarter will no longer be provided (amendments made by item 90 refer).

Once the Secretary has calculated the amount of fee reductions for a particular week for an individual and an enrolled child, the service will be required, as a condition of its continued approval, to pass the fee reduction amount as calculated for the week on to the individual (amendments made by item 83 refer). This obligation will apply regardless of whether the service has, or has not, already charged the individual for care provided to the child for that week.

Certain enrolments will attract a refundable payment, an enrolment advance, payable to the service on the confirmation of the enrolment by the Secretary. Once the enrolment for which an enrolment advance was paid has ended, the enrolment advance amount paid in respect of that enrolment will be recovered via an offset from any amount subsequently due to be paid to the service (amendments made by item 90 refer).
Part 1 – Amendments

Amendments to the Family Assistance Act

Items 1 and 2 are explained under the heading Absences.

Items 3 and 4 are explained under the heading Counting hours towards an individual’s limit of hours.

Item 5 is explained under the heading Part-time %.

Amendments to the Family Assistance Administration Act

Items 6 and 7 insert new definitions of ‘enrolled’ and ‘ceases’ into subsection 3(1). The definition of ‘enrolled’ refers the reader to the meaning given by new subsections 219A(2) and 219AA(2) inserted by item 82, and the definition of ‘ceases’ refers to the meaning given by new section 219AD inserted by item 82. The meaning of ‘enrolled’ and ‘ceases’ is explained in the context of the amendments made by those items.

Items 8, 9 and 10 make amendments to section 4. Section 4 provides for approval of the use of electronic equipment, etc, to do things for the purposes of the family assistance law. Amendments made in this Schedule include a number of provisions authorising the Secretary to approve the form, manner or way of providing information, for example, a notice of enrolment to be given by a service (new subsection 219AB(1) inserted by item 82) or a weekly report to be given by the service (new subsection 219N(3) inserted by item 87).

The amendments made by items 8 and 9 to section 4 ensure that the approval may extend to requiring the doing of things, for example, the provision of enrolments or reports by a service, by the use of software registered by the Secretary.

Item 10 inserts new subsections 4(2) and 4(3). New subsection 4(2) provides for application by a person to have software registered by the Secretary for the purposes of a particular application, claim or other thing or for a class of those. New subsection 4(3) provides the Secretary with a discretionary power to register software for use under CCMS.

The amendments made to section 4, together with other amendments providing for approval by the Secretary of the form, manner or way of doing things, operate to the effect that, if the Secretary approves the use of registered software for a particular purpose, for example, for notification of enrolments under new section 219AB or for the provision of weekly reports under new section 219N, failure to comply with this requirement will constitute a breach of the service’s condition of continued approval for the purposes of the family assistance law. As a result, a sanction under section 200 may be imposed on the service, including suspension or cancellation of the service’s approval.
Item 11 substitutes a new section 48. This section provides an overview of the main elements of the fee reduction process, which applies when an individual claims CCB by fee reduction. New section 48 reflects the changes to the process resulting from the CCMS amendments. It refers to the following elements of the process:

- an approved child care service is required to notify the Secretary about an enrolment of a child in child care by an individual (new subsection 48(1) refers);

- following the notification of enrolment, and its confirmation by the Secretary, the service is required to provide to the Secretary weekly reports about care provided to the child (new subsection 48(2) refers);

- following the provision of a weekly report, if the report relates to the child of an individual who is determined to be conditionally eligible for CCB by fee reductions, the Secretary calculates an amount of fee reductions for care provided to the child in the week, by which the service has to reduce its fees (new subsection 48(3) refers);

- the amount of fee reductions is the amount calculated in the same way, using the same legislative provisions, that the individual’s entitlement for CCB for care provided to the child would be calculated if a determination of entitlement for CCB by fee reduction (which will be made after the end of the income year) were in force while the fee reduction calculation is made (new subsection 48(4) refers);

- following the calculation of fee reductions, the service is required to pass on to the individual the amount calculated (new subsection 48(5) refers);

- when the determination of entitlement is made in respect of an income year and the entitlement amount is greater that the total amount of fee reductions received by the individual during the income year, the individual’s entitlement includes the amount of the difference (new subsection 48(6) refers);

- when the determination of entitlement is made in respect of an income year and the entitlement amount is less than the total amount of fee reductions received by the individual during the income year, the individual’s entitlement is the amount of fee reductions minus the difference (new subsection 48(7) refers);

- fee reduction payments are made to the service by the Secretary under new Division 2 of Part 8A inserted by item 90 to enable the service to pass on to the individual the amount of fee reductions as calculated (new subsection 48(8) refers).
Items 12 to 17 make amendments to various notice provisions. Currently, services are required by section 219A to calculate fee reductions for conditionally eligible individuals, applying the relevant CCB %, a weekly limit of hours, schooling % and the special grandparent rate (where applicable), as determined by the Secretary. To do so, the services need to be notified of those determinations, subsequent variations of those determinations and any review decisions relating to those determinations. Therefore, the relevant provisions relating to those determinations require that notice be given to the approved child care service providing care to the child.

As the CCMS amendments provide for the calculation of fee reductions by the Secretary, not by a service, it is no longer necessary to give to an approved child care service notice of these decisions relating to an individual whose child is in the care of the service.

Therefore, item 12 removes this requirement from subsection 50L(8), relating to the cessation of the determination of conditional eligibility; item 14 – from subsection 50M(1), relating to determination of conditional eligibility under section 50F, of a weekly limit of hours under section 50H, of CCB % under section 50J, and schooling % under section 50K; and item 16 – from subsection 50V(1) relating to a determination of special grandparent rate under section 50T.

Under the CCMS, an approved child care service will be required to notify the Secretary of the enrolment of each child in the care of the service. An enrolment record will be subsequently created for the enrolled child on the electronic interface, containing some of the information relevant to the calculation of fee reductions for care provided by the service to the child. The information will include a limit of eligible hours of care, CCB % and the special grandparent rate where relevant. This information will be accessible electronically to the service providing care to the child.

The following amendments authorise the Secretary to make notices of these decisions, and some other decisions specified in the amending provisions, available using an electronic interface, or otherwise, to an approved child care service or services providing care to the child. Item 13 inserts for this purpose new subsection 50L(10), relating to the cessation of the determination of conditional eligibility; item 15 inserts new subsection 50M(4), relating to determination of conditional eligibility under section 50F, of a weekly limit of hours under section 50H, of CCB % under section 50J, and schooling % under section 50K; and item 17 inserts new subsection 50V(4), relating to determination of special grandparent rate under section 50T.

Item 18 inserts new Subdivision CB after Subdivision CA of Division 4 of Part 3, dealing with the calculation by the Secretary of the rate and amount of fee reductions. A corresponding amendment to section 219A made by item 90 removes the current requirement for approved child care services to calculate fee reductions.
New Subdivision CB – Calculating the rate and amount of fee reductions

New sections 50Z and 50ZA are relevant to the calculation of fee reductions in a situation when an individual is conditionally eligible for CCB by fee reductions.

**New section 50Z – Calculating the rate and amount of fee reductions – individual conditionally eligible**

New subsection 50Z(1) imposes on the Secretary a requirement to calculate the rate, and the amount of fee reductions, applicable to an individual and a child in respect of care provided to the child by an approved child care service in a week.

The Secretary is required to make such a calculation only for sessions of care provided while a determination of conditional eligibility is in force in respect of the individual and the child (new paragraph 50Z(1)(a) refers).

The requirement to calculate fee reductions for sessions of care provided to a child in a particular week is contingent upon the service giving a report under section 219N (as modified by amendments made by item 87) in respect of an enrolled child and a week (new paragraph 50Z(1)(b) refers). The meaning of ‘enrolled’ is given in new subsection 219A(2) inserted by item 82. A ‘week’ for CCB purposes is defined in section 3 as starting on a Monday. The report contains the information necessary for the calculation of fee reductions, for example, the number of hours of care provided to the child in a week. If the service does not provide the report for a child for a week, the calculation of fee reductions for that child for care in that week cannot occur.

The calculation of rate, and the amount of fee reductions for a week, is based on the determinations relevant to the individual and the child made under the Family Assistance Act and the Family Assistance Administration Act in force in that week (new paragraph 50Z(2)(a) refers). Therefore, the Secretary is required to take into account the relevant determination of a weekly limit of hours under section 50H, CCB % under section 50J, schooling % under section 50K, the special grandparent rate under section 50T (if applicable), any determination of a limit of hours under sections 54, 55 or 56 of the Family Assistance Act, a determination of rate under section 81 of that Act, any variations of those determinations, and any other determinations relevant to the individual, the child and the week.

In certain situations (for example, when a child is at risk of abuse or neglect), an approved child care service is authorised by the legislation to certify that, for a period certified by the service, a particular weekly limit of hours is applicable to the individual and the child in a week (subsections 54(1), 55(6) and 56(3) of the Family Assistance Act refer) at a particular certified rate (subsection 76(1) of the Family Assistance Act refers).
If a service gives a certificate to this effect in respect of a period, and the week in respect of which the Secretary calculates fee reductions for the individual and the child falls within that period, the Secretary is required to calculate fee reductions using the certified limit of hours and the certified rate (new paragraphs 50Z(2)(b) and (c) refer).

These requirements ensure that the Secretary’s calculations of fee reductions for a week result in an amount as close as possible to the actual CCB entitlement of the individual for this week, to be calculated after the end of the income year.

The Secretary is required to notify the service of the rate and amount calculated in respect of the individual, the child and the week (new subsection 50Z(3) refers). The notification is relevant to the service’s obligation in new section 219B inserted by item 83 to pass on fee reductions for the week on to the individual.

New subsection 50Z(4) provides that the notice must be given in the form, manner or way approved by the Secretary. As a result of the operation of section 4, which allows for approval of the use of electronic equipment for doing things required or permitted to be done for the purposes of the family assistance law, new subsection 50Z(4) enables the Secretary to approve an electronic way of notification of the rate and amount of calculated fee reductions.

It is intended that, in line with the CCMS principle of electronic communication between the Secretary and the services, an approved child care service providing a weekly report in respect of an enrolled child will be notified of the rate and amount of fee reductions calculated by the Secretary by making this information available to the service via an electronic interface, to which the service, through their software, will have access. A service is taken to have been given the notice on the day on which the information is made available to the service. New subsection 50Z(5) operates to this effect.

**New section 50ZA – Revising the rate and amount calculation**

New section 50ZA allows the Secretary to recalculate the previously calculated rate or the amount of fee reductions, or both. The recalculation may be necessary as a result of a service changing the previously provided report in respect of a week or to correct an erroneous calculation on the Secretary’s part. The Secretary can only recalculate fee reductions in respect of a week if an entitlement determination under section 51B has not been made in respect of the individual, the child and the income year in which the week falls (new subsection 50ZA(1) refers).
As fee reductions are made in lieu of the individual's CCB entitlement to be determined in respect of the income year, once a determination of entitlement is made under section 51B, and the total amount of fee reductions provided during that year is reconciled (where the amount of the entitlement differs from that amount of fee reductions, a top-up payment is made to the individual or there is a debt to be paid by the individual), any future information that may be relevant to care provided during a week occurring in that income year affects the individual's entitlement for that year, not fee reductions. Any change to an amount of entitlement determined under section 51B can only be made via review of the determination of entitlement under Part 5 of the Family Assistance Administration Act.

Where a recalculation occurs under the new subsection 50ZA(1), the Secretary is required to notify a service of the recalculated rate and amount (new subsection 50ZA(2) refers).

The Secretary is not required to notify a service of the recalculated amount if the Secretary revises downwards the calculation of a fee reduction amount for a week for a reason other than the change of the service’s report (new subsection 50ZA(3) refers). Notification of this lower amount is not required because the service’s obligation under new section 219B inserted by item 83, to pass fee reductions for the week on to the individual, does not extend to passing on the lower amounts calculated in this situation.

The requirements in new subsections 50ZA(4) and (5), relating to giving notice of the recalculated amount in the form, manner or way approved by the Secretary, and making the information available to the service using an electronic interface, are the same as the requirements explained in the context of new subsections 50Z (4) and (5).

New section 50ZB – Calculating the amount of child care benefit by fee reduction – service eligible

New subsection 50ZB(1) imposes on the Secretary a requirement to calculate the rate, and the amount of CCB by fee reduction, applicable in respect of care provided to a child at risk by an approved child care service in a week.

The Secretary is required to make such a calculation only for sessions of care provided while a service is so eligible under section 47 of the Family Assistance Act (new paragraph 50ZB(1)(a) refers).

The requirement to calculate fee reductions for sessions of care provided to a child at risk in a particular week is contingent upon the service giving a report under section 219N (as modified by amendments made by item 87) in respect of an enrolled child and a week (new paragraph 50ZB(1)(b) refers). The meaning of ‘enrolled’ is given for this purpose in new subsection 219AA(2) inserted by item 82. A ‘week’ for CCB purposes is defined in section 3 as starting on a Monday.
The report contains the information relevant to the calculation of the amount of fee reductions for the service for the week, for example, the weekly limit of hours certified by the service in respect of the child under section 54, 55 or 56 of the Family Assistance Act, the rate certified by the service under section 76 of the Family Assistance Act, and the number of hours of care provided to the child in the week. If the service does not provide the report for a child for a week, the calculation of fee reductions for the service in respect of care provided to the child in that week cannot occur.

The calculation of the rate and the amount of CCB by fee reduction for a week is based on the determinations relevant to the service and the child made under the Family Assistance Act and the Family Assistance Administration Act in force in that week (new paragraph 50ZB(2)(a) refers). Therefore, the Secretary is required to take into account any relevant determinations in force, that is, a determination of rate made by the Secretary under section 81 of the Family Assistance Act or a determination of a limit of hours under section 54, 55 or 56 of the Family Assistance Act and any variation of those determinations relevant to the service, the child and the week.

In the situation when a child is at risk, an approved child care service is authorised by the legislation to certify that, for a period certified by the service, a particular weekly limit of hours is applicable to the individual and the child in a week (subsections 54(10), 55(6) and 56(4) of the Family Assistance Act) at a particular certified rate (subsection 76(2) of the Family Assistance Act refers).

If a service gives a certificate to this effect in respect of a period, and the week in respect of which the Secretary calculates CCB for the service and the child falls within that period, the Secretary is required to calculate CCB using the certified limit of hours and the certified rate (new paragraphs 50ZB(2)(b) and (c) refer).

These requirements ensure that the Secretary’s calculations of a service’s CCB by fee reductions for a week results in an amount as close as possible to the actual CCB entitlement of the service for this week to be calculated after the end of the income year.

The Secretary is required to notify the service of the amount calculated in respect of the child at risk and the week (new subsection 50ZB(3) refers). The notification is relevant to the service’s obligation in new section 219BA inserted by item 83 to pass on to itself the amount calculated by the Secretary for the week.

The requirements in new subsections 50ZB(4) and (5), relating to the giving of notice of the calculated amount in the form, manner or way approved by the Secretary, and making the information available to the service using an electronic interface, are the same as the requirements explained in the context of new subsections 50Z(4) and (5).
New section 50ZC – Revising the rate and amount calculation

New section 50ZC allows the Secretary to recalculate a previously calculated amount of a service’s CCB by fee reduction. The recalculation may be necessary as a result of a service changing the previously provided report in respect of a week or to correct an otherwise erroneous calculation on the Secretary’s part. The Secretary can only recalculate fee reductions in respect of a week if an entitlement determination under section 54B has not been made in respect of the service, the child and the income year in which the week falls (new subsection 50ZC(1) refers).

As the Secretary’s calculation of a service’s CCB by fee reductions during an income year under new subsection 50ZB is made in lieu of the service’s CCB entitlement to be determined in respect of the income year, once a determination of entitlement is made under section 54B, and the total amount of CCB by fee reductions provided during that year is reconciled (where the amount of the entitlement differs from that amount of fee reductions, a top-up payment is made to the service or there is a debt to be paid by the service), any future information that may be relevant to care provided during a week occurring in that income year affects the service’s entitlement for that year. Any change to an amount of entitlement determined under section 54B can only be made via review of the determination of entitlement under Part 5 of the Family Assistance Administration Act.

The Secretary is required to notify the service of the recalculated rate and amount (new subsection 50ZC(2) refers).

The Secretary is not required to notify a service of the recalculated amount if the Secretary revises downwards the calculation of the fee reduction amount for a week for a reason other than the change of the service’s report (new subsection 50Z(3) refers). Notification of this lower amount is not required because the service’s obligation in new section 219BA inserted by item 83, to pass on to itself the amount calculated for the week, does not extend to passing on the lower amounts calculated in this situation. The same administrative rule is applicable in this situation, regardless of whether the amounts for a week are recalculated for an individual conditionally eligible for CCB by fee reduction or for an approved child care service eligible for CCB by fee reduction for a child at risk.

The requirements in new subsections 50ZC(3) and (4) relating to the giving of notice of the recalculated amount in the form, manner or way, approved by the Secretary, and making the information available to the service via the electronic interface, are the same as the requirements explained in the context of new subsections 50Z(4) and (5).

Item 19 amends section 51E, dealing with notice of determination of entitlement to be paid CCB by fee reduction where an individual was conditionally eligible during an income year.
After each income year during which an individual is conditionally eligible for CCB by fee reduction in respect of a child, a determination of entitlement to be paid CCB by fee reduction is made under section 51B for the income year.

Section 51E requires the Secretary to give notice of this determination to the individual concerned stating, among other things, ‘the total amount of fee reductions made by an approved child care service’ providing care to the child, in respect of sessions of care provided to the child during the income year (subparagraph 51E(1)(c)(iii) refers).

**Item 19** amends the wording of this requirement to reflect a new obligation of an approved child care service specified in new section 219B inserted by **item 83** to pass on to the claimant the amount of fee reductions calculated by the Secretary.

