THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY ASSISTANCE LEGISLATION AMENDMENT
(JOBS FOR FAMILIES CHILD CARE PACKAGE) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Education and Training, Senator the Hon Simon Birmingham)
FAMILY ASSISTANCE LEGISLATION AMENDMENT
(JOBS FOR FAMILIES CHILD CARE PACKAGE) BILL 2016

OUTLINE

The purpose of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the Bill) is to introduce key aspects of the Jobs for Families Child Care Package, as announced in the 2015-16 Budget.

In the 2016-17 Budget, it was announced that the commencement of the main amendments in the Bill would be delayed until July 2018.

The Bill will, through the introduction of a new Child Care Subsidy (CCS), and enhancements to the operating requirements of approved child care providers, deliver a simpler, more affordable, more flexible and more accessible child care system for families. The new measures improve access to quality early education and care, support parents as they balance work and family responsibilities, and enable greater engagement with the workforce.

Recognising the needs of vulnerable and disadvantaged families, and the benefits that quality child care and a positive early learning environment can have on children’s early development, the Bill also introduces the Additional Child Care Subsidy (ACCS). ACCS will provide improved and targeted support to those families who require it most, such as: families with children at risk of serious abuse or neglect (though “ACCS (child wellbeing)’’); families experiencing temporary financial hardship (through “ACCS (temporary financial hardship)’’); families on income support transitioning to work (through “ACCS (temporary financial hardship)’’); and grandparent carers on income support (through “ACCS (grandparent)’’).

The Bill comprises four Schedules.

Schedule 1—Main Amendments

Amendments to the A New Tax System (Family Assistance) Act 1999 will improve the affordability, accessibility and flexibility of child care for families, particularly through:

- Establishing eligibility criteria, and the payment calculation process, for a new simpler child care subsidy, the CCS. The CCS will replace the current poorly targeted child care payments (including Child Care Benefit (CCB) and Child Care Rebate (CCR)) with the objective of supporting parents who want to work or work more.
• Establishing eligibility for ACCS elements of the Child Care Safety Net which will improve accessibility to child care for disadvantaged or vulnerable families.

Amendments to the *A New Tax System (Family Assistance) (Administration) Act 1999* set out further payment and claim rules, as well as rules dealing with: reconciliation of payments following a financial year; debt recovery; compliance powers and other machinery provisions.

**Schedule 2—Consequential amendments**

This Schedule contains provisions to ensure that related legislation such as the *A New Tax System (Goods and Services Tax) Act 1999*, the *Fringe Benefits Assessment Act 1986* and the *Income Tax Assessment Act 1997* align with the changes to family assistance law through minor consequential amendments.

**Schedule 3—Other amendments**

This Schedule contains amendments that commence on Royal Assent (Part 1) or from 1 July 2017 (Part 2). Among other matters, the Schedule enables the Secretary to treat certain new applications for approval as not having been made and to reassess whether existing operators and their services continue to meet conditions of the approval at any time from Royal Assent. Schedule 3 also closes enrolment advance payments and allows for their recovery from 1 July 2017.

**Schedule 4—Application, saving and transitional amendments**

This Schedule contains provisions relating to: the cessation of eligibility for CCB and CCR and the transition to the CCS and ACCS payment system; the saving of certain laws in relation to CCB and CCR (to ensure, for example, that debts and reviews can continue to be dealt with); and transitional provisions to enable existing claimants and recipients to be eligible for CCS and for existing approved services to transition to the CCS system from 2 July 2018.
FINANCIAL IMPACT STATEMENT

The measures in this Bill form part of the Government’s investment of approximately $40 billion in child care support over the forward estimates. This includes more than $3 billion of additional expenditure to support the implementation of the Jobs for Families Child Care Package.

<table>
<thead>
<tr>
<th>Jobs for Families legislative measure</th>
<th>Funding</th>
<th>Years</th>
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</thead>
<tbody>
<tr>
<td>Child Care Subsidy</td>
<td>$23.2 billion</td>
<td>Over two years from 2018-19</td>
</tr>
<tr>
<td>Additional Child Care Subsidy</td>
<td>$173 million</td>
<td>Over two years from 2018-19</td>
</tr>
</tbody>
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REGULATION IMPACT STATEMENT

The Regulation Impact Statement for the Jobs for Families Child Care Package, including measures proposed to be given effect to by this Bill, appears at the end of this Explanatory Memorandum (Attachment A).
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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

FAMILY ASSISTANCE LEGISLATION AMENDMENT (JOBS FOR FAMILIES CHILD CARE PACKAGE) BILL 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016 (the Bill) will introduce key aspects of the Jobs for Families Child Care Package that was announced in the 2015-16 Budget. The objective of the Jobs for Families Child Care Package is to improve access to quality education and child care, support parents as they balance work and family responsibilities, and enable greater engagement with the workforce. To support the implementation of the Jobs for Families Child Care Package, the Australian Government has committed more than $3 billion in additional funding for child care.