**Item 20** amends section 54D, dealing with notice of a determination of entitlement to be paid CCB by fee reduction when the service is eligible for fee reductions in respect of a child at risk.

After each income year during which an approved child care service is eligible for CCB by fee reduction in respect of a child at risk, a determination of entitlement to be paid CCB by fee reduction is made under section 54B for the income year, the service and the child.

Section 54D requires the Secretary to give notice of this determination to the service stating, among other things, ‘the total amount already received by the claimant in respect of the financial year from one or more payments of an amount of advance paid to reimburse the claimant’.

As a result of the amendments made by **item 90**, advance amounts currently paid quarterly to approved child care services under Division 2 of Part 8A will no longer be provided. **Item 20** amends, therefore, the wording of the requirement in paragraph 54D(1)(c) to reflect this change and to reflect the new obligation of an approved child care service specified in new section 219BA inserted by **item 83** to pass on to itself the amount of CCB fee reductions calculated by the Secretary.

**Item 21** amends section 56, dealing with payment in respect of a claim for CCB by fee reduction if the claim is made by an individual.

Section 56 is relevant to the entitlement determination made under section 51B. If the total amount of fee reductions made for an individual during an income year by an approved child care service for care provided to a child is less that the amount of the individual’s CCB entitlement for that year and the child, section 56 requires that the amount of the difference be paid to the individual.
**Item 21** amends the wording of paragraphs 56(1)(b) and (c) to reflect the new obligation of an approved child care service specified in new section 219B inserted by **item 83** to pass on to the individual the fee reduction amount calculated by the Secretary.

The amendment made by this item to paragraph 56(1)(c) makes it clear that the amount to be paid is the difference between the entitlement amount for the particular income year and the total amount of fee reductions that the service is obliged to pass on to the claimant under new section 219B for sessions of care provided to the child during the income year.

Under new section 219B, a service must pass on to the claimant any amount calculated by the Secretary under new section 50Z, and notified as provided by new subsection 50Z(3), and any amount recalculated under new section 50ZA and notified as provided by new subsection 50ZA(2). However, if the recalculation occurred for a reason other than the change of a report for a week by the service and the recalculated amount is lower than the previously calculated or recalculated amount, that lower amount is not required to be passed on to the individual (new subsection 219B(3) refers).

In the situation referred to in new subsection 219B(3), the previously calculated (or recalculated, as the case may be) higher amount is the amount the service was obliged to pass on to the claimant, not the lower recalculated amount. Therefore, the higher amount the service was obliged to pass on to the individual is taken into account for the purposes of the calculation under new paragraph 56(1)(c) of the difference between the full entitlement amount (the amount the individual should receive) and the total fee reductions amount (the amount the individual was provided with during the income year).

**Item 22** amends section 56B, dealing with payment in respect of a claim for CCB by fee reduction if the claim is made by an approved child care service.

Section 56B is relevant to the entitlement determination made under section 54B. If the total amount of CCB by fee reductions for which the service was reimbursed by the way of quarterly advances paid under Division 2 of Part 8A to an approved child care service during an income year for care provided to a child at risk is less than the amount of the service’s CCB entitlement for that year in respect of the care, section 56B requires that the amount of the difference be paid to the service.

**Item 22** amends the wording of paragraph 56B(1)(b) to reflect the new obligation of an approved child care service specified in new section 219BA inserted by **item 83** to pass on to itself the fee reduction amount calculated by the Secretary.
The amendment made by this item to insert new paragraph 56B(1)(c) makes it clear that the amount to be paid is the difference between the service’s entitlement amount for the particular income year for care provided to a child and the total amount of fee reductions that the service is obliged to pass on to itself under new section 219BA for sessions of care provided to the child during the financial year.

Under new section 219BA, a service must pass on to itself any amount calculated by the Secretary under new section 50ZB and notified as provided by new subsection 50ZB(3), and any amount recalculated under new section 50ZC and notified as provided by new subsections 50ZC(2) and (3). However, if the recalculation occurred for a reason other than the change of a weekly report by the service and the recalculated amount is lower than the previously calculated or recalculated amount, that lower amount is not required to be passed on (new subsection 219BA(3) refers).

In the situation referred to in new subsection 219BA(3), the previously calculated (or recalculated, as the case may be) higher amount is the amount the service was obliged to pass on to itself, not the lower recalculated amount. Therefore, the higher amount the service was obliged to pass on is taken into account for the purposes of the calculation under new paragraph 56B(1)(c) of the difference between the full entitlement amount (the amount the service should receive) and the total fee reductions amount (the amount the service was provided with during the financial year).

Item 23 inserts new section 57G in Subdivision L of Division 4 of Part 3 (Secretary’s powers).

New subsection 57G(1) authorises the Secretary to give a notice to an approved child care service, requiring the service to provide specified information in relation to a child or any aspect of care provided by the service to the child. The Secretary may require the provision of such information only if the service submitted an enrolment for this child under new section 219A or 219AA inserted by item 82 and the enrolment was confirmed by the Secretary under new section 219AE inserted by item 82 (new subsection 57G(1) refers).

The Secretary must specify in the notice either the period (past or future) in respect of which information must be provided or, for an ongoing requirement, must specify the intervals at which the information must be provided (new subsection 57G(2) refers).

The notice is required to be given in the form, manner or way approved for this purpose by the Secretary (new subsection 57G(3) refers). As a result of the operation of section 4, the Secretary may approve the giving of the notice by electronic means. The Secretary may approve notification of the information by making the notice available to services using an electronic interface. Services will be taken to have been given the notice on the day on which the notice becomes so available (new subsection 57G(4) refers).
The required information must be provided by the service in the form, manner or way approved for this purpose by the Secretary. As a result of the operation of section 4, the Secretary may approve the provision of the information by electronic means.

If the Secretary notifies a service of the requirement under new section 57G, the service will be required to comply with this requirement as a condition of its continued approval (new section 219NB inserted by item 88 refers).

Items 24 to 30 make amendments to various notice provisions. Currently, services are required by section 219A to calculate fee reductions of conditionally eligible individuals, applying the relevant CCB %, a weekly limit of hours, schooling % and the special grandparent rate (where applicable) determined by the Secretary. To do so, the services need to be notified of those determinations, subsequent variations of those determinations and the review decisions relating to those determinations. Therefore, the relevant provisions relating to those determinations require that notice of these determinations be given to the approved child care service providing care to the child.

As the CCMS provides for the calculation of fee reductions by the Secretary, not by a service, it is no longer necessary to give to an approved child care service notice of a decision relating to an individual whose child is in care of the service.

Therefore, items 24 and 25 remove this requirement from section 63, relating to a variation of determination of conditional eligibility, CCB %, a weekly limit of hours, schooling % and the special grandparent rate under Subdivisions M, N, P, Q, R and S of Division 4 of Part 3 of the Family Assistance Administration Act; item 27 – from section 64E, relating to a variation of determination of a limit of hours under Subdivision U of Division 4 of Part 3 of the Family Assistance Administration Act; and item 29 – from subsection 65E(1), relating to a variation of conditional eligibility, CCB %, a weekly limit of hours, schooling % and the special grandparent rate under Subdivision V of Division 4 of Part 3 of the Family Assistance Administration Act.

Under the CCMS, an approved child care service will be required to notify each enrolment of a child in the care of the service. An enrolment record will be subsequently created for the enrolled child using an electronic interface, containing some of the information relevant to the calculation of fee reductions for care provided by the service to the child. The information will include a limit of hours of care, CCB % and the special grandparent rate (where relevant). This information will be accessible electronically to the service providing care to the child.
The following amendments authorise the Secretary to make notices of these decisions, and some other decisions specified in the amending provisions, available on the electronic interface, or otherwise, to an approved child care service or services providing care to the child. Item 26 inserts for this purpose new subsection 63(4), relating to a variation of determination of conditional eligibility, CCB %, a weekly limit of hours, schooling % and the special grandparent rate under Subdivisions M, N, P, Q, R and S of Division 4 of Part 3 of the Family Assistance Administration Act; item 28 inserts new subsection 64E(3), relating to a variation of determination of a limit of hours under Subdivision U of Division 4 of Part 3 of the Family Assistance Administration Act; item 30 inserts new subsection 65E(3), relating to a variation of conditional eligibility, CCB %, a weekly limit of hours, schooling % and the special grandparent rate under Subdivision V of Division 4 of Part 3 of the Family Assistance Administration Act.

Items 31 to 33 amend section 66 (Protection of payments under this Part). Section 66 protects the payments identified in this section by specifying that they are absolutely inalienable. Quarterly advance payments made under section 219R are specified in paragraph 66(1)(f).

As quarterly advance payments will not be available (as a result of the amendment made by item 90), item 31 repeals paragraph 66(1)(f) and substitutes new paragraphs (f) and (fa), referring to fee reduction payments under new section 219Q or new subsection 219QA(2) and payments of enrolment advances under new section 219RA (all inserted by item 90), making these new payments inalienable.

Subsection 66(2) ensures that certain actions specified in this subsection, which affect the amount of the payment, do not offend the inalienability requirement.

Item 32 amends this subsection to specify debt recovery actions under section 87A as amended by item 42 (setting off debts against the payment of enrolment advances under section 219RA) and under new section 87B as inserted by item 44 (setting off debts against payments under section 219Q or subsection 219QA(2) in respect of fee reductions.

Item 33 further amends subsection 66(2) to add direct offsetting actions under new section 219Q inserted by item 90 (setting off a recalculated fee reduction amount against a fee reduction payment or an enrolment payment) and under new section 219RC inserted by item 90 (setting off an enrolment advance amount against another enrolment advance payment or a fee reduction payment).
Item 34 amends subsection 68(1A), which defines the meaning of ‘amount paid to a person’ for the purposes of debt recovery provisions. Subsection 68(1A) is directly relevant to the operation of section 71C, which creates a debt out of the difference between the amount paid to a person (the amount the person received) and the amount the person should have received. Subsection 68(1A) ensures that the amount paid to an individual includes fee reduction amounts provided to an individual by an approved child care service during an income year, and that the amount paid via advance amounts to an approved child care service eligible for CCB by fee reductions in respect of care provided to a child at risk includes CCB amounts paid during an income year to the service.

The amendments made by item 34 modify the language of subsection 68(1A) to reflect the fact that the payment of fee reductions to an individual, or the payment of CCB to an eligible service, is no longer underpinned by the payment of quarterly advances to a service and will occur as a result of services’ new obligation to pass on any fee reduction amount calculated by the Secretary.

Item 35 substitutes a new section 71B.

Subsection 71B(1) creates a debt, due by the claimant for CCB by fee reductions, out of the amounts of fee reductions made to the individual by an approved child care service during an income year where the individual was not entitled to the amount, and out of CCB amounts paid during an income year to an approved child care service via quarterly advances where the individual was not entitled to the amount. Subsection 71B(1) is modified by the amendment in item 35 to reflect the fact that the payment of fee reductions to an individual, or the payment of CCB to an eligible service, is no longer underpinned by the payment of quarterly advances to a service and will occur as a result of services’ new obligation to pass on any fee reduction amount calculated by the Secretary.

Subsection 71B(2) creates a debt due by an approved child care service out of advance amounts paid to the service when the service was not entitled to receive the amount. This debt has been substituted by the amended subsection 71B(2), which creates a debt out of an enrolment advance paid to a service under new section 219RA inserted by item 90 when the service was not entitled to the amount.

Subsection 71B(3) creates a debt out of quarterly advance amounts paid to an incorrect account. This debt has been substituted by the amended subsection 71B(3), which creates a debt out of an enrolment advance paid under new section 219RA inserted by item 90 or fee reduction amounts paid under new section 219Q or subsection 219QA(2) and deposited in the incorrect account. The debt in this situation is due to the Commonwealth by the person, or jointly and severally by the persons, as the case may be, in whose name the incorrect account was kept.

Item 36 inserts new section 71CA.
New section 71CA creates a debt in the situation where an approved child care service was required under new section 219QB inserted by item 90 to remit a fee reduction amount that it was not reasonably practicable for the service to pass on and the service did not remit the amount. The amount is a debt due to the Commonwealth by the service.

Item 37 repeals and substitutes a new section 71G.

Section 71G creates a debt due by an approved child care service if an amount was paid to the service by way of advances (quarterly advances) in respect of a period (under section 219R) to reimburse the service for the provision of fee reductions during the period and the service’s approval for the purposes of the family assistance law was suspended, cancelled or the service ceased to operate. In this situation, the difference between the higher advance amount paid for the period and the lower amount used by the service to reimburse itself for the provision of fee reductions during the period before the suspension, cancellation or cessation of operation is a debt.

As quarterly advances will not be paid as a result of amendments made by item 90, the current section 71G debt associated with these payments is repealed.

New subsection 71G(1) creates a debt out of the amount of fee reduction payments made to a service under new section 219Q inserted by item 90 if the payments related to sessions of care or periods occurring after suspension (any case of suspension under the Family Assistance Administration Act) or cancellation of the service’s approval under section 200 or after the cessation of the service’s approval. For the purposes of this new subsection, fee reduction amounts that would be paid but for the fact that a debt was recovered from this amount under subsection 82(2) or another amount was set off against this amount under section 219QA or 219RC inserted by item 90, are included in the amounts that are to be repaid (new subparagraph 71G(1)(a)(ii) refers). Fee reduction amounts that would be paid but for a suspension sanction imposed under new paragraph 200(1)(h) inserted by item 78 are not treated as amounts paid for the purpose of this subsection (are not recoverable).

New subsection 71G(2) creates a debt in the situation where an amount of fee reductions that should have been set off against another fee reduction amount or against an enrolment amount, under new subsection 219QA(3) inserted by item 90, was not set off before the service’s approval has been suspended under the Family Assistance Administration Act (any case of suspension under this Act) or cancelled under section 200 or before the service’s cessation of operation. The amount of fee reductions that should have been set off is a debt due by the service.
New subsection 71G(3) creates a debt out of an amount of enrolment advance paid to a service under new section 219RA inserted by item 90 if the amount has not already been set off under new section 219RC inserted by item 90 before the service’s approval has been suspended under the Family Assistance Administration Act (any case of suspension under this Act) or cancelled under section 200 or before the cessation of the service’s approval.

For the purposes of this new subsection, enrolment amounts that would be paid but for the fact that a debt was recovered from this amount under subsection 82(2) or another amount was set off against this amount under section 219QA or 219RC inserted by item 90, are included in the amounts that are to be repaid (new subparagraph 71G(3)(a)(ii) refers). Enrolment amounts that would be paid but for a withholding sanction imposed under new paragraph 200(1)(f) inserted by item 78 are not treated as amounts paid for the purpose of this subsection (are not recoverable).

Item 38 inserts new section 71GA. The amendment made by this item is explained under the heading *New sanctions*.

Item 39 substitutes a new subsection 82(2). This subsection specifies methods of debt recovery available when a debt is owed by an approved child care service.

One of the ways in which a service’s debt may currently be recovered is via setting off a debt amount against a payment of an advance amount under section 219R. As advance amounts will no longer be paid to approved child care services, as a result of amendments made by item 90, the amendments made by item 39 repeal this method of recovery of a service’s debt.

New subsection 82(2) provides two new methods of recovery of a debt owed by an approved child care service: by setting off the amount of the debt against one or more fee reduction payments made to the service under new section 219Q or subsection 219QA(2) inserted by item 90 and by setting off the amount of the debt against one or more amounts of enrolment advances paid to the service under new section 219RA inserted by item 90.

Item 40 makes consequential amendments to paragraph (a) of the definition of ‘debt’ in subsection 82(3) to insert references to new debt creation sections 71CA and 71GA inserted by items 36 and 38 respectively.

Item 41 makes a consequential amendment to section 86, dealing with time limits on recovery action to include a reference to new section 87B inserted by item 44 and to change the section’s heading accordingly.
Item 42 amends section 87A, which sets out the process relevant to setting off a debt amount owed by a service against an advance amount paid to the service under section 219R. The process requires the Secretary to determine the amount by which each amount to be paid to the service is to be reduced by and requires that the amount be so reduced until the sum of the reductions under this section equals the amount of the debt. As advance amounts will not be paid to approved child care services, as a result of amendments made by item 90, but enrolment advance amounts will instead be paid to services under new section 219RA inserted by item 90, item 42 amends subsection 87A(1) so the process specified in this section applies to setting off an amount of a debt owed by a service against amounts of enrolment advance to be paid to the service under new section 219RA.

Item 43 further amends section 87A to ensure that, if a debt amount is being recovered by a set off against enrolment advance amounts under this section and against fee reduction amounts under new section 87B, the reductions under this section are made until the sum of the amounts recovered under both sections (from advance amounts and fee reduction amounts) equals the amount of the debt.

Item 44 inserts new section 87B. The new section sets out the process relevant to setting off a debt amount owed by a service against an amount of fee reductions to be paid to the service under new section 219Q or new subsection 219QA(2) inserted by item 90. The relevant process is substantially the same as the setting off process applicable under section 87A as amended by items 42 and 43.

Items 45 and 46 make consequential amendments to sections 88 and 90 to include a reference to new section 87B in paragraph 88(6)(b)(i) and 90(5)(b)(i) respectively.

Item 47 amends paragraph (b) of the definition of ‘family assistance payment’ in subsection 93A(6). Section 93A sets out the relevant processes applicable to recovery from a financial institution of amounts of family assistance payments paid to the credit of an account kept with the institution by someone for whom the payment was not intended or paid to the credit of an account kept with the institution by someone who died before the payments were made. The amendment made by this item includes in the definition of ‘family assistance payment’ references to a fee reduction payment under new section 219QA or new subsection 219QA(2) and an enrolment advance under new section 219RA (these sections and the subsection are inserted by item 90).

Items 48 to 50 amend section 95 dealing with the Secretary’s ability to write off a debt. The Secretary may write off a debt in situations specified in subsection 95(2), which include the debt not being recoverable at law and the debtor having no capacity to repay the debt.
Subsection 95(3) specifies when a debt is taken to be irrecoverable at law. One of the relevant considerations is that the debt cannot be recovered by the means of recovery provided for in this Act and specified in subsection 95(3). **Item 48** substitutes the reference in this subsection to the setting off a debt against advances paid under section 219R (as this method will no longer be available as a result of amendments made by **item 90**) with references to setting off under section 87A against enrolment advances and under new section 87B (as inserted by **item 44**) against payments of fee reductions.

Subsection 95(4) is relevant to the consideration of a person’s capacity to repay the debt. This subsection provides that, unless repayment of the debt would cause the person severe financial hardship, the person is taken to have capacity to repay the debt if a debt is recoverable by the means specified in this subsection, including setting off under section 87A against advances paid under section 219R.

**Items 49 and 50** make amendments that substitute in effect the reference in this subsection to setting off a debt against advances paid under section 219R (as this method will no longer be available as a result of amendments made by **item 90**) with references to setting off under section 87A against enrolment advances and under new section 87B (as inserted by **item 44**) against payments of fee reductions.

**Items 51 and 52** amend section 99 dealing with waiver of small debts, less than $200. Subsection 99(2) prevents the Secretary from waiving a debt that is at least $50 if the debt could be recovered by the means specified in this subsection, including setting off under section 87A against advances paid under section 219R. **Items 51 and 52** make amendments that substitute in effect the reference in this subsection to setting off a debt against advances paid under section 219R (as this method will no longer be available as a result of amendments made by **item 90**) with references to setting off under section 87A against enrolment advances and under new section 87B (as inserted by **item 44**) against payments of fee reductions.

**Item 53** amends section 104, which provides for internal review by the Secretary on his/her own initiative of decisions under the family assistance law except for the decisions specified in subsection (1). Currently, a decision under Division 2 of Part 8A relating to advances (quarterly) to an approved child care service is not reviewable. As quarterly advances will no longer be available as a result of amendments made by **item 90**, **item 53** repeals the reference to decisions relating to those advances and substitutes references to decisions relating to calculation of fee reduction amounts under new section 50Z or 50ZB or recalculation under new section 50ZA or 50ZC (new sections were inserted by **item 18**) and decisions relating to payment of those amounts under new section 219Q or new subsection 219QA(2) (inserted by **item 90**).

A similar amendment is made by **item 56** to subsection 108(1) that specifies the decision which cannot be reviewed by the Secretary on application made by an applicant.
As a result of the amendments made by items 53 and 56, decisions relating to the calculation and payment to services of fee reductions will not be reviewable in the merit review process under the family assistance law, in the same way calculations of fee reductions by approved child care services are not currently reviewable. This is because these are high frequency, high volume interim calculations, in lieu of the actual entitlement that is required to be determined by the Secretary after the end of each income year during which an individual (or a service) is eligible for fee reductions.

In the entitlement determination process, the difference between the annual entitlement and the total fee reductions provided during the year is reconciled (where the amount of the entitlement differs from that amount of fee reductions resulting in a top-up amount paid to the claimant or a debt being created to be repaid by the claimant).

The entitlement determination is a decision reviewable by the Secretary (sections 105 and 109A), the Social Security Appeals Tribunal (section 111) and the Administrative Appeals Tribunal (section 142).

Items 54 and 57, respectively, remove the requirement to give notice to a service from subsection 106(1), relating to the Secretary’s review on his/her own initiative, and from subsection 109B(2), relating to internal review on application. However, amendments made by these items preserve the current requirement in subparagraphs 106(1)(c)(v) and 109B(2)(c)(v) respectively to give notice to a service of a review decision relating to a determination of the special rate under subsection 81(2) of the Family Assistance Act made in respect of an individual in a ‘hardship’ situation, which will continue to be provided to both the claimant and the service, as required by subsection 81(8) of the Family Assistance Act. The rationale for these amendments is explained in the context of similar amendments made to other notice provisions by items 12 to 17.

Item 55 further amends section 106 relating to the Secretary’s review on his/her own initiative. This item inserts new subsections 106(1A) and (1B). New subsection 106(1A) provides the Secretary with a discretion to notify an approved child care service about the decision in respect of which the Secretary must, as a result of the amendments made by item 54, give notice to the applicant. The Secretary may notify the service providing care to the child by making the information available using an electronic interface or otherwise.

New subsection 106(1B) provides the Secretary with a discretion to give the notice of the decision that the Secretary must give to the service, as a result of the amendments made by item 54, by making the notice available using an electronic interface.
Item 58 amends similarly section 109B, relating to the Secretary’s review on application. This item inserts new subsections 109(2A) and (2B). New subsection 109B(2A) provides the Secretary with a discretion to notify an approved child care service about the decision in respect of which the Secretary must, as a result of the amendments made by item 57, give notice to the applicant. The Secretary may notify the service providing care to the child by making the information available using an electronic interface or otherwise.

New subsection 109B(2B) provides the Secretary with a discretion to give the notice of the decision that the Secretary must give to the service, as a result of the amendments made by item 57, by making the notice available using an electronic interface.

Items 59 and 60 amend section 111 providing for application for review by the Social Security Appeals Tribunal (SSAT). This is a consequential amendment.

Subsection 111(2) specifies decisions that are not reviewable by the SSAT. Paragraph 111(2)(a) refers to all decisions under the family assistance law about the manner and form of claims or things that are required to be done under that law. The amendment made by item 59 preserves the current references to the decisions concerning the form and manner of things and adds new references to exclude from review by the SSAT the decisions of the Secretary relating to approving the manner, form, etc, of things (for example, the way in which a particular notice is given to an approved child care service or is to be provided by a service) under new powers in new subsections 50Z(4), 50ZA(3), 50ZB(4), 50ZC(3), 57G(2), 219AE(4), 219AF(2), 219N(3) and 219RA(4) or under new paragraph 219AB(1)(a), 219QB(4)(a) or 219R(2)(a) inserted by items 18, 23, 82, 83, 87 and 90.

Item 60 further amends section 111 to exempt from review by the SSAT the Secretary’s request made under new section 57G inserted by item 23 that an approved child care service must provide additional information in relation to aspects of care provided to enrolled children.

Items 61, 62 and 63 make amendments to section 141A dealing with notices of review of certain decisions specified in this section that the Secretary is required to give to an approved child care service. The rationale for these amendments is the same as for other amendments relating to notices of decisions made by items 12 to 17 and 54 to 55. As a result of the amendments, the Secretary’s obligation to give notice of the review decision to an approved child care service is preserved only if the decision relates to a determination specified in subparagraph (b)(iii) of section 141A – decision of rate under subsection 81(2) or (3) of the Family Assistance Act when an individual is in hardship or a child is at risk. In relation to other decisions affecting a conditionally eligible individual referred to in section 111, the Secretary will have the discretion to notify the service providing care to the child and will be able to make the information available to the service by using an electronic interface or otherwise.
Item 64 amends section 144. This amendment is described in the context of the amendments referred to under the heading New sanctions.

Items 65 and 66 amend section 162 to authorise the obtaining of protected information by any person for the purposes of the CCMS pilot to be conducted after 1 July 2007 over the course of several months, as well as the use and disclosure of this information for the purposes of the pilot. The persons involved in the pilot would be officers of the department, Centrelink, operators of approved child care services or third party software providers participating in the pilot on a voluntary basis and their staff or contractors.

Further amendments for the protection of personal information in the course of the pilot are made by item 99.

Item 67 amends section 173, creating an offence for making a false statement that affects a person’s rate, amount and generally entitlement to a family assistance payment including CCB (as specified in this section). The amendment ensures that a false statement affecting the rate and amount of fee reductions calculated by the Secretary (item 18 inserts new provisions relating to the calculation of fee reductions by the Secretary) is also an offence.

Items 68 to 71 amend section 175A. Generally, this section creates an offence if an individual obtains fee reductions while the individual has not been determined to be conditionally eligible for CCB by fee reductions or obtains an incorrect amount. It also creates an offence if an approved child care service obtained advance amounts paid under section 219R to reimburse itself for fee reductions for care provided to a child at risk while the service was not eligible for that payment under section 47 of the Family Assistance Act (the service itself makes the decision of that eligibility) or if a service obtains an incorrect amount. Strict liability applies to specific elements of the offences, as specified in section 175A.

Advances under section 219R (quarterly advance payments) to reimburse services for fee reductions provided will not be available to services, as a result of amendments made by item 90, but services will be paid amounts of fee reductions under new section 219Q or subsection 219QA(2) inserted by item 90. The amendments therefore ensure that section 175A creates an offence if an approved child care service obtains an amount of fee reductions in relation to its eligibility for care provided to a child at risk while the service was, in fact, not so eligible or if a service obtained an incorrect amount. Items 69 and 71 specify the elements of the offence to which strict liability applies. Strict liability is an appropriate basis for the offences because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case; the fact that the offences are of a similar nature to the offences in current section 175A; and the fact that the offences do not involve dishonesty or serious imputation affecting a person’s reputation.
**Items 72 and 74** amend section 176, which creates an offence if an approved child care service obtains an amount of advance paid under section 219R to reimburse the service for the provision of fee reductions by means of impersonation or by fraudulent means or as a result of a reckless false or misleading statement. As advances under section 219R (quarterly advance payments) to reimburse services for fee reductions provided will not be available to services, as a result of amendments made by **item 90**, but services will be paid amounts of fee reductions under new section 219Q or subsection 219QA(2) and enrolment advances under new section 219RA (all these sections are inserted by **item 90**), the amendments ensure that section 176 creates an offence if an approved child care service obtains a payment of fee reductions or an enrolment advance by means of impersonation or by fraudulent means or a reckless false or misleading statement.

**Items 73 and 75** make consequential amendments to subsections 176(2) and (4), specifying the elements relevant to the offence relating to payment of fee reduction amounts and enrolment advance amounts, to which strict liability applies. The rationale for strict liability is the same as in relation to offences under section 175A.

**Item 76** makes a consequential amendment to section 178. This section provides that, if a person is convicted for contravention of an offence provision under Subdivision B, for example, for contravention of section 176, the court may order the person to repay to the Commonwealth an amount equal to the amount of family assistance, fee reductions or advance paid because of the offence. The amendment ensures that a court order extends to the repayment of amounts made to an approved child care service in respect of enrolment advances paid under new section 219RA inserted by **item 90**.

**Items 77 to 81** make amendments to sections 200 and 201. These amendments are explained under the heading *New sanctions*.

**Item 82** repeals section 219A, which imposes an obligation on services to act on various notices received and certificates given under the family assistance law with respect to conditional eligibility for CCB by fee reductions and inserts new sections 219A, 219AA, 219AB, 219AC, 219AD, 219AE, 219AF and 219AG, which detail the obligations imposed on services, the manner in which services are to perform those obligations, the types of offences that services commit if they fail to comply with those obligations and the applicable penalties.

*New section 219A – Obligation to notify Secretary of enrolment of a child by an individual*

New subsection 219A(1) imposes an obligation on the service to notify the Secretary of the enrolment of a child by an individual for care by the service.
New subsection 219A(2) defines the meaning of ‘enrolled’ child. It provides that a child is enrolled by an individual for care by an approved service if the individual has entered into an arrangement with the service for the provision of care to the child by the service.

New subsection 219A(3) deals with the situation where an individual enters into an arrangement with the service for care to a child, that enrolment ceases under new section 219AD, for example, as a result of a break in the provision of care of a particular duration, and the care continues after the break under the arrangement, same or new, with the same individual. New subsection 219A(3) provides that the care after the cessation of enrolment under new section 219A(3) is taken to have been provided under a new arrangement.

A note at the end of new subsection 219A(3) informs the reader that the new arrangement constitutes a new enrolment that the service has to notify.

New section 219AA – Obligation to notify Secretary of enrolment where approved child care service eligible

New section 219AA(1) deals with the obligation of the service to notify the Secretary of an enrolment where the service is eligible for CCB by fee reduction for a child at risk under section 47 of the Family Assistance Act and the service has given a certificate under section 76 of that Act.

New subsection 219AA(2) provides that a child is ‘enrolled’ for care when the first session(s) of care begin(s) (for which the service is eligible).

New section 219AB – When and how notice to be given

New section 219AB deals with the time and manner in which a notice must be given under new sections 219A and 219AA. The notice must be in the form, manner or way approved by the Secretary and must contain any information required by the Secretary. The notice must be given within a specified timeframe: where the child’s enrolment occurs after the day on which the Secretary approves the service, the notice must be given before the end of the week that follows the first week in which care is provided; where the child’s enrolment occurs before the day on which the Secretary approves the service but after the day from which the approval is expressed to operate, the notice of the enrolment must be given seven days after the day on which the approval is given; where a service’s approval is suspended during the child’s enrolment for care and the suspension is later revoked, the notice must be given within seven days after the suspension is revoked.
New section 219AC – Offence for failure to notify

New section 219AC provides that a service commits an offence if it is under an obligation to provide a notice under new sections 219A and 219AA and it fails to provide the notice in accordance with new section 219AB. The penalty is 60 penalty units. Offences under this section are strict liability offences, as are the most of the offences relating to services’ obligations in Part 8A of the Family Assistance Administration Act. Strict liability is an appropriate basis for the offence because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case and the fact that the offence does not involve dishonesty or serious imputation affecting a person’s reputation.

New section 219AD – When enrolment ceases

New section 219AD deals with four different situations when an enrolment ceases.

Under new paragraph 219AD(1)(a), an enrolment under an arrangement with an individual ceases if the arrangement with the service for the provision of care ceases.

Under paragraph 219AD(1)(b), an enrolment under an arrangement with an individual ceases if the service becomes eligible for CCB by fee reductions for a child at risk (section 47 of the Family Assistance Act refers).

Under new subsection 219AD(2), an enrolment resulting from a service becoming eligible for CCB by fee reduction for care provided to a child at risk is taken to have ceased when the period under the section 76 certificate issued by the service under the Family Assistance Act ends, or a subsequent period of rate in respect of the child specified by the Secretary under section 81 of that Act ends, or, if the Secretary makes a determination of rate for the child in circumstances referred to in paragraph 81(4)(b)(ii) of that Act, the period specified for that rate ends.

New subsection 219AD(3) provides that any enrolment is taken to have ceased if sessions of care are not reported by the service over the number of weeks specified by the Secretary in a legislative instrument. New subsection 219AD(4) allows for different periods to be specified in the instrument for different kinds of services or types of care.

New section 219AE – Secretary to confirm receipt of notice

New section 219AE deals with the obligation of the Secretary to confirm the receipt of the notice of enrolment given by the service under new sections 219A or 219AA (new subsection (1) refers).
New subsection 219AE(2) provides that the Secretary need not provide that confirmation in circumstances where the notice is given under new section 219A and the information in the notice is inconsistent with information contained in a claim or document that accompanies the claim made by an individual in relation to care provided by the service to the child.

If the Secretary confirms the enrolment, the Secretary is required to include in the confirmation details of the record, which the Secretary maintains for the enrolment of the child (new subsection 219AE(3) refers).

The confirmation must be provided in the form, manner or way approved for that purpose by the Secretary.

*New section 219AF – Obligation to update enrolment information*

New section 219AF deals with the obligation of the service to update enrolment information where that information (which is required to be given under new sections 219A and 219AB or new sections 219AA and 219AB) becomes incorrect or information becomes subsequently available, which, had it been available at the time the notice of enrolment was given, should have been included in the notice, or, had it been available at the time the notice of enrolment was given, would have required the notice to be given in a different form. The updated information must be provided to the Secretary within 7 days after the information becomes incorrect or becomes available.

The notice of the updated information must be provided in the form, manner or way approved for that purpose by the Secretary.

*New section 219AG – Offences for failure to update enrolment information*

New section 219AG provides that a service commits an offence if it is required to notify the Secretary under new section 219AF of a correction of information and it fails to provide this notice in accordance with section 219AF. The penalty for this offence is 60 penalty units. This is a strict liability offence, as is the offence under new section 219AC, imposing the primary obligation to notify enrolments. The rationale is therefore the same as for the offence in new section 219AC.

**Item 83** repeals section 219B, which deals with the obligation to reduce fees of individuals when an approved child care service is eligible for CCB by fee reduction for care provided to a child at risk, and substitutes new section 219B.
**New section 219B – Obligation to pass on fee reductions where individual conditionally eligible**

New subsection 219B(1) imposes an obligation on the service to pass on fee reductions where the individual (the claimant) is determined to be conditionally eligible under section 50F for CCB by fee reductions for sessions of care provided to a child in a week, and the Secretary has either calculated or recalculated the amount of fee reductions under new section 50Z or 50ZA that are applicable for the sessions of care provided in the week, and the Secretary has notified the service of either of those amounts in accordance with new subsections 50Z(3) or 50ZA(2).

New subsection 219B(2) requires the service to pass on to the claimant the calculated or recalculated amount of fee reductions (as notified) within 14 days after being notified by the Secretary of this amount.

The penalty for failing to pass on this amount is 60 penalty units. New subsection 219B(6) states that it is an offence of strict liability (as is the case with the current section 219A, which this new obligation replaces). The rationale for strict liability is the same as for the offence under new section 219AC. The penalty does not apply if the service remits the amount that the service is required to remit to the Secretary under new section 219QB.

A note under new subsection 219B(2) informs the reader that the amount calculated or recalculated as specified is required to be passed on even if the payment of the fee reductions to the service has been suspended under new paragraph 200(1)(h).

New subsection 219B(3) provides that, if the Secretary reduces the amount of fee reductions applicable for a particular week on the recalculation under new section 50ZA for a reason other than a correction by the service of a report given under section 219N, and the amount is reduced, then the service is required to pass on the previously calculated higher amount.