Measures in the Bill seek to complement and enhance existing Commonwealth funded child care programmes, and the State and Territory quality regime established through the Education and Care Services National Law Act 2010 (Vic) (the “National Law”) (as applied in other State and Territory jurisdictions and which relates to the monitoring of the quality of child care services). The Bill therefore reflects an increasing recognition of the importance of cooperation between the various levels of government.

The Bill proposes to introduce the Child Care Subsidy (CCS), a single, means-tested subsidy that will replace current child care payments and be better targeted to provide more assistance to low and middle income families. The CCS will be supplemented by the Additional Child Care Subsidy (ACCS), in recognition that extra support is needed for some disadvantaged and vulnerable children and the significant benefits that quality child care and early learning can have on children’s early development. The ACCS will provide support for families with children at risk of serious abuse or neglect (through “ACCS (child wellbeing)”), families experiencing temporary financial hardship (through “ACCS (temporary financial hardship)”).
families on income support transitioning to work (through “ACCS (transition to work)”; and grandparent carers on income support (through “ACCS (grandparent)”).

The Bill sets out the following matters relating to the new child care payments regime:

- the cessation of Child Care Benefit (CCB) and Child Care Rebate (CCR);
- the introduction, from 2 July 2018, of a new Child Care Subsidy (CCS), which is subject to both an income and activity test;
- the introduction of various rates of Additional Child Care Subsidy (ACCS) that are available to individuals and child care providers in various circumstances;
- other amendments to deal with CCS and ACCS claims, reviews of decisions, provider approvals and compliance obligations of approved providers of child care services.

In doing so, the Bill engages with the following treaties and Articles contained within:

- *International Covenant on Economic, Social and Cultural Rights* (ICESCR) – Articles 6 and 9;
- *Convention of the Rights of the Child* (CRC) – Articles 2, 3, 6, 14, 18, 19, 27 and 36;
- *International Covenant on Civil and Political Rights* (ICCPR) – Articles 26, 14 and 17; and
- *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) – Articles 10 and 11.

**Human rights implications**

*The right to work*

Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) requires that State Parties recognise the right to work, including through developing policies and techniques to achieve steady economic, social and cultural development and full and productive employment. This right goes to the core objective of the Bill, to help parents who want to work, or who want to work more. It is estimated that the Package will encourage more than 230,000 families to increase their involvement in paid employment.
The rights of parents and children

Article 3 of the Convention of the Rights of the Child (CRC) recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. The Bill establishes a new CCS that provides a higher rate of assistance to low and middle income families compared to the current child care assistance, and the supplementary ACCS that will increase the access of children to quality child care. Early childhood education and care plays a vital role in the development of Australian children and their preparation for school. Access to early childhood education and care is also one of the most effective early intervention strategies to break the cycle of poverty and intergenerational welfare dependence. Additionally, ACCS payments will ensure vulnerable children have access to the benefits of child care.

Article 18 of the CRC mandates that State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child, and to provide appropriate assistance, in particular to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible. This Bill will support the introduction of a simpler, more affordable, more flexible and more accessible child care system.

Article 19 of the CRC requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. The ACCS (child wellbeing) payment, in particular, is designed to address the barriers faced by children and individuals in certain vulnerable situations, in being able to access quality child care. Article 19 also requires that measures be taken to identify, report, refer, investigate, treat and follow-up any instances of abuse. Under the reforms proposed by the Bill, if an individual or child care provider is eligible for the ACCS (child wellbeing) payment (where the child has been identified as at risk of serious abuse or neglect), the provider must make relevant State or Territory authorities aware of the child’s circumstances. This information sharing is also considered a justifiable limitation on the right to privacy, as it furthers the rights of children under the CRC.

The Bill also furthers Article 3(3) of the CRC, relating to the requirement of State Parties to ensure child care providers conform to standards relating to the number and suitability of staff and competent supervision, by implementing mechanisms that allow for the collection and sharing of information with the States and Territories who are responsible for monitoring the quality of care and safety of children in care. Further, the collection of enrolment information and information about attending a session of care from approved child care providers will provide the Commonwealth with meaningful data for the purposes of research and policy development to ensure
the child care payments scheme is properly targeted and meeting its objectives. In doing so, the Bill engages with Article 18(2) of the CRC by facilitating improved, evidence based assistance to parents in raising children, and supporting the development of institutions, facilities and services for the care of children. Such measures would be directed to monitoring and improving all child care in Australia, and not just child care subsidised by the Commonwealth. To the extent that these measures may limit the right to privacy, they are reasonable and proportionate to assist the Australian Government to meet its requirements under the CRC and other treaties that deal with the rights of parents and children.