A note at the end of new subsection 219B(3) informs the reader that, in this situation, the fact that a higher amount was passed on to the claimant will be taken into account when a determination of entitlement to be paid CCB by fee reduction will be made after the end of the income year in respect of the individual and the child.

New subsection 219B(4) provides that a service is taken to have passed on to the claimant an amount equal to the anticipated fee reduction for a particular week if the service reduces the amount of fees it charges the claimant for that week in anticipation of the Secretary's calculation of the fee reduction amount applicable for that week.

New subsection 219B(5) provides that the amount passed on to the claimant is taken to have been passed on to the claimant the day the Secretary notified the service of the amount in accordance with subsection 50Z(3).
New section 219BA – Obligation to pass on fee reductions where approved child care service eligible

New subsection 219BA(1) imposes an obligation on the service to pass on to itself CCB by fee reductions where the service is eligible under section 47 of the Family Assistance Act for CCB by fee reduction for a session of care provided to a child at risk, and the Secretary has either calculated or recalculated the amount applicable to the service, the child and the week under new section 50ZB or 50ZC, and has notified the service of either of those amounts in accordance with new subsections 50ZB(3) or 50ZC(2).

New subsection 219BA(2) requires the service to pass on the calculated or recalculated amount to itself within 14 days after being notified by the Secretary of this amount.

New subsection 219BA(3) provides that, if the Secretary reduces the amount on the recalculation under new section 50ZC and the amount is reduced for a reason other than a correction by the service of a report given under new section 219N, then the service must pass on the previously calculated higher amount.

A note at the end of new subsection 219BA(3) informs the reader that, in this situation, the fact that a higher amount was passed on to the individual will be taken into account when a determination of entitlement to be paid CCB by fee reduction will be made after the end of the income year in respect of the service and the child.

New subsection 219BA(4) provides that a service is taken to have passed on to itself an amount equal to the anticipated fee reduction for a particular week if the service reduces the amount of fees it charges the claimant for that week in anticipation of the Secretary’s calculation of the fee reduction amount applicable for that week.

New subsection 219BA(5) provides that the amount passed on to the claimant is taken to have been passed on to the claimant the day the Secretary notified the service of the amount in accordance with subsection 50ZB(3).

New section 219BB – Obligation to charge no more than usual fee – rate determined by child care service or Secretary

New section 219BB replicates the obligation inserted into the table in section 219A of the Family Assistance Administration Act by item 28 in Schedule 3 and the obligation inserted into section 219B by item 30 in Schedule 3. New section 219BB is required because section 219A is repealed by item 82 and section 219B is repealed by item 83.
New subsection 219BB(1) imposes an obligation on a service to ensure that, if an individual is eligible for fee reductions because the individual is experiencing hardship or the child for which child care is being provided is at risk of serious abuse or neglect, or the service is eligible for CCB by fee reduction for care provided by the service to a child at risk, the fees set by the service for a session of care provided to the child do not exceed the amount of fees that the service would charge another individual who was not eligible for the special rate. Failure to comply with the requirements of new subsection 219BB(1) constitutes an offence for which a penalty of 60 penalty units applies. New subsection 219BB(2) provides that new subsection 219BB(2) is an offence of strict liability, as is the case under the current provision that is being replicated, the underlying basis for which is not changing.

New section 219BC – Obligation to charge no more than usual fee – special grandparent rate

New section 219BC replicates the obligation that is imposed on services in table items 3A, 3B and 9A in section 219A of the Family Assistance Administration Act. Section 219A is repealed by item 82. New subsection 219BC(1) places an obligation on a service to charge no more than their usual fee when an individual is eligible for the special grandparent rate. Failure to comply with the requirements of new subsection 219BC(1) constitutes an offence for which a penalty of 60 penalty units applies. New subsection 219BC(2) provides that new subsection 219BC(1) is an offence of strict liability, as is the case under the current provisions that are being replicated, the underlying basis for which is not changing.

New section 219BD – Obligation to charge no more than usual fee

New section 219BD replicates the obligation that is placed on services by the insertion of subsections 219A(1A) and 219A(1B) by item 26 in Schedule 3. New section 219BD is required because section 219A is repealed by item 82. New subsection 219BD(1) imposes an obligation on services to set fees for individuals who are eligible for Jobs, Education and Training (JET) Child Care fee assistance that do not exceed the amount of fees the individual would charge individuals who are not eligible for Jobs, Education and Training (JET) Child Care fee assistance.

A penalty of 60 penalty units applies for failure to comply with this obligation. New subsection 219A(3) provides that new subsection 219BD(1) is an offence of strict liability as is the case under the provisions that are being replicated, the underlying basis for which is not changing.

New subsection 219A(2) defines Jobs, Education and Training (JET) Child Care fee assistance as the payment of the same name that is paid by the Commonwealth.
**Item 84** repeals section 219C, which imposes an obligation on the service to pass on further fee reductions to individuals if notice of the service’s entitlement shows the entitlement is greater than the fee reductions calculated by the service for which the service reimbursed itself from advance amounts paid to the service under section 219R. This provision is repealed as it has become obsolete (there are no situations to which the provision may be applied).

**Item 85** repeals section 219D, which imposes an obligation on the service to cease to reduce fees as provided for in section 219A and 219B where the service’s approval is suspended or cancelled, and to start reducing fees as provided for in section 219A and 219B where the service’s suspension has been revoked. As fee reductions will be calculated by the Secretary, not the service, and fee reductions will not be calculated when a service’s approval is suspended or cancelled, this provision is no longer required.

**Item 86** repeals subsection 219E(1), which deals with the obligation on the service to provide receipts where the service has reduced its fees as provided by section 219A and 219B. This item substitutes a new subsection 219E(1), which provides that a service must issue a receipt for a fee charged by the service for an enrolment which has been confirmed under new section 219AE. The receipt must be issued at the time the fee is paid and must state the amount paid, the amount of fee reductions that the service is required to pass on to the individual under new sections 219B and 219BA and any other information the Secretary specifies in the rules made under subsection (2). A penalty of 60 penalty units applies for contravention of this requirement. This is an offence of strict liability (as is the case with the current subsection 219E(1), which this offence replaces). The rationale for strict liability is the same as for the previous offence.

**Item 87** repeals section 219N and substitutes a new section 219N. Section 219N deals with the obligation of the service to give reports to the Secretary, when the reports are to be made, the form they should take, the manner in which they are to be provided and the information that should be included, depending on whether the individual is conditionally eligible for CCB by fee reduction under section 50F of the Family Assistance Act, or the service is eligible for CCB by fee reductions under section 47 of that Act, or there is no individual conditionally eligible for the child and the service is also not eligible under section 47 for the child.

New subsection 219N(1) provides that the service must give a report to the Secretary for each week where a session of care has been provided to a child and the enrolment for that child has been notified to the Secretary in accordance with section 219A and 219AB and confirmed by the Secretary in accordance with section 219AE. The requirement under this section is relevant to an enrolment when an individual has made arrangement for care to a child by the service.
New subsection 219N(2) provides that the service must give a report to the Secretary for each week where a session of care has been provided to a child and the enrolment for that child has been notified to the Secretary in accordance with section 219AA and 219AB and confirmed by the Secretary in accordance with section 219AE. The requirement under this section is under section 47 of the Family Assistance Act for care provided to a child at risk.

The report must be made in the form, manner or way approved by the Secretary and must include information relevant to determining the rate and amount of fee reductions for care provided by the service to the enrolled child and to the entitlement or no entitlement in relation to the care, and any other information the Secretary requires (new subsections 219N(3) and (4) refer).

The report in respect of a week of care must be given by the end of the second week immediately following the week of care. In respect of the weeks of care occurring before the confirmation of enrolment by the Secretary, the reports must be given within 7 days after the day on which the enrolment was confirmed (new subsection 219N(5) refers).

If a service does not provide a report as required by new section 219N, the service commits an offence for which a penalty of 60 penalty units applies (new subsection 219N(6) refers).

A service may update its report (substitute a new report with updated information) or withdraw a report that was not required to be given (new subsection 219N(7) refers).

Item 88 inserts a new section 219NB relating to the obligation to provide further information about enrolled children. If the Secretary makes a request under new section 57G inserted by item 23 for the provision of additional information about enrolled children, the service must comply with the notice. A penalty of 60 penalty units applies for failure to comply with this obligation.

Item 89 repeals section 219P, which deals with the obligation of a former operator of an approved child care service to report the service’s final reporting period immediately before the service ceases to be approved and substitutes a new section 219P.

New section 219P is relevant in the situation where a service’s approval was suspended or cancelled. It imposes a requirement on an operator of a service, whose approval was suspended or cancelled, to fulfil the specified obligation that applied to the service while the service was approved. Specifically, the former operator of an approved child care service must ensure that the service’s obligations (relating to, for example: the requirement to notify enrolments occurring before suspension/cancellation; updating the enrolment information; providing reports for the enrolments for sessions of care before cessation/cancellation; passing on fee reductions calculated for periods before suspension/cancellation; and remitting the amounts not passed on) are fulfilled.
A penalty of 60 penalty units applies for failure to comply with this obligation.

**Item 90** repeals Division 2 of Part 8A, which deals with quarterly advances to approved child care services, and substitutes a new Division 2, which deals with weekly fee reduction payments to approved child care services, and a new Division 3, which deals with enrolment advances.

**New Division 2 – Weekly payments in respect of fee reduction to approved child care services**

**New section 219Q – Weekly payments in respect of fee reductions**

New subsection 219Q(1) provides that the Secretary must pay into a nominated bank account maintained by the service the amount of fee reductions calculated by the Secretary under new sections 50Z and 50ZB in respect of care provided by a service to a child in a week.

New subsection 219Q(2) provides that the Secretary must pay into a nominated bank account maintained by the service any increase in the amount of fee reductions recalculated by the Secretary under new sections 50ZA or 50ZC in respect of the child and the week.

New subsection 219Q(3) makes this new section subject to the provisions in Part 4, which deal with overpayments and debt recovery; new section 219QA, which deals with set off where the amount of applicable fee reduction is reduced on recalculation; new section 219RC, which deals with set off where enrolment ceases; and new paragraph 200(1)(h), which deals with suspension of payment under new section 219Q or subsection 219QA(2) in respect of fee reduction.

**New section 219QA – Payments and set offs where calculation results in reduced fee reductions**

New section 219QA applies where the Secretary recalculates the amount of fee reductions applicable to a child and a week as a result of the substitution or withdrawal by the service of a report given under section 219N in respect of the child and the week, and the amount applicable for the child and the week is reduced.

Subsection 219QA(2) requires the Secretary to pay the last recalculated amount (the lower amount) to the service and to set off the previously calculated or recalculated amount (the higher amount) against any future payment to the service of a fee reduction amount (whether paid under new section 219Q or new subsection 219QA(2)) or any enrolment advance to be paid to the service.
New section 219QB – Remitting amounts that cannot be passed on

New section 219QB requires the service to remit any fee reduction amount paid to the service under new section 219Q or that would be paid but for a set off under subsection 82(2) (debt recovery), new section 219QA (set off of a previously calculated higher amount) or new section 219RC (set off of an enrolment advance) if it is not reasonably practicable for the service to pass on that amount to the individual or the service itself within the time required under new subsections 219B(2) or 219BA(2) (within 14 days after being notified of the amount calculated or recalculated).

The amount is to be remitted immediately (new subsection 219QB(1) refers).

The penalty for contravention of new section 219QB is 60 penalty units (new subsection 219QB(1) refers).

The amount must be remitted in the form, manner or way approved by the Secretary. The Secretary must be notified by the service of the remittal, in the form, manner or way approved by the Secretary. The notice must include information required by the Secretary. (New subsections 219QB (2), (3) and (4) refer).

New Division 3 – Enrolment advances

New Division 3 (new sections 219R, 219RA, 219RB and 219RC) deals with enrolment advances.

New section 219R – Election to receive enrolment advance

New section 219R provides that an approved child care service may elect to receive an enrolment advance in relation to a particular enrolment. An occasional care service is not entitled to make the election and cannot receive an enrolment advance (new subsection 219R(1) refers).

The election must be made at the time of giving notice in accordance with new section 219A (new section 219A inserted by item 82 requires an approved child care service to notify enrolment of a child in care of the service).

The election must be given in the form, and in the manner or way approved for this purpose by the Secretary (new paragraph 219R(2)(a) refers). Section 4 operates to the effect that the electronic means of making the election may be specified. The election must include any information the Secretary requires (paragraph 219R(2)(b)).
New section 219RA – Enrolment advance must be paid if service elects to receive it

New section 219RA provides that the Secretary must pay the amount of the enrolment advance if an approved child care service makes an election in accordance with new section 219R in respect of an enrolment and the Secretary confirms the enrolment in accordance with new section 219AE inserted by item 82 (new subsection 219RA(1) refers).

The enrolment advance cannot be paid if the election is not made in the approved manner, form or way or it does not include the information the Secretary requires.

The amount must be paid to the credit of a bank account nominated and maintained by the service (new subsection 219R(1) refers).

New subsection 219RA(2) specifies the following provisions that may affect the payment: Part 4 (overpayments and debt recovery); section 219QA (set off where amount of applicable fee reduction reduced on recalculation); section 219RC (set off when enrolment ceases); and paragraph 200(1)(f) (withholding of enrolment advances).

The Secretary must notify the service about the payment in the form, manner or way approved for this purpose by the Secretary (new subsections 219RA(3) and (4) refer).

New section 219RB – Amount of enrolment advances

New section 219RB provides the Secretary with the authority to determine the amount of the enrolment advance that may be paid in respect of enrolments of a specified class, and to provide for indexation of the amount determined.

New section 219RC – Setting off enrolment advance when enrolment ceases

An enrolment advance amount paid is recoverable when the enrolment to which it relates ceases (an enrolment ceases in the circumstances specified in new section 219AD inserted by item 82). If the enrolment ceases, new section 219RC requires the Secretary to set off the amount of the advance against any other enrolment amount to be paid to the service or any fee reduction amount to be paid to the service, whether fee reductions relate to this particular enrolment or not.

An enrolment advance amount that would have been paid but for the fact that a debt was recovered from this amount under subsection 82(2), or a set off under section 219QA or 219RC occurred against this amount, is also recoverable in full by a set off under new section 219RC.

For clarity, it is not intended for the set off to apply in respect of an enrolment amount that would be paid but for the withholding of the amount as a sanction under new paragraph 200(1)(f) inserted by item 78.
If an enrolment advance was not set off before the service’s approval was suspended or cancelled under section 200, or the service ceased to operate, the enrolment amounts paid to the service become a debt due to the Commonwealth by the service. (New subsection 71G(3) inserted by item 37 makes a debt in these circumstances out of the enrolment amount paid or the amount that would be paid but for a set off under subsection 82(2) or new subsections 219QA or 219RC.)

**Part 2 – Application and transitional provisions**

**Items 91 to 99** give effect to various transitional arrangements relevant to the amendments made in Schedule 1 for CCMS purposes.

*Application of the amendments to an individual approved child care service*

While the amendments made in Schedule 1 generally commence on 1 July 2007, immediately after the commencement of amendments made in Schedule 2, the application of the amendments in Schedule 1 to an individual approved child care service will occur from the day determined for this purpose by the Secretary.

An individual application day determined for a specific approved child care service recognises that the transition of all services from the current administrative system to an electronic, computer-based system requires a carefully managed rollout process to ensure the ability of individual services to transition successfully.

**Item 91** therefore provides the Secretary with the power to determine a service’s application day. The day may be a day on or after 1 July 2007 but before 1 July 2009 (subitem 91(2) and paragraph 91(1)(b) refer).

If the Secretary does not specify a day as an application day for a particular approved child care service, the service’s application day is 1 July 2009 (paragraph 91(1)(a) refers).

The Secretary is provided with a discretionary power to specify a day later than 1 July 2009 as a particular service’s application day, but only if the Secretary is satisfied that the service will be unable to satisfy the requirements imposed under the amendments made by Schedule 1 on 1 July 2009 because of technical difficulties, beyond the service’s control, in relation to accessing the electronic interface by which those requirements are to be met (subitem 91(3) refers). If the Secretary specifies a later application day, the 1 July 2009 deadline does not apply; rather, the later application day applies to that service (paragraph 91(1)(c) refers).
Electronic communications

Item 92 specifies that this Part is taken to form part of the family assistance law for the purposes of section 4, that is, for the purposes of approving electronic means of doing things relevant to this Part.

Application of the amendments in Schedule 1

Item 93 is a general application provision. It provides that the amendments made by Schedule 1, which relate to the enrolment of a child for care provided by an approved child care service, apply to an enrolment that occurs on or after the service’s application day (paragraph 93(a) refers). For example, the new requirement in section 219A inserted by item 82, that a service notifies any enrolment of a child in care by a particular service, applies to an enrolment occurring on or after the service’s application day.

Otherwise (if an amendment does not relate to an enrolment, for example, an amendment relating to absences from care made by item 1), the amendments apply to sessions of care provided by an approved child care service to a child during a week falling wholly after the application day for the service (paragraph 93(b) refers).

Children already enrolled on the application day

Item 94 imposes a transitional requirement on approved child care services in respect of children already enrolled for care by the service on the service’s application day.

This item makes the requirement of new sections 219A to 219B inserted by item 82, to notify the enrolment of any child, applicable to the enrolments that occurred before a service’s application day and that are current on the application day.

As a result of this requirement operating in conjunction with new sections 219A to 219B, an approved child care service will be required, as a condition of its continued approval, to notify enrolments of all children in its care on the application day. The service will have to notify the enrolments within 7 days after its application day (paragraph 94(a) refers).