The right to an adequate standard of living

Article 27 of the CRC requires that State Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. The Bill advances this right through the CCS and the ACCS which will address barriers to accessing child care to ensure all children, regardless of parental income, have access to an adequate amount of child care to aid socialisation and development.

The right to social security

Article 9 of the ICESCR recognises the right of everyone to social security. Under the Bill all families who meet basic eligibility criteria will be eligible for some fee assistance through the CCS, so long as they also meet an activity test. Additionally, children at risk of serious abuse or neglect, families experiencing temporary financial hardship and families transitioning from income support to work will be eligible for further support through ACCS payments that will ensure all children have access to adequate child care, regardless of circumstances.

Recent amendments to section 24 of the Family Assistance Act restricted the maximum period of eligibility for family assistance payments (including CCB) from 56 weeks to six weeks (the “portability period”) for individuals who travel overseas. This position is maintained for CCS purposes through a new provision in the Bill which relates specifically to CCS (see section 85EE as proposed for the Family Assistance Act). As is currently the case for CCB, the Secretary is given the discretion to extend the six week period under section 85EE of the Family Assistance Act for individuals who are members of the Australian Defence Force or Australian Federal Police and who are deployed overseas, assisted by the Medical Treatment Overseas Program, or unable to return to Australia for a specified reason (such as a serious accident, or natural disaster). To the extent that a limited portability period provides a limitation on the right to social security, it is reasonable and proportionate given that individuals will still be able to access child care payments for a reasonable period of time while overseas (for up to six weeks, or longer in specified circumstances). The six week time period will generally align with the maximum six week portability period.
allowed for most other family payments and working age income support payments for a person who is overseas. Furthermore, the discretion to extend the six week period for up to three years provides a safeguard to avoid harsh consequences for individuals who may not be in a position to return within the six week period due to their particular circumstances.

The right to be free from discrimination

Through the measures in the Bill which seek to make child care simpler, more affordable and more flexible, the Bill also seeks to alleviate some of the current pressures experienced by families, some of which have a negative disproportionate impact on women in particular. Articles 10 and 11 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) mandates State Parties to take all appropriate measures to eliminate discrimination against women in the field of education and employment, by providing, amongst other things, the same conditions for career advancement and vocational guidance. There are several ways in which the Bill engages with this important right. Through the broadly expressed activity test requirements associated with CCS eligibility, women who are engaged in paid work, an approved course of training or study, or volunteering will receive a number of subsidised hours of child care. There is also the ability to prescribe additional activities as recognised activities or associated activities. Individual circumstances may also be considered on a case by case basis to accommodate the greatest flexibility possible for eligible individuals, including women. This is intended to allow for some activities, which may not be conventionally regarded as an activity (e.g. being on leave from work, or in a semester break), to be counted as recognised activity for the purpose of receiving CCS. In addition, there are several types of supplementary ACCS which are designed to assist individuals, and could support women in particular, to receive subsidies to support their workforce participation, such as the ability to receive payments when transitioning to work.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the CRC requires that persons are equal before the law and that the law shall provide equal and effective protection against discrimination on any grounds. The Bill sets out a range of eligibility criteria for the CCS and the ACCS in relation to age of the child, residency requirements, immunisation status of children and for grandparents.

Using a child’s age as a criterion to determine eligibility is considered legitimate differential treatment as those children 13 and under are particularly vulnerable and require close care and supervision on a constant basis, compared with older children. The child care payments system is obviously also administered within a broader policy context that includes other forms of financial assistance to school children. In addition, in exceptional circumstances and where access to child care is
in the best interests of a child, the Bill includes provision for the Minister to make rules to enable children aged over 13 to access CCS and ACCS.

Using residency requirements as a criterion to determine eligibility is a proportionate limitation on the right to be free from discrimination, because it is important for the Secretary to reconcile payments against residents’ tax assessment information, noting also that residency requirements are not applied to children at risk of serious abuse or neglect, in relation to whom a provider can be eligible for ACCS regardless of the child’s residency status.