Once the enrolments are notified, all other amendments made in Schedule 1 (for example, the confirmation of the enrolment, the service’s obligation to provide reports under new section 219N in relation to the enrolment, etc) apply to those enrolments in the same way as they would apply if the enrolments were to occur on or after the service’s application day (paragraph 94(b) refers).
Notification of email address

**Item 95** imposes a transitional requirement on an approved child care service to provide to the Secretary its email address within seven days from the service’s application day (subitem 95(1) refers).

The service will have complied with this requirement where it provides its email address prior to its application day and this address does not change. (paragraph 95(2) refers).

The notice of an email address must be provided by the service in the form and manner approved for this purpose by the Secretary. As a result of the amendment made by **item 92**, section 4 of the Family Assistance Administration Acts will allow the Secretary to approve an electronic form of the notification.

Obligation to give reports to the Secretary for sessions of care before application day

**Item 96** provides for a transitional arrangement relating to the requirement under section 219N to provide reports for a reporting period by the end of the following period.

The reports provide, among other things, information about fee reductions provided for a child during a reporting period and about the hours of care provided to the child. The information about fee reductions is relevant to acquittal of advances paid under section 219R to a service in respect of the reporting period; the information about hours of care provided to the child is relevant to the determination of the individual’s entitlement to CCB by fee reductions in respect of care provided during that period.

**Item 96** is relevant to the reporting period during which amendments made under **Schedule 1** started applying to the service (because the Secretary determined the application day for the service). It operates to the effect that, after a service’s application day, the service is required to provide the Secretary with the reports for the period during which the application day occurred, by the end of the period that would have been a reporting period if section 219N had not been repealed (paragraph 96(b) refers).

In other words, under **item 96**, a service will be required to provide reports for the quarter during which the service’s application day occurred by the end of the following quarter.

The requirement to provide the reports within the specified timeframe relates only to the reports concerning children in respect of whom an individual was conditionally eligible for CCB by fee reduction or the service was eligible under section 47 of the Family Assistance Act for CCB by fee reduction (paragraphs 96(a) and (d) refer).
The reports are to be provided for that period for sessions of care that occurred before the service’s application day (paragraph 96(e) refers).

The reports will need to be provided in the same form as approved by the Secretary for the purpose of subsection 219N(2) as in force immediately before the application day.

As compliance with section 219N is a service’s condition of continued approval (as provided for in subsection 196(2)), and item 96 imposes on the service the requirement of further compliance with section 219 in respect of the last reporting period, failure to comply with the requirement to provide the reports for that period within the specified deadline will constitute a breach of the service’s condition of continued approval, for which a sanction under section 200 may be imposed on the service.

**Acquittal of advances paid to an approved child care service before application day**

Item 97 provides the Secretary with the authority to acquit, after an approved child care service’s application day, quarterly advance amounts not acquitted before that day, paid in respect of any reporting period that occurred before the service’s application day, and including the period during which the application day occurred (paragraph 97(1)(a) refers). In relation to the reporting period in which the service’s application day occurred, the period relevant to the acquittal is the part of the reporting period before the application day (paragraph 97(1)(b) refers).

The acquittal process prescribed in subitems 97(2), 97(3) and 97(4) equates to the process currently applying to the acquittal of quarterly advance amounts. The total of advance amounts for a particular reporting period is to be compared with the fee reductions the service reported as provided to conditionally eligible individuals in respect of sessions of care provided by the service during the reporting period (subitem 97(2) refers).

If the amount of the advance is more than the total of the fee reductions provided, the difference is a debt due to the Commonwealth by the service. The debt is recoverable, as currently, by the debt recovery methods specified in subsection 82(2) as substituted by item 39 (subitem 97(4) refers).

If the amount of the advance is less than the total of the fee reductions provided, the difference is to be paid to the service (subitem 97(5) refers).
If a service does not provide a report for a particular reporting period within the relevant deadline applicable to the provision of the report for that period, the Secretary may assume for the purposes of the acquittal of the period that no fee reductions were provided by the service during that period (subitem 97(3) refers). This would result in a debt being created under subitem 97(4) out of the whole amount of the advance for the period for which a report has not been provided. Ultimately, under subitem 97(4), a debt equals the difference between the higher amount of advance and the lower amount of fee reductions; the debt created out of the whole amount of advance would be subject to recalculation if the service provided a subsequent report on fee reductions passed on during the relevant reporting period.

Subitems 97(6) and (7) require the Secretary to give a notice to the service of any debt or payment resulting from acquittal, in the form and manner approved for this purpose by the Secretary (including the electronic form, as provided for under section 4, as a result of the operation of item 92).

Notice where individual not conditionally eligible and approved child care service not eligible

Item 98 imposes a transitional requirement for approved child care services in relation to the provision of reports relating to child care usage of the children for whom neither an individual was conditionally eligible for CCB by fee reductions nor the service was eligible under section 47 of the Family Assistance Act for CCB by fee reductions. In practical terms, the requirement relates to reports relevant to full fee paying customers (paragraph 98(1)(b) refers).

Item 98 relates to the provision of reports for the reporting period (meaning a reporting period under section 219N as immediately before the service’s application day) during which the service’s application day occurred and for any other period determined by the Secretary for this purpose (paragraph 98(1)(a) refers).

The information to be provided in the report is specified in subitem 98(2) and includes, generally, the name of the child, the number of hours relevant to the individual’s entitlement to CCB for the care provided to the child and any other information required in the form approved for this purpose by the Secretary (subitem 98(2) refers).

The report must be provided to the Secretary not later than the end of the second financial year following the year during which the service’s application day occurred. If the Secretary requested a service to give the report earlier, the service must provide the report within 30 days after the request was made (paragraph 98(3)(a) refers).

The report must be provided in the form, manner or way approved by the Secretary under paragraph 219N(2)(b).
The Secretary may make the request for a report in the form, manner or way approved by the Secretary (subitem 98(4) refers).

The requirement of item 98 replaces the requirement under section 219N as in force before the commencement of Schedule 1 relating to the provision of reports in relation to a child referred to in paragraph 98(1)(b).

The requirement of item 98 is a condition of continued approval of the service. Failure to comply with this requirement may result in a sanction being imposed on the service under section 200.

Information other than protected information obtained for the purposes of the Child Care Management System Pilot

Item 65 makes amendments to section 162, authorising obtaining of protected information for the purposes of the Child Care Management System Pilot. ‘Protected information’ is defined in section 3 and includes information about a person held by the department or the agency (as defined).

Item 99 authorises a person to obtain information other than protected information for the purposes of the Child Care Management System Pilot (subitems 99(1) refers). Subitem 99(2) prohibits a person from making a record of such information, disclosing it or using it other than for the purposes of the pilot or as otherwise authorised by law.

A penalty of 2 years imprisonment applies for contravention of subitem 99(2).

Item 99 makes it lawful for a departmental officer to obtain from an operator of an approved child care service, for the purposes of the pilot, personal information relating to a child obtained by the service operator in the course of his or her business.

Subitem 99(3) authorises an approved child care service or any person engaged in the conduct of the service to make a record of personal information relating to the child for whom the service provides care or the individual who enrolled the child for care by the service obtained by the service, and to disclose such information for the purposes of the Child Care Management System Pilot.

‘Personal information’ referred to in this subitem has the same meaning as in the Privacy Act 1988.

Saving provisions in relation to item 2

Item 100 makes saving provisions in relation to item 2, which are explained under the heading Absences.
Transitional regulations

**Item 101** authorises the making of regulations, prescribing matters of a transitional nature, including saving or application provisions, and including modifications or adaptations of this amending Act, the Family Assistance Act and the Family Assistance Administration Act.
(b) Absences

**Background**

Under the current rules, CCB is paid in respect of an individual and a child for sessions of care that the child attends at an approved child care service (other than an approved occasional care service). CCB is also paid for certain absences from care. Currently, CCB continues to be payable, if the care would otherwise have been provided to the child and the absence:

- is due to a reason set out in subparagraphs 10(2)(b)(i) – 10(2)(b)(iv) of the Family Assistance Administration Act; for example, where the child is ill and covered by a medical certificate or the absence is due to the child's attendance at pre-school; or

- occurs on a ‘permitted absence day’ (subparagraph 10(2)(b)(v) of the Family Assistance Act).

Subsection 10(3) of the Family Assistance Act defines a permitted absence day as a day during the period when the service is providing care; care would otherwise have been provide to the child; the reason for the absence is not covered by subparagraphs 10(2)(b)(i) to (iv); and, before the day, not more than 29 permitted absence days in relation to the child have elapsed in the same financial year. For example, a family holiday, which occurs between the 24th and 29th days of absence, would be included in the 30 permitted absence days.

Amendments will be made so that a service will be taken to have provided a session of care to a child for the first 42 absence days without the individual who is eligible for CCB for the child providing evidence, for example, a medical certificate, of why the absence has occurred. An absence will only be counted towards the 42 day limit if CCB is paid for one or more of the hours of care in the session from which the child is absent. The limit of 42 initial absence days is derived from the 30 permitted absence days that are currently in the legislation plus 12 public holidays, which are currently included as an absence for which a service is taken to have provided care by virtue of the permitted circumstances made under section 11.

After the initial 42 absence days without evidence have been utilised, sessions of care will be taken to have been provided if any of circumstances that are set out in subparagraphs 10(2)(b)(i) to (iv) are met and the session of care would otherwise have been provided to the child by an approved child care service.
Explanation of the changes

Part 1 – Amendments

**Item 1** repeals subsection 10(2), which deals with absences from all of a session of care and substitutes new subsection 10(2). **Item 1** also repeals subsection 10(3), which deals with permitted absence days and substitutes new subsection 10(3).

Under new subsection 10(2), a session of care will be taken to have been provided to a child if the child is absent from a session of care that would otherwise have been provided to the child by an approved child care service, the day falls during the period in which the service is providing care, one or more of the hours in the session is counted toward the individual’s weekly limit of hours, and less than 42 days have elapsed in the same financial year on which a session of care is taken to have been provided to the child.

Under the new subsection 10(3), a session of care will be taken to have been provided to a child, after the initial 42 absence days, where the session of care would otherwise have been provided to the child by an approved child care service and the absence occurs in specific circumstances such as illness of the child supported by a medical certificate or the absence is due to the child attending pre-school.

The policy intent behind this amendment is to simplify administration for both individuals and child care services with regards to absences by enabling individuals to claim the first 42 absence days in a year without the need to obtain or provide evidence for the reason for the child’s absence from care for the first 42 absence days in a year. In addition, an absence will only be counted towards the 42 day limit if CCB is paid for at least one hour in the session from which the child is absent. Under the new processing rules which will be made under section 57A of the Family Assistance Act, absences will be the last hours to be counted towards an individual’s limit of hours, to enable the most beneficial outcome for the individual.

**Item 2** is consequential to **item 1** and amends section 11 so that it refers to the correct subparagraph of the amended section 10 for which the determination of specified circumstances as permitted circumstance is made.

Part 2 – Application and transitional provisions

**Item 100** is a saving provision consequential on the amendment made by **item 2** to section 11 of the Family Assistance Act. This item is relevant to the permitted circumstances determination made by the Minister under section 11 before the commencement of the amendments made by **items 1 and 2**. This item provides that the determination continues in force after the commencement of the amendments as if the determinations had been made under the new provisions of the Act.
(c) Counting hours towards an individual’s limit of hours

Background

Section 52 of the Family Assistance Act limits the number of hours in a week for which an individual or service is eligible for CCB. Under subsection 57A(1) of the Family Assistance Act, the Minister must determine rules relating to which of the hours in sessions of care in a week are to count towards the limit of 24, 50, or more than 50, hours that might apply to a claimant in a week.

Subsection 57A(2) limits the rules made under subsection 57A(1) to sessions of care other than those for which the standard hourly rate applies (which is set out in item 1 of the table in subclause 4(1) of Schedule 2) and the part-time % is 100% (under subclause 2(2) of Schedule 2).

Amendments will allow the Minister to determine the order in which all hours in sessions of care provided by a child care service, or child care services, (including standard hours) are to count towards an individual’s hours of eligibility for CCB.

Explanation of the changes

Item 3 changes subsection 57A(1) into section 57A. This amendment is consequential on item 4.

Item 4 repeals subsection 57A(2).

Subsection 57A(2) was included in the Family Assistance Act so that the sessions of care that would be the subject of the Minister’s determination are those in the higher cost category, which attract a higher rate.

Under the new measure, the Secretary, not services, will be calculating fee reductions. To enable the Secretary to calculate fee reductions for a child in a week, each service will be required to submit a record of usage information. The records from each service will not be received or processed at the same time.

Repealing subsection 57A(2) will allow the Minister to determine rules relating to how all of the hours in sessions of care provided by a child care service or child care services are to count towards a claimant’s limit of hours. This amendment addresses difficulties in processing the hours of a claimant where the child for whom they are eligible utilises two or more services.
(d) Part-time %

**Background**

An individual’s rate of CCB is worked out using Schedule 2 to the Family Assistance Act and equals their standard hourly rate (worked out using clause 4 of Schedule 2), multiplied by the individual’s adjustment percentage (worked out using clause 2 of Schedule 2).

An individual’s adjustment percentage equals:

CCB % × Schooling % × Part-time %.

Under subclause 2(2) of Schedule 2, an individual’s part-time %, where the care provided to the child is by one or more approved centre based long day care services, varies as follows:

- less than 34 hours at one or more approved centre based long day care services gives a part-time % of 110% (subparagraph 2(2)(a)(iii) of Schedule 2 to the Family Assistance Act);

- 34 or more, but less than 35, hours at one or more approved centre based long day care services gives a part-time % of 108% (subparagraph 2(2)(b)(iii) of Schedule 2 to the Family Assistance Act);

- 35 or more, but less than 36, hours at one or more approved centre based long day care services gives a part-time % of 106% (subparagraph 2(2)(c)(iii) of Schedule 2 to the Family Assistance Act);

- 36 or more, but less than 37, hours at one or more approved centre based long day care services gives a part-time % of 104% (subparagraph 2(2)(d)(iii) of Schedule 2 to the Family Assistance Act);

- 37 or more, but less than 38, hours at one or more approved centre based long day care services gives a part-time % of 102% (subparagraph 2(2)(e)(iii) of Schedule 2 to the Family Assistance Act);

- in any other case, the part-time % is 100% (subparagraph 2(2)(f) of Schedule 2 to the Family Assistance Act).

Therefore, an individual’s rate of CCB for a session of care provided to a child who attends long day care is affected by the number of hours that the child attends care.
As a result of the amendments contained in this Schedule, the definition of part-time % will refer to the total number of hours provided to a child by an approved centre based long day care service in the week concerned.

This amendment addresses difficulties in administering this provision where a family utilises two or more centre based long day care services. This is because, if the provision applies across all centre based long day care services, the Secretary would have to wait until the information regarding attendance was received from all the services concerned before the Secretary could determine the applicable part-time % and calculate the fee reductions for the individual. This amendment enables the Secretary to determine the part-time % for the hours a child attends a service once the Secretary has the information regarding the hours from that service.

**Explanation of the changes**

**Item 5** replaces references to ‘one or more approved centre based long day care services’ in the definition of part-time % in subclause 2(2) of Schedule 2 (subparagraphs (a)(iii), (b)(iii), (c)(iii), (d)(iii) and (e)(iii)) with references to ‘the approved centre based long day care service’ to give effect to the part-time % applying within a service rather than across all services that a child attends.
(e) New sanctions

**Background**

Subsection 200(1) of the Family Assistance Administration Act contains sanctions that the Secretary may impose on an approved child care service that has not complied, or is not complying, with a condition for the continued approval of the service. Under subsection 200(1), the Secretary may vary the conditions of continued approval of the service imposed under subsection 199(2); impose additional conditions for the continued approval of the service; reduce the number of places allocated to the service under section 208; suspend the service’s approval; or cancel the service’s approval.

If the Secretary does any of the things listed in subsection 200(1), notice must be given to the service (subsection 200(2)). The process that must be followed prior to the imposition of a sanction is set out in subsection 201(1).

The amendments will introduce three new sanctions for failure of an approved child care service to comply with conditions of continued approval. The sanctions will allow the payment of enrolment amounts to be withheld, or the return of enrolment amounts already paid, or the payment of fee reductions to be suspended for a maximum of three weeks.

**Explanation of the changes**

**Item 38** inserts new section 71GA after section 71G. This section provides that, if the Secretary imposes a sanction that requires a service to remit enrolment advances under new paragraph 200(1)(g), which is inserted by **item 78**, the amount equal to the advances that the service is required to remit is a debt due to the Commonwealth.

By virtue of the amendments made by **item 38**, debts arising in respect of remittal or enrolment advances under paragraph 200(1)(g) will be recoverable by the means set out in new subsection 82(2), inserted by **item 39**.

**Item 64** amends paragraph 144(1)(c) to substitute the reference to ‘paragraphs 200(1)(a) to (e)’ with ‘paragraphs 200(1)(a) to (h)’ and is consequential on the amendment made to subsection 200(1) by **item 78**.

**Item 77** amends subparagraph 195(2)(b)(i) to substitute the reference to ‘paragraphs 200(1)(a) to (e)’ with ‘paragraphs 200(1)(a) to (h)’ and is consequential on the amendment made to subsection 200(1) by **item 78**.

**Item 78** inserts new paragraphs 200(1)(f), 200(1)(g) and 200(1)(h) at the end of subsection 200(1).

Subsection 200(1) lists sanctions that may be imposed by the Secretary if a service breaches conditions of continued approval.
New paragraph 200(1)(f) will allow the Secretary to withhold the payment of enrolment amounts that will be due to the service in the future. When this sanction is in place the service will not be paid any enrolment amounts.

New paragraph 200(1)(g) will allow the Secretary to impose a sanction that will require services to repay the enrolment amounts that have been paid to the service for enrolments that have not ceased. The enrolment amounts that the service will have to repay will become a debt by virtue of the amendments made by item 38 and can be recovered by the methods listed in section 82 of the Family Assistance Administration Act.

Under new paragraph 200(1)(h), the Secretary may suspend, for a maximum of three weeks, payment of fee reductions to a service. When the Secretary imposes this sanction, the service is expected to continue to comply with all of its other obligations under the Family Assistance Administration Act, including the obligation to submit attendance records and pass on the fee reductions calculated by the Secretary.

Item 79 amends subsection 200(2) to substitute the reference to ‘paragraphs 200(1)(a) to (e)’ with ‘paragraphs 200(1)(a) to (h)’ and is consequential on the amendment made to subsection 200(1) by item 78.

Item 80 inserts new subsections 200(3A) and 200(3B) after subsection 200(3).

New subsection 200(3A) provides that the Secretary may revoke the imposition of the sanction of withholding the payment of enrolment advances to a service at any time. The revocation is to be done by notice and has effect from the day specified in the notice.

New subsection 200(3B) provides that the Secretary may, at any time by notice to a service, revoke the suspension of payment in respect of fee reductions. If the suspension of the sanction is revoked, all payments that would have been paid under section 219Q or subsection 219QA(2) but for the suspension must be paid to the service.

Item 81 amends subsection 201(1) to substitute the reference to ‘paragraphs 200(1)(a) to (e)’ with ‘paragraphs 200(1)(a) to (h)’ and is consequential on the amendment made to subsection 200(1) by item 78.
Schedule 2 – Civil penalties

Summary

This Schedule introduces a civil penalty and infringement notice scheme. The amendments provide that the Minister may seek a civil penalty order from the Federal Court of Australia or the Federal Magistrates Court where an approved child care service contravenes a civil penalty provision. The civil penalties scheme will operate in conjunction with an infringement notice scheme. An infringement notice that is issued to an approved child care service will provide the service with the option of paying the lesser penalty set out in the notice or proceeding to a court to determine liability.

Background

The family assistance law currently provides criminal penalties for those approved child care services and former operators of approved child care services that fail to comply with the obligations imposed by the family assistance law. Approved child care services have a direct role in the delivery of CCB. Compliance with the obligations imposed by the family assistance law is therefore essential for the proper administration of CCB.

The introduction of a civil penalties scheme will enhance the range of penalties that may be applied to an approved child care service to ensure compliance with the obligations imposed under the family assistance law.

The civil penalties and infringement notice scheme will not directly affect individuals receiving CCB. An individual will only be affected where an approved child care service consistently fails to comply with its obligations under family assistance law, through either the application of existing sanction provisions or the suspension of a service’s approval under new section 219TSQ.

The civil penalty and infringement notice scheme will commence on 1 July 2007.

Explanation of the changes

Item 1 inserts the definition ‘civil penalty provision’ into subsection 3(1). This definition sets out the proposed provisions in the bill which are civil penalty provisions. The following provisions are civil penalty provisions: subsection 219EA(2) and subsection 219TSB(1). Civil penalty provisions may attract a pecuniary penalty if breached (see new section 219TSC).

Item 2 amends subsection 104(1) by inserting a new paragraph (e) to provide that the Secretary may not review on his own initiative a decision under Division 2 of new Part 8C (inserted by item 7) (infringement notices).
Decisions made in relation to infringement notices are not reviewable under the review provisions in Division 1 of Part 5 of the Family Assistance Administration Act.

**Item 3** amends subsection 108(2) by inserting a new paragraph (g) to provide that a decision under Division 2 of Part 8C (infringement notices) may not be reviewed on application under section 109A. Decisions made in relation to infringement notices are not reviewable under the review provisions in Division 1 of Part 5 of the Family Assistance Administration Act.

**Item 4** amends subsection 111(1A) to provide that a decision made personally by the Secretary under Division 2 of Part 8C (infringement notices) may not be reviewed by the Social Security Appeals Tribunal.

The proposed amendments in this bill relating to the infringement notices (see **item 7**) require the Secretary to make two decisions personally under Division 2 of Part 8C. The first decision is the appointment of an authorised person under section 219TSO. The second decision is to grant an extension of time for a person to pay an infringement notice (subparagraph 219TSJ(e)(ii)). The Family Assistance Administration Act presently provides that decisions in relation to child care services under Part 8 of the Act are not reviewable by the Social Security Appeals Tribunal. This provision continues the present scheme of the Act.

**Item 5** amends subsection 144(1) by inserting new paragraphs (oa) and (ob).

New subparagraph (oa) provides that a decision made under new subsection 219TSQ(1) to suspend the approval of an approved child care service may be reviewed by the Administrative Appeals Tribunal.

New subparagraph (ob) provides that a decision made under new subparagraph 219TSQ(3) to revoke the suspension of an approved child care service from a particular day may be reviewed by the Administrative Appeals Tribunal.

The Secretary must suspend the approval of an approved child care service if the person has been given 10 infringement notices under new section 219TSI (in **item 7**) within a period of 12 months. The time for paying a penalty under each of the 10 infringement notices must have ended before the end of the 12 months.

**Item 6** inserts new section 219EA.

New section 219EA imposes a further obligation on an approved child care service to provide information to the Secretary in relation to child care places at the service.
New subsection 219EA(1) provides that new section 219EA will apply where the Minister has determined rules under subsection 205(1) that require an approved child care service to provide, by a particular time, information in relation to the number of child care places provided by the service, or likely to be provided, during a particular period.

Subsection 205(1) of the Family Assistance Administration Act provides that the Minister may determine rules relating to the eligibility of a service to be approved and to continue to be approved. The Minister has determined rules, which are set out in the *Child Care Benefit (Eligibility of Child Care services for Approval and Continued Approval) Determination 2000*.

New subsection 219EA(2) provides that the service must provide the information at the time and in the form, manner or way specified in the request. New subsection 219EA(3) provides that subsection 219EA(2) is a civil penalty provision (see item 1).

The Secretary currently collects information from approved child care services on the number of child care places occupied for the past week and the number of child care places that are likely to be available in the next week. If, for example, an approved child care service is required to provide information in relation to the number of child care places provided by the service, or likely to be provided, each Friday by 8:00 pm and the service fails to provide the information by that time, the service will have contravened a civil penalty provision.

Item 7 inserts new Part 8C.

**New Part 8C – Civil penalty**

**New Division 1 – Civil penalty orders**

New Division 1 sets out the requirements for the court to make a civil penalty order. The Minister may make an application to either the Federal Court of Australia or the Federal Magistrates Court for a civil penalty order, where a person has contravened a civil penalty provision.

**New section 219TSA – Definitions**

New section 219TSA sets out the definitions used in Division 1.

*civil penalty order*

The term ‘civil penalty order’ is defined as an order made under subsection 219TSC(1). A civil penalty order is an order of the Federal Court of Australia or the Federal Magistrates Court imposing a pecuniary penalty on a person who contravenes a civil penalty provision.
The term ‘penalty unit’ is defined as having the same meaning as in section 4AA of the *Crimes Act 1914*.

**New section 219TSB – Ancillary contravention of a civil penalty provision**

New subsection 219TSB(1) addresses ancillary contraventions of a civil penalty provision. It provides that a person must not:

- attempt to contravene a civil penalty provision; or
- aid, abet, counsel or procure a contravention of section 219EA(2); or
- induce a contravention of this provision; or
- in any way, be, directly or indirectly, knowingly concerned in, or party to, a contravention of this provision; or
- conspire with others to effect a contravention of this provision.

These ancillary contravention provisions are similar to the offences in Part 2.4 of the *Criminal Code* (aiding and abetting and conspiracy), which provide for the extension of responsibility in criminal offences.

New subsection 219TSB(2) provides that new subsection 219TSB(1) is a civil penalty provision.

**New section 219TSC – Civil penalty orders**

New subsection 219TSC(1) provides that, where the Federal Court of Australia or the Federal Magistrates Court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay to the Commonwealth a pecuniary penalty. New subsection 219TSC(2) provides that this order is known as a civil penalty order. Only the Minister may make an application to the court for a civil penalty order.

New subsection 219TSC(3) provides that a court, when determining the pecuniary penalty to be paid, must take into account all relevant matters. The relevant matters include:

- the nature and extent of the contravention;
- the nature and extent of any loss or damage suffered as a result of the contravention;
- the circumstances in which the contravention took place; and
the findings and civil penalty orders of a court in previous proceedings under the Family Assistance Administration Act where the person has engaged in similar conduct; this would not enable a court to take into account previous infringement notices given to the defendant, as these are not proceedings under the Act.

New subsection 219TSC(4) provides that the pecuniary penalty is a debt to the Commonwealth. New subsection 219TSC(5) provides that the Commonwealth may enforce a civil penalty order in a court as a judgement debt.

The note at the end of new subsection 219TSC points out that the Secretary may also take action against the service under section 200 of the Family Assistance Administration Act. A service may be sanctioned under that section. Possible sanctions include the imposition of additional conditions for continued approval under subsection 199(2), a variation of a condition for continued approval imposed under subsection 199(2), and suspension of approval or cancellation of approval.

**New section 219TSD – Maximum penalties for contravention of civil penalty provisions**

New subsection 219TSD sets out the maximum pecuniary penalty payable for a contravention of a civil penalty provision. The maximum penalty payable for a contravention of a civil penalty provision by a body corporate is 60 penalty units. The maximum penalty payable for a contravention of a civil penalty provision by a person other than a body corporate is 30 penalty units.

The maximum penalties for a contravention of a civil penalty provision are 30 penalty units for a natural person and 60 penalty units for a body corporate. Generally, criminal penalties in Commonwealth legislation for a body corporate are five times higher than the penalty imposed on a natural person. The penalty has been set at a 2:1 ratio in this instance because of a number of factors. These factors include the nature of the obligation being imposed on an approved child care service, the fact that a penalty less than 30 penalty units imposed on a natural person would be meaningless, and the usual penalty for non-compliance with provisions of a similar nature in other Commonwealth legislation is 60 penalty units for a body corporate.

**New section 219TSE – proceedings may be heard together**

New section 219TSE provides that, where the Federal Court of Australia or the Federal Magistrates Court considers it appropriate, 2 or more proceedings for a civil penalty order may be heard together.

**New section 219TSF – Time limit for application for an order**

New section 219TSF provides that the Minister must make an application for a civil penalty order no later than four years after the contravention.
New section 219TSG – Civil evidence and procedure rules for civil penalty orders

The Federal Court of Australia or the Federal Magistrates Court, when hearing proceedings for a civil penalty order, is to apply the rules of evidence and procedure that apply when the court hears a matter in its civil jurisdiction.

New Division 2 – Infringement notices

New Division 2 sets up a system of infringement notices relating to contraventions of civil penalty provisions. It is anticipated that such notices could be given where an authorised person is of the view that there has been a minor breach which could be adequately dealt with by way of an infringement notice, instead of initiating court proceedings.

New section 219TSH – Definitions

New section 219TSH sets out the definitions used in Division 2.

authorised person

An ‘authorised person’ is the Secretary, or an officer of the Department who is appointed in writing as an authorised person for the purposes of this Division under section 219TSO.

The definition of an authorised person is central to the scheme of issuing infringement notices. Only an authorised person can issue infringement notices under section 219TSI.

civil contravention

This is defined to mean a contravention of a civil penalty provision. The civil penalty provisions are in new subsections 219EA(2) and 219TSC(1).

An infringement notice can be given when an authorised person has reasonable grounds to believe that a person has committed one or more civil contraventions (see new subsection 219TSI(1)).

infringement notice

The term ‘infringement notice’ is defined as an infringement notice given under section 219TSI.

penalty unit

The term ‘penalty unit’ is defined as having the same meaning as in section 4AA of the Crimes Act 1914.
New section 219TSI – when an infringement notice can be given

New subsection 219TSI(1) sets out when an infringement notice may be issued. It provides that an infringement notice may be issued by an ‘authorised person’ (the Secretary or an officer of the Department – see definition in new section 219TSH) if he or she has reasonable grounds to suspect that a person has contravened a civil penalty provision (see item 1 above for the definition of ‘civil penalty provisions’).

New subsection 219TSI(2) requires that an infringement notice be given to the person within 12 months of the date that the contravention or contraventions occur.

New section 219TSJ – Matters to be included in an infringement notice

New subsection 219TSJ(1) sets out the requirements of an infringement notice. The notice must contain the following:

− the name of the person to whom the notice is given, that is, the person who has allegedly contravened the civil penalty provision;

− the name of the approved child care service where the infringement took place;

− the name of the authorised person who issued the notice; it is anticipated that, as a matter of administrative practice, the authorised person would sign the notice;

− brief details of the alleged civil contraventions (the minimum details to satisfy this requirement are set out in new subsection 219TSJ(2));

− a statement setting out that the Federal Court of Australia or the Federal Magistrates Court will not deal with the matters in the alleged contraventions if the penalty is paid within the notified period (either 28 days after the notice is given or longer, if an extension of time for payment is granted by the Secretary);

− an explanation of how the payment of the penalty may be made; it is anticipated that the payment will be made directly to the Department; and

− any other matters that are specified in the regulations.

New subsection 219TSJ(2) sets out that the notice must include the date of the contravention and the civil penalty provision that was contravened, as part of the brief details about the alleged contravention (under paragraph 219TSJ(1)(d)). This does not limit the details which may be included under this paragraph.
New section 219TSK – Amount of penalty

New section 219TSK sets out two tables indicating the pecuniary penalties payable under an infringement notice. The first table deals with notices given to a body corporate and the second table deals with notices given to an individual.

infringement notice given to a body corporate

New subsection 219TSK(1) provides that, where an infringement notice for a single alleged contravention of a civil penalty provision is given to a body corporate, the penalty must be four penalty units. If the infringement notice relates to more than one alleged contravention of a civil penalty provision, the penalty payable is obtained by multiplying four by the number of contraventions.

infringement notice given to a person other than a body corporate

New subsection 219TSK(2) provides that, where an infringement notice for a single alleged contravention of a civil penalty provision is given to a person other than a body corporate, the penalty must be two penalty units. If the infringement notice relates to more than one alleged contravention of a civil penalty provision, the penalty payable is obtained by multiplying two by the number of contraventions.

The infringement scheme penalties have a 2:1 penalty ratio in relation to a body corporate and a natural person. As noted above, the maximum penalty for a civil penalty provision also has a 2:1 penalty ratio in relation to a body corporate and a natural person (see discussion – new section 219TSD). The rationale for maintaining the 2:1 ratio for infringement notices is the same as for a contravention of civil penalty provision (see discussion – new section 219TSD). The information a service is obliged to provide is to be provided weekly. If the infringement notice penalty were the usual 1/5th of the maximum penalty (that is, 12 penalty units) and were imposed for each failure to provide information, the infringement notice scheme could result in severe penalties, which is not the intention of the policy behind these regulatory changes.

New section 219TSL – Withdrawal of an infringement notice

New subsection 219TSL(1) provides that new section 219TSL will apply when a notice has been given to a person.

New subsection 219TSL(2) provides for an authorised person (the Secretary or an officer of the Department – see definition in new section 219TSH), to withdraw an infringement notice that has been given to a person in relation to a contravention of a civil penalty provision. The withdrawal notice must be in writing.
A withdrawal of a previously given infringement notice may be considered, for example, where further evidence has come to light since the issuing of the infringement notice to suggest that a person has not contravened a civil penalty provision, or alternatively that further evidence suggests that the breach is more serious than initially believed and consequently would be more appropriately dealt with by a court rather than an infringement notice.

Where a person does not pay a penalty under an infringement notice, the Minister may institute proceedings in the Federal Court of Australia or the Federal Magistrates Court for a civil penalty order. New section 219TSN provides that the court’s discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Division 1 to have committed a civil contravention is not affected by the person’s failure to comply with the infringement notice. However, a person may be required to pay a higher penalty.

New subsection 219TSL(3) provides that, for a withdrawal notice to be effective, the withdrawal notice must be given to the person within 28 days of the person being given the infringement notice.

refund of penalty if infringement notice withdrawn

New subsection 219TSL(4) provides that, where a person has paid the penalty set out in the infringement notice and the authorised person decides to withdraw the notice, the Commonwealth will be liable to refund the amount of the penalty.

New section 219TSM – What happens if the penalty is paid

New subsection 219TSM(1) provides that section 219TSM will apply if:

− an infringement notice is given to a person;
− the penalty is paid in accordance with the infringement notice; and
− the infringement notice is not withdrawn.

New subsection 219TSM(2) provides that any liability of the person for the alleged contravention will be discharged. Therefore, if the factors set out in new subsection 219TSM(1) are satisfied, all liability for the alleged contravention will have been discharged.

New subsection 219TSM(3) provides that no proceedings may be instituted by the Minister for a civil penalty order under new Division 1 against the person for the contravention alleged in the infringement notice.

New section 219TSN – Effect of this Division on civil proceedings

New section 219TSN clarifies the effect of the infringement notice in relation to civil penalty proceedings.
New section 219TSN specifically provides that nothing in this Division:

− requires an infringement notice to be given in relation to an alleged civil contravention (new paragraph 219TSN(a));

− affects the liability of a person to have court proceedings brought against them under Division 1 if the person does not comply with an infringement notice, an infringement notice is not given to a person, or an infringement notice is withdrawn (new paragraph 219TSN(b));

− limits the Federal Court’s discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Division 1 to have committed a civil contravention (new paragraph 219TSN(c)).

New section 219TSO – Appointment of an authorised person

New section 219TSO enables the Secretary to appoint, in writing, an officer of the Department as an authorised person for the purposes of Division 2. An authorised person is able to issue infringement notices under this Division, (section 219TSI), and may withdraw notices (new section 219TSL).

In addition to those officers specifically appointed as authorised persons under this section, the Secretary is an authorised person for the purpose of this Division (see definition of an ‘authorised person’ in new section 219TSH). He or she is automatically considered an authorised person without any need to be appointed as such under section 219TSO.