Using immunisation status as a criterion to determine eligibility is legitimate differential treatment as Article 14 of the CRC allows for limitations on one’s freedom to beliefs when it is necessary to protect public health and safety in a facility responsible for the care or protection of children. The immunisation eligibility criterion is a necessary limitation to encourage parents to better protect children from diseases. The exemption on medical grounds constitutes a safeguard to protect the individual safety of the child.

The ACCS (grandparents) payment is considered legitimate differential treatment as it is a special measure intended to further support a group who are already vulnerable and in receipt of income support. This payment is also an early intervention strategy to break the cycle of poverty and intergenerational welfare dependence by providing disadvantaged families with adequate access to child care.

The right to be presumed innocent

Article 14 of the ICCPR requires that in the determination of any criminal charge, everyone shall be entitled to a set of minimum guarantees and that anyone convicted will have the right to review and compensation if the conviction is not upheld. Under the Bill there are both civil penalties and criminal penalties. These penalties are part of a multi-pronged approach to further deter fraud and ensure the integrity of payments, and also protect children from harm, in line with obligations under Article 19 of the CRC.

Article 14 of the ICCPR also requires that anyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law. Under the Bill there are strict liability offences that apply to factual scenarios. These offences are proportionate to the value of maintaining adequate safeguards in relation to the large sums of public money involved in administering the child care payments system. It is considered reasonable in these cases to impose strict liability offences to ensure the integrity of payments. It is intended that prosecution action will only be taken in relation to strict liability offences in serious or repeated cases.
The right to privacy

Article 17 of the ICCPR and Article 16 of the CRC requires that no one shall be subject to arbitrary or unlawful interference with privacy. Under the Bill, as part of administering the CCS and the ACCS and for the enhancement of the child care system overall, information will be collected and stored on a new IT system that will be built to meet legislative requirements. This information collection and storage will be subject to the Privacy Act 1988 as well as the existing and stringent secrecy provisions in the family assistance law.

Under the Bill, if a child care provider is suspected of breaching obligations that are subject to monitoring powers, the Secretary may deem it necessary to visit the facility without advising the operator beforehand of its intention to do so. However, the provider retains their right to refuse to allow entry (such a refusal can only be overcome through the issue of a warrant). This limitation of the providers’ and clients’ right to privacy is in response to the Australian National Audit Office finding that the Government is losing an estimated $700 million a year on misleading or fraudulent child care practices. Given the scale of the breaches this interference is not considered arbitrary, but a reasonable and proportionate response to protect Government expenditure and uphold the integrity of payments.

The right to privacy, the right to be presumed innocent and the triggering of Parts of the Regulatory Powers (Standard Provisions) Act 2014

The Bill proposes amendments to the Family Assistance Administration Act that would trigger Parts 2, 4 and 5 of the Regulatory Powers (Standard Provisions) Act 2014 (Regulatory Powers Act), which deal with monitoring, civil penalties and infringement notices (see new Part 8C). Those Parts are triggered in relation to a number of obligations of approved child care providers associated with their approval (and have no bearing on the enforcement of obligations of parents and other individual CCS payment recipients). Prior to amendments proposed by the Bill, child care provisions in the family assistance law contained a codified set of monitoring provisions as well as its own civil penalty and infringement notice regime (as set out in current Part 8C of the Administration Act).

The main purpose of these amendments in the Bill is to follow whole of Government policy and trigger the standard suite of provisions of the Regulatory Powers Act in relation to monitoring powers, as well as processes for enforcement of civil penalties and infringement notices.

The repealed provisions of the Family Assistance Administration Act which deal with these matters adopted approaches that were unique to the family assistance law and created unnecessary regulatory complexity as they differed from the standard approach adopted in the Regulatory Powers Act in key ways including by:
establishing only a personal right of the Minister to apply for a civil penalty order; establishing infringement notice formalities, which included only a limited power for their withdrawal; and ambiguity about methods of their enforcement.

These amendments are important to adopt a more streamlined and consistent approach with other Commonwealth legislative schemes and to simplify the family assistance law itself, which, as a result of the proposed amendments, will contain a simpler Part 8C.

In triggering the Regulatory Powers Act, the intention is to also establish consistency from a human rights perspective with a whole of Government approach to civil enforcement mechanisms.

**Monitoring provisions**

Part 2 of the Regulatory Powers Act creates a framework for monitoring whether provisions have been complied with. It includes powers of entry and powers to seek production of documents and information. Certain provisions in the Bill are subject to the monitoring provisions set out in Part 2 of the Regulatory Powers Act. These include all civil penalty provisions, certain conditions for continued approval of an approved provider, and provisions requiring compliance by the giving of specific types of information (to the extent the requirement is placed on an approved provider, rather than a parent or other CCS payment recipient