New section 219TSP – Regulations

New section 219TSP provides that the regulations may make further provision in relation to infringement notices. A general regulation-making power is found in section 235 of the Family Assistance Administration Act.

New Division 3 – Suspension of approved child care service’s approval

New section 219TSQ – Suspension of approved child care service’s approval

New subsection 219TSQ(1) provides that the Secretary must suspend the approval of an approved child care service if the person has been given 10 infringement notices under new section 219TSI within a period of 12 months. The time for paying a penalty under each of the 10 infringement notices must have ended before the end of the 12 months. The Secretary must give the person who operates the service a notice in writing stating that the service’s approval has been suspended.
Example: A person is given an infringement notice on 9 July 2007. A further eight notices are given throughout the following 10 months. A tenth infringement notice is given on 23 June 2008. The Secretary would not be able to suspend the service’s approval based on the 10 infringement notices because the time for payment of the penalty under the tenth notice would occur outside 12 months from the time the person was given the first infringement notice.

New subsection 219TSQ(2) provides that the notice the Secretary gives the person who operates the service must specify a day from which the service’s approval is suspended. The day from which the service’s suspension takes effect cannot be a date earlier than the date of the notice. The Secretary must also set out the grounds upon which the Secretary has suspended the approval of the service, that is, that, within a 12 month period, the person has been given 10 infringement notices and the period for paying a penalty under each notice has expired.

New subsection 219TSQ(3) provides that the Secretary may revoke the suspension of the service’s approval with effect from the day specified in the notice.

Item 8 amends section 221 by adding a further subsection (4), providing that the Secretary may not delegate any of the Secretary’s powers under Division 2 of Part 8C (infringement notices).

Item 9 provides that the obligation to provide information made by item 6 arises after the commencement of the item on 1 July 2007, regardless of whether the information that is to be provided relates to a period before 1 July 2007.
Schedule 3 – Miscellaneous amendments

Summary

This Schedule contains a number of amendments to various provisions of the Family Assistance Act and the Family Assistance Act Administration Act. In large part, the amendments relate to the information gathering powers, the location of records, and the fee charging practices of services. The amendments also enable the Secretary to write directly to the parents of children at child care services that are not complying with their obligations under the family assistance law, to suspend immediately the approval of a service in certain limited circumstances, and to establish committees for the purposes of the family assistance law.

Further amendments will reduce overpayments of CCB occurring because an individual who is eligible for CCB for a child has delayed notifying the Secretary when the child starts attending primary school, improve the recovery of debts owed by child care services operated by unincorporated bodies or associations (such as partnerships), limit the fees charged by services in certain restricted circumstances, limit the retrospective approval of a child care service and standardise the appeal period for certain decisions affecting services.

(a) Definition of ‘school child’

Background

An individual’s rate of CCB is worked out using Schedule 2 to the Family Assistance Act and equals the individual’s standard hourly rate (worked out using clause 4 of Schedule 2), multiplied by the individual’s ‘adjustment percentage’ (worked out using clause 2 of Schedule 2). An individual’s adjustment percentage equals ‘CCB % × schooling % × part-time %’.

Under subclause 2(2) of Schedule 2, the schooling % is 85% if the child is a school child and 100% if the child is not a school child. Subsection 18(1) of the Family Assistance Act defines a school child as a ‘child [who] is attending primary or secondary school’.

Under subsection 56C(5) of the Family Assistance Administration Act, a conditionally eligible individual is required to notify the Secretary if anything happens that causes a reduction in the schooling % to 85%. Therefore, individuals are required to notify the Secretary if the child in respect of whom they are eligible for CCB starts school.

To reduce overpayments of CCB in situations where an individual does not notify the Secretary when their child starts school, or when there is a delay in notification, this Schedule will make amendments so that a child will be taken to be a school child when the child turns six years of age, unless the individual notifies the Secretary otherwise.
Explanation of the changes

Item 1 inserts a new subsection 18(1A) into the Family Assistance Act, which provides that a child is taken to be a school child if the child has reached six years of age, unless an individual who is conditionally eligible, or eligible, for CCB for the child notifies the Secretary that the child does not satisfy the criterion in subsection 18(1).
(b) Immediate suspension

Background

Section 200 of the Family Assistance Administration Act provides that the Secretary may sanction an approved child care service when the service has not complied, or is not complying, with a condition for continued approval. The Secretary must give the service notice of an intention to sanction the service and invite the service to make submissions stating why the service should not be sanctioned. The consequence of suspension for an individual is that the individual is not entitled to CCB for care provided while the service is suspended (section 50, Family Assistance Act). The consequence of suspension for a service is that the service must cease to provide fee reductions to individuals who are conditionally eligible while the service is suspended (section 219D, Family Assistance Administration Act).

The amendments provide for the immediate suspension of a service’s approval in certain circumstances. A service’s approval may be suspended immediately if it fails to comply with all the requirements imposed by Commonwealth legislation, or State or Territory law relating to child care; if the care provided by the child care service results in an imminent threat to the health or safety of a child; or where, in urgent circumstances, it is no longer appropriate for the service to provide child care.

There are also consequential amendments to various provisions, which clarify the effect of suspension on individuals, the effect of suspension on services and the date a notice of suspension may come into effect.

Explanation of the changes

Part 1 – Amendments

Item 2 amends subsection 50(1) of the Family Assistance Act by omitting the words ‘section 200 of’. The effect of this amendment is that, where the approval of an approved child care service has been suspended under section 200, 201A or 219TSQ, the individual is not eligible for CCB for sessions of care provided during the period when the service’s approval is suspended.

Item 12 amends subsection 144(1) by inserting two new paragraphs (da) and (db). Paragraph (da) provides that a decision made under subsection 201A(1) to suspend the approval of an approved child care service may be reviewed by the Administrative Appeals Tribunal. Paragraph (db) provides that a decision made under subsection 210A(3) to revoke the suspension of a child care service may be reviewed by the Administrative Appeals Tribunal.

Item 20 is consequential to the amendments made to paragraph 195(2)(b) by item 21 and substitutes ‘either’ for ‘any’.
Item 21 provides for the insertion of new subparagraphs 195(2)(b)(ia) and (ib).

Subsection 195(2) of the Family Assistance Administration Act sets out the grounds upon which the Secretary may refuse to approve a child care service for the purposes of the family assistance law. If a service has previously been approved and the service has been sanctioned under section 200, the Secretary may refuse to approve the child care service.

If a service has been previously approved, new subparagraph (ia) provides that the Secretary may take into account a suspension under section 201A (immediate suspension) when determining whether or not a service should be approved for the purposes of the family assistance law.

If a service has been previously approved, new subparagraph (ib) provides that the Secretary may take into account a suspension under section 219TSQ (suspension after being given 10 infringement notices) when determining whether or not a service should be approved for the purposes of the family assistance law.

Item 23 amends subsection 200(2) by inserting, ‘The notice must specify the day, no earlier than the day on which the notice is given, on which the sanction takes effect.’ This amendment will clarify that the date of effect of a suspension under subsection 200(1) does not have to be the date the notice of sanction was given to the service; it may be a later date.

Item 24 inserts new section 201A. New subsection 201A(1) provides that the Secretary may suspend the approval of a service in certain circumstances. The Secretary must give a notice in writing to the service if he or she decides to suspend the approval of a service under new section 201A. The introduction of a power to suspend immediately the approval of a child care service is not a replacement of the power to suspend by sanction under section 200 of the Family Assistance Administration Act. It is anticipated that this power will be used in limited circumstances and where it is appropriate for the Secretary to act immediately. The Secretary must have a reasonable belief that one of the circumstances noted has occurred before suspending the service’s approval.

The circumstances in which the Secretary may immediately suspend the approval of a service are where:

- the service has failed to comply with all the applicable requirements imposed by a law of the Commonwealth, or State or Territory law, relating to child care; for example, where a service has its licence to operate a child care service suspended by the relevant state regulatory authority, the Secretary may also immediately suspend the approval of the service for family assistance law purposes;

- the Secretary reasonably believes that there is an imminent threat to the health or safety of a child or children because of the care provided by the service; or
in urgent circumstances, where it is no longer appropriate for the service to provide child care; an example is where a service is found to be situated on contaminated land, requiring immediate evacuation of the child care service.

A service, which has its approval suspended, may have the decision to suspend its approval under subsection 201A(1) reviewed by an authorised review officer under Division 1 or Part 4 of the Family Assistance Administration Act and by the Administrative Appeals Tribunal (see item 12).

A service’s approval cannot be cancelled under this provision. The procedure for cancellation of the approval of a child care service is set out in section 203 of the Family Assistance Administration Act.

New subsection 201A(2) provides that the notice informing the service that its approval has been suspended must:

− specify the day on which the suspension is to take effect; the day cannot be any earlier than the day on which the notice is given;

− set out the grounds upon which the Secretary has suspended the approval of the service; and

− inform the service of its rights under the Family Assistance Administration Act to seek a review of the decision to suspend the approval of the service.

New subsection 201A(3) provides that the Secretary may revoke a suspension under section 201A(1). Notice of the revocation of the suspension of the approval of the service must be in writing. The revocation takes effect from the day set out in the notice. The Secretary may revoke the suspension with effect from the day the suspension was imposed.

A service may have the decision in relation to revocation under subsection 201A(3) reviewed by an authorised review officer under Division 1 or Part 4 of the Family Assistance Administration Act and by the Administrative Appeals Tribunal (see item 12).

Item 31 amends subsection 219D(1) to provide that, where a service receives a notice that its approval has been suspended or cancelled it must cease reducing fees from the day set out in the notice of the sanction. This amendment clarifies the date from which the service must stop reducing fees.

Item 32 amends subsection 219D(2) by providing that, where a service receives a notice of revocation of immediate suspension, the service must reduce the fees of individuals who are conditionally eligible from the date the service receives notice.
Item 36 inserts new section 224A. New section 224A provides that a notice of a decision to a service made by an officer under Part 8 (for example, a decision to suspend the approval of a service) is to be taken to have been given to the service if it is left at, or sent by prepaid post to, the address of the place of residence or business or the email address of the service last known to the Secretary.

New subsection 224A(2) provides that a notice of a decision under Part 8 of the Family Assistance Administration Act affecting a service may be given to the service by properly addressing, prepaying and posting the document as a letter. If this procedure is followed, then the notice is taken to have been given to the person at the time at which the notice would be delivered in the ordinary course of post, unless the contrary is proved.

New subsection 224A(3) provides that notices of decision forwarded to the service in accordance with new subsection 224A(2) are taken to be given to the service at the time when the notice would be delivered to the service in the ordinary course of the post, unless the service can establish that the notice was not received.

Part 2 – Application provisions

Items 42 and 46 are application provisions.

Item 42 provides that the amendments in item 23 and item 31 will apply to notices of suspension that are given to child care services on or after the commencement of those items.

Item 46 provides that the amendments made in item 36 will apply to a notice that is given to a service after the commencement of the item.
(c) Changes to information gathering provisions

**Background**

Division 1 of Part 6 of the Family Assistance Administration Act contains provisions relating to information gathering. Under section 154 of the Family Assistance Administration 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 the matters listed in the section.

Failure to comply with any of the obligations set out in Division 1 of Part 6 is an offence punishable by 12 months’ imprisonment (section 159, Family Assistance Administration Act). Failure to comply with the requirements and provide information or a document could also result in a variation to a claimant’s determination/s in certain circumstances.

Amendments made by this Schedule will allow the Secretary to vary a claimant’s determination of conditional eligibility if they, or their partner, fail to provide information or a document relating to the claimant’s conditional eligibility or eligibility. Similarly, variation may also apply if information or a document is not supplied and is relevant to: an application by a person for approval of a child care service; whether an approved child care service should continue to be approved; an application by a person for approval as a registered carer; or whether a person should continue to be approved as a registered carer.

Amendments are also made so that the Secretary may request information from a former operator of a child care service in relation to the records they are required to keep under the Family Assistance Administration Act. Under the amendments, the Secretary may also require former operators to produce the documents the former operator is required to keep.

**Explanation of the changes**

**Part 1 – Amendments**

**Item 3** amends paragraph 62(1)(b).

Section 62 allows the Secretary to vary a claimant’s determination of conditional eligibility when the claimant, or their partner, refuses or fails to provide information or a document under a request made under Division 1 of Part 6 where the information or document relates to the claimant’s conditional eligibility. The claimant’s 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 was made. Under subsection 62(2), if the claimant subsequently gives the information or produces the document by the end of the income year following the one in which the variation took effect, the Secretary must undo the variation determination.
The amendment made by **item 3** to paragraph 62(1)(b) will allow the Secretary to vary a claimant’s determination of conditional eligibility if the claimant, or their partner, refuses or fails to comply with a request made under Division 1 of Part 6 where the information or document requested relates to the claimant’s conditional eligibility, or eligibility (as per the criteria set out in section 43 of the Family Assistance Act), or in relation to a matter set out in subsection 154(5) of the Family Assistance Administration Act (information or a document relevant to an application by a person for approval of a child care service; whether an approved child care service should continue to be approved; an application by a person for approval as a registered carer; or whether a person should continue to be approved as a registered carer).

This amendment brings the powers of the Secretary in relation to varying a claimant’s CCB eligibility closer to those available in relation to family tax benefit.

**Item 13** amends subsection 153(2) to insert ‘or records’ and is consequential to the amendments made to section 154 by **items 14 and 15**.

**Item 14** inserts new paragraph 154(5)(e) at the end of subsection 154(5) to allow the Secretary to obtain information regarding the records that a person is required to keep under section 219G. The information could include information relating to where the records are stored or located.

**Item 15** inserts new subsection 154(5A). This subsection will allow the Secretary to request a former operator of a child care service to produce records they are required to keep under section 219G.

Section 219G of the Family Assistance Administration Act requires the operator of a service that ceases to be an approved child care service to keep records that the service would otherwise have been obliged to keep under section 219F of the Family Assistance Administration Act, had it not ceased to be an approved child care service. The service is required to keep the records for 36 months from the end of the year in which the care was provided. Failure to comply with obligations under section 219G is an offence with a penalty of 60 penalty units.

Section 219K of the Family Assistance Act gives an authorised officer the power to enter the premises of a former operator of an approved child care service during business hours to inspect the records that an approved child care service is required to keep under section 219G.

There is currently no power in the legislation for the Secretary to request information from former operators regarding the location of the records they are required to keep, or to require former operators to provide records. The amendments made by **items 14 and 15** address this issue to allow the Secretary to request such information or records.
Item 16 amends subparagraphs 158(2)(b)(i) and (ii) to include references to ‘records’. These amendments are consequential to the amendments made to section 154 by items 14 and 15.

Item 17 amends subparagraph 158(2)(b)(iii) to include a reference to records that are to be produced. This amendment is consequential to the amendments made to section 154 by items 14 and 15.

Item 18 amends subsection 159(1) to include a reference to ‘records’. This amendment is consequential to the amendments made to section 154 by items 14 and 15.

Item 19 amends paragraph 160(b) to include a reference to ‘records’. This amendment is consequential to the amendments made to section 154 by items 14 and 15.

Part 2 – Application provisions

Item 40 is an application provision. It provides that the amendments made by items 14 and 15 of this Schedule apply in relation to a requirement to keep records that arose before or after the commencement of this Schedule.
(d) Notification to parents

**Background**

Section 200 of the Family Assistance Administration Act provides that the Secretary may sanction an approved child care service when the service has not or is not complying with a condition for continued approval. The Secretary may sanction the service by imposing or varying a condition for continued approval under subsection 199(2), or suspending or cancelling the approval of the service. The Secretary must give the service notice of his or her intention to sanction the service and invite the service to make submissions stating why the service should not be sanctioned.

Two new powers of suspension are introduced in this bill, that is, the power of immediate suspension in new section 201A (see item 24) and the power of suspension when a service is given 10 infringement notices in a year (see Schedule 2 – item 7).

There is presently no power in the Family Assistance Administration Act that permits the Secretary to write to individuals using a child care service, informing them that the service is not complying with its obligations under the family assistance law.

The amendments enable the Secretary to inform individuals using a child care service that the service has not complied with, or is not complying with, a condition for continued approval; or has had its approval suspended or cancelled. An individual is not entitled to CCB for care provided while a service is suspended.

**Explanation of the changes**

**Part 1 – Amendments**

**Item 4** amends subsection 104(1) by inserting new paragraph (ba) to provide that the Secretary may not review on his or her own initiative a decision to give a notice under section 204A.

**Item 5** amends subsection 108(2) by inserting new paragraph (ca) to provide that a decision of the Secretary to give a notice under section 204A may not be reviewed on application under section 109A.

**Item 25** inserts new section 204A into the Family Assistance Administration Act.
The new provision enables the Secretary to write directly to individuals, whose children are being cared for in a child care service, if the Secretary is satisfied that the service has not complied, or is not complying, with a condition for continued approval, without needing to provide to the service notice of the intention to write to the individual. The Secretary may also write to individuals whose children are being cared for in a child care service if the Secretary has suspended or cancelled the approval of a child care service.

New subsection 204A(1) provides that, if the Secretary is satisfied that an approved child care service has not complied, or is not complying, with a condition for continued approval, the Secretary may give a notice to an individual whose entitlement to be paid CCB may be affected.

New subsection 204A(2) provides that the notice must contain a statement that the Secretary is satisfied that the service has not complied, or is not complying, with a condition of continued approval and the effect on an individual’s entitlement if the Secretary were to suspend or cancel the approval of the service. The Secretary may also set out other information that the Secretary thinks relevant.

New subsection 204A(3) provides that, if the Secretary suspends or cancels the approval of a child care service, the Secretary may give a notice to an individual whose entitlement to be paid CCB may be affected.

New subsection 204A(4) provides that the notice must contain a statement that the Secretary has suspended or cancelled the service’s approval, and of the effect on an individual’s entitlement because of the suspension or cancellation.

New subsection 204A(5) provides that the notice must be in a manner or form approved by the Secretary.

Part 2 – Application provisions

Item 43 is an application provision. The amendment provides that subsection 204A(1) will apply to non-compliance by a service with conditions for continued approval that occurs before or after the commencement of item 25.

Any decision of the Secretary to give a notice under new subsection 204A(1) will be made after the commencement of the provision. The Secretary must be satisfied, at the date the notice is given to the individual, that the service has not complied, or is not complying, with a condition for continued approval. Therefore, the non-compliance upon which the Secretary relies may have occurred prior to the commencement date of new subsection 204A(1). However, the retrospective element in this application provision causes no practical disadvantage to the service because any non-compliant behaviour has already occurred and cannot be disregarded without undermining the whole measure, which is to the primary advantage of families.
The amendment also provides that subsection 204A(3) will apply to suspensions or cancellations of the approval of services that occur before or after the commencement of item 25.

Any decision of the Secretary to give a notice under new subsection 204A(3) will be made after the commencement of the provision. The Secretary must be satisfied, at the date the notice is given to the individual, that the service is suspended or cancelled. The rationale for the amendment in relation to new subsection 204(1), is the same for new subsection 204(3).
(e) Changes to review provisions

Background

Part 5 of the Family Assistance Administration Act contains the review provisions for the family assistance law.

Subdivision B of Division 1 of Part 5 applies to internal review initiated by the applicant. The standard period for an application for internal review to be submitted by an individual is 52 weeks after the applicant is notified of the original decision. The 52 week appeal period exists because many of the decisions made under the family assistance law are related to entitlement to family tax benefit and CCB, which are connected to the income year. The same 52 week period for application for internal review currently applies to decisions relating to the operation of child care services.

Division 4 of Part 5 contains provisions relating to review by the Administrative Appeals Tribunal. Currently, in relation to decisions made under Part 8 of the Family Assistance Administration Act (approval of child care services and registered carers) and decisions made under section 57 of the Family Assistance Act (determination that a service is a sole provider), the review provisions allow for simultaneous application to the Secretary for internal review and to the Administrative Appeals Tribunal for review.

Amendments made by this Schedule will standardise the time limit for internal review of decisions relating to services to 28 days. Internal review of decisions relating to services will be a prerequisite for review by the Administrative Appeals Tribunal.

Explanation of the changes

Part 1 – Amendments

Item 6 inserts new paragraph 109D(6)(c) at the end of subsection 109D(6).

Under section 109D 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. Subsection 109D(6) defines an ‘excepted decision’.

The amendment made by item 6 is consequential to the amendment made by item 7 and excludes decisions of the kind mentioned in subsection 144(1) (which are decisions relating to child care services and registered carers) from the 52 week period to apply for internal review of decisions.

Item 7 inserts new section 109DA. New section 109DA places a 28 day time limit for review of decisions in relation to child care services and registered carers. Under this new section an application for review of a decision of a kind mentioned in subsection 144(1) must be made no later than 28 days after the applicant is notified of the decision.
Decisions made under Part 8 of the Family Assistance Administration Act and subsection 57(1) of the Family Assistance Act (which are the decisions mentioned in subsection 144(1) are difficult to remedy retrospectively and it is preferable to have a shorter review period.

**Item 8** amends subsection 111(2) so that decisions made by the Secretary personally, or by another agency head in the exercise of a delegated power, of the kind listed in paragraphs 111(2)(a) – (g) are excluded from review by the Social Security Appeals Tribunal. This amendment corrects an oversight from when subsection 111(1A) was enacted.

**Item 9** inserts new paragraph 111(2)(h) at the end of subsection 111(2). New paragraph 111(2)(h) excludes decisions made under subsection 57(1) of the Family Assistance Act (determinations that an approved child care service is a sole provider) from review by the Social Security Appeals Tribunal.

This amendment corrects an anomaly that was created by the *Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006*, which amended the power to make a determination that a service is a sole provider. The Secretary now has the power to make such a determination, whereas the power previously sat with the Minister. Persons affected by such decisions will continue to be able to apply to the Administrative Appeals Tribunal for review.

**Item 10** inserts new subsections 144(1A), 144(1B) and 144(1C).

New subsection 144(1A) provides that, if a decision of the kind referred to in subsection 144(1) has been reviewed under section 109A and the decision has been affirmed, varied or set aside and substituted, then application may be made to the Administrative Appeals Tribunal for review of the decision. This new subsection means that internal review of a decision is a prerequisite for review by the Administrative Appeals Tribunal.

New subsection 144(1B) provides that the decision for the purposes of subsection 144(1A) is taken to be the decision as affirmed if the Secretary or authorised review officer affirms a decision; the decision as varied if the Secretary or authorised review officer varies a decision; and the new decision if the Secretary or authorised review officer sets aside and substitutes a new decision.

New subsection 144(1C) provides that, if a decision referred to in subsection 144(1) is made by the Secretary personally, or by another agency head himself or herself in the exercise of a delegated power, application may also be made to the Administrative Appeals tribunal for review of the decision. This subsection is inserted because decisions made by the Secretary personally, or by another agency head in the exercise of a delegated power cannot be reviewed internally.
**Item 11** amends subsection 144(1). This amendment is consequential to the amendments made by **item 10** and changes the subsection to refer to an application being made under subsection 144(1A) or 144(1C).

**Part 2 – Application provisions**

**Item 39** is an application provision, which provides that the amendments made by **items 6 to 11** of this Schedule apply in relation to decisions made after the commencement of this Schedule.
(f) **Backdating approval of child care service**

**Background**

Subsection 194(5) of the Family Assistance Administration Act provides the Secretary with discretion to backdate the approval of a child care service. There is currently no limit on the length of time for which a service’s approval can be backdated. This Schedule provides an appropriate limit.

**Explanation of the changes**

**Part 1 – Amendments**

**Item 22** repeals subsection 195(4) and substitutes new subsection 195(4). Under existing subsection 195(4), the day from which the Secretary may approve a service may be a day before the day the Secretary approves the service. New subsection 195(4) provides that the approval of a service must not be a day that is earlier than six months before the day on which the application for the approval was made.

The new subsection 195(4) limits the retrospective approval of services to six months. Limiting the backdating to six months is intended to operate as an incentive for applicants seeking to have a service approved to resolve issues relating to their eligibility for approval for the purposes of the family assistance law as quickly as possible.

These amendments also address the issues associated with backdating approvals for longer periods, such as past period debts.

**Part 2 – Application provisions**

**Item 41** is an application provision. It provides that the amendments made by **item 22** apply in relation to applications for approval that are made after the commencement of this Schedule.
(g) Fee setting practices

**Background**

Section 76 of the Family Assistance Act allows a child care service to certify the rate of CCB where it considers that a child is ‘at risk of serious abuse or neglect’ or where the individual who is eligible for CCB by fee reduction for care provided by an approved child care service is ‘experiencing hardship’ of the kind specified in the instrument made under paragraph 82(3)(a) of the Family Assistance Act.

Jobs, Education and Training (JET) Child Care fee assistance provides extra help with the cost of approved child care for eligible individuals receiving income support who are the principal carers of children up to 15 years of age and who need to use child care to participate voluntarily in study, work or job search activities or meet their mandatory participation requirements. Jobs, Education and Training (JET) Child Care fee assistance pays most of the difference between the total child care fee and the amount covered by CCB, up to an individual’s limit of hours for Jobs, Education and Training (JET) Child Care fee assistance (which may be different to their CCB eligible hours limit). Individuals who receive Jobs, Education and Training (JET) Child Care fee assistance currently pay 10 cents per hour per child, plus the cost for any additional hours over their CCB eligible hours limit.

In these situations, a different CCB rate applies from the normal rate, which is based on the individual’s income. The service providing care to the child certifies the applicable rate and the period for which the rate applies (up to a maximum of 13 weeks). In practice, the rate certified by the service is equal to the amount of the fees charged by the service, which results in the individual not incurring any out of pocket expenses. A service can apply any fee amount it decides. Section 81 allows the Secretary to determine the rate applicable when a child is ‘at risk of serious abuse or neglect’ after the service has certified the rate for a period of 13 weeks.

The intention behind the amendments made by this Schedule is to ensure that a service does not charge an individual more than another individual would be charged for the same child only because the individual is eligible for the special rate and the individual’s child care fees are fully or substantially paid for via CCB entitlement.

**Explanation of the changes**

**Part 1 – Amendments**

**Item 26** inserts new subsections 219A(1A) and 219A(1B).
Section 219A sets out the obligations of an approved child care service to act on various notices or to take certain action when they give a certificate in respect of care that the service provides to the child of an individual who has been determined to be conditionally eligible. Compliance with those obligations is a condition for continued approval of an approved child care service. Sanctions under section 200 may apply for failure to comply with any obligation. A penalty of 60 penalty units applies if services fail to comply with these obligations.

New subsection 219A(1A) imposes an obligation on services to set fees for individuals who are eligible for Jobs, Education and Training (JET) Child Care fee assistance that do not exceed the amount of fees the individual would charge individuals who are not eligible for Jobs, Education and Training (JET) Child Care fee assistance. A penalty of 60 penalty units will apply for failure to comply with this obligation.

New subsection 219A(1B) defines Jobs, Education and Training (JET) Child Care fee assistance as the payment of the same name that is paid by the Commonwealth.

Item 27 makes a minor technical amendment to paragraphs 219A(2)(a) and (b) so that these paragraphs refer to the correct items in the table.

Item 28 amends subsection 219A(2) (table items 2 and 3, at the end of column 2). Table item 2 is relevant when a service certifies a rate applicable to an individual for a session of care when the individual is conditionally eligible in respect of a child and the service is satisfied that the child is at risk of serious abuse or neglect or the individual is experiencing hardship.

Table item 3 is relevant to a notice that the Secretary has determined a rate applicable to an individual and a child because the Secretary is satisfied that the individual is experiencing hardship or the child is at risk of serious abuse or neglect.

Item 28 amends these table items to impose an additional obligation on a service so that, if an individual is eligible for fee reductions under table item 2 or 3 because the individual is experiencing hardship or the child for whom child care is being provided is at risk of serious abuse or neglect, the service has to ensure that the fees set by the service for a session of care provided to the child do not exceed the amount of the fees that the service would charge another individual who was not eligible for the special fee reductions under table item 2 or 3 for the same child.

Item 29 is consequential to the amendment made by item 26 and amends subsection 219A(3) to include a reference to new subsection 219A(1A). The result of this amendment is that failure to comply with the requirements of new subsection 219A(1A) also constitutes an offence with a penalty of 60 penalty units.

Item 30 inserts a new paragraph 219B(1)(d) at the end of subsection 219B(1).
Subsection 219B(1) provides that, where a service is eligible under section 47 of the Family Assistance Act for CCB by fee reduction for sessions of care provided to a child at risk, the service must calculate the appropriate amount of CCB and reduce the fees charged by that amount. A penalty of 60 penalty units applies for failure to comply with this provision.

New paragraph 219B(1)(d) imposes a requirement on a service to ensure that, when the service is eligible for CCB by fee reduction for a child at risk, the fees set by the service for a session of care provided to the child do not exceed the amount of the fees that the service would charge an individual for the same session for the same child if the service was not so eligible.

**Part 2 – Application provisions**

**Item 44** is an application provision. It provides that the amendments made by **items 26, 28 and 30** apply in relation to a session of care provided after the commencement of this Schedule.
(h) Location of records

**Background**

Presently, section 219G of the Family Assistance Administration Act provides that a person who operates an approved child care service immediately before the service ceases to be an approved child care service must keep the records the service is required to retain under subsection 219F(1) for a period of 36 months from the end of the year in which care was provided.

Section 219K provides that an authorised officer may enter the premises of a former operator at any time during business hours to inspect the records referred to in section 219G.

The approval of a child care service for family assistance law purposes cannot be transferred from one operator to another operator. Therefore, the records of a service cannot be transferred. In order that an authorised officer may enter the premises of a former operator, the Secretary must know the location of the premises where the records are kept.

The new provisions will impose a new obligation on the person who is a former operator of an approved child care service to inform the Secretary of the location of the premises where the records of the service are kept. The obligation to inform the Secretary of the location of the premises where the records are kept is a continuing obligation for the time records are required to be kept.

The new provisions also amend the rules about when an authorised officer may enter the premises of a former operator.

**Explanation of the changes**

**Item 33** inserts into section 219G new subsections 219G(3), (4), (5) and (6).

New subsection 219G(3) requires a person who is the former operator of an approved child care service to notify the Secretary in writing within 14 days after the cessation day of the premises at which the records of the former service are kept. The cessation day is the day the service ceased to be approved. A penalty of 60 penalty units applies.

The effect of the new provision will require the former operator of a child care service to inform the Secretary, within 14 days of the service ceasing to be an approved child care service, of the location of the records that are required to be kept under the family assistance law.

New subsection 219(4) requires a person who is the former operator of an approved child care service to inform the Secretary within 14 days of a change in the location of the premises where the records are held. This obligation remains for as long as the person is required to keep the records under subsection 219G(1). A penalty of 60 penalty units applies.
The requirement to inform the Secretary is an ongoing requirement for as long as the former operator is required under the family assistance law to keep the records. Records must be kept for 36 months from the end of the year in which care was provided (subsection 219F(1)).

New subsection 219(5) defines the expression ‘cessation day’, which is used in subsections 219G(3) and (4). The cessation day is the day a service ceases to be an approved child care service.

New subsection 219G(6) provides that subsections (3) and (4) are offences of strict liability. Strict liability is an appropriate basis for the offences as applied to former operators because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case; the fact that the offences are of a similar nature to the offence in subsection 219G(1); and the fact that the offence does not involve dishonesty or serious imputation affecting a person’s reputation.

**Item 34** repeals paragraph 219K(1)(b) and substitutes a new paragraph 219K(1)(b). An authorised officer will be entitled to enter the premises that were last notified to the Secretary under section 219G (with the consent of the occupier) where the records of the former service are located at any reasonable time of the day that is not a Saturday, Sunday or a public holiday at the place where the records are located.

**Part 2 – Application provisions**

**Item 45** provides that the amendments made by **items 33** and **34** will apply to services that cease to be approved child care services after the commencement of those items. A service ceases to be an approved child care service for the purposes of family assistance law when a service’s approval is suspended or cancelled.
(i) **Power to establish committees**

**Background**

Section 16 of the *Child Care Act 1972*, which is a predecessor to the family assistance law, gives the Minister the power to establish 'such other committees as the Minister thinks fit for the purposes of this Act'. Amendments made by this Schedule will create a similar power in the Family Assistance Administration Act.

**Explanation of the changes**

**Item 35** inserts new section 221A, which empowers the Minister to establish committees for the purposes of the family assistance law.

New subsection 221A(1) provides the Minister with the power to establish committees, in writing, for the purposes of the family assistance law.

New subsection 221A(2) provides that a committee has the functions determined in writing by the Minister.

New subsection 221A(3) provides that a committee must comply with any directions given to the committee by the Minister.

New subsection 221A(4) provides that the appointment of members of a committee are to be made by the Minister in writing.

New subsection 221A(5) provides that a member of a committee holds office on a part-time basis.

New subsection 221A(6) provides that the Minister may appoint a member of a committee to be the Chair of that committee.

New subsection 221A(7) provides that a member of a committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination by the Remuneration Tribunal is in operation, then the member is to be paid the remuneration that is prescribed by the regulations. The remuneration that the Remuneration Tribunal determines may include allowances such as travel allowance.

New subsection 221A(8) sets out that a member of a committee is entitled to be paid the allowances that are set out in the regulations.

New subsection 221A(9) makes it clear that subsections 221A(7) and (8) have effect subject to the *Remuneration Tribunal Act 1973*.

New subsection 221A(10) requires a member to declare, in writing to the Minister, any direct or indirect pecuniary interests that the member has or acquires and that conflicts or could conflict with the proper performance of the member’s functions.
New subsection 221A(11) provides that a member who wishes to resign must notify the Minister in writing.

New subsection 221A(12) provides that the Minister will have the discretion to terminate the appointment of a member at any time.
(j) Debt recovery from services run by unincorporated bodies or associations

**Background**

An approved child care service is under an obligation to pay a debt to the Commonwealth that arises under Part 4 of the Family Assistance Administration Act. If the approved service is an unincorporated body or association, such as a partnership, then paragraph 231(2)(a) of the Family Assistance Administration Act provides that the relevant debt is imposed on ‘each partner’. If it is an unincorporated body or association (the body) other than a partnership, then each member of the committee of management of the body is liable.

Amendments made by this Schedule change the methods of recovery of debts owed by child care services that are operated by unincorporated bodies or associations.

**Explanation of the changes**

**Part 1 – Amendments**

**Item 37** is consequential to **item 38**. This item includes a reference to new subsection 231(2A) in subsection 231(2).

**Item 38** inserts new subsection 231(2A), which provides that, if a debt becomes due by a service that is operated by an unincorporated body or association, then subsection 231(2) does not apply and the debt is taken to be a debt owed by the service. Subsection 231(2) identifies individuals within the unincorporated body on whom obligations can be imposed and who can discharge those obligations.

The policy intent behind the changes made by these amendments (and reflected in the note to new subsection 231(2A)) is to clarify that debts of child care services operated by partners or unincorporated bodies are recoverable through the same methods of recovery that are applicable to other child care services that are not operated by unincorporated bodies or associations under subsection 82(2). This includes the option of recovering the debt by repayment of instalments under an arrangement entered into under subsection 91(1A).

**Part 2 – Application provisions**

**Item 47** is an application provision, which provides that the amendments made by **items 37 and 38** apply in relation to debts that become due to the Commonwealth after the commencement of those items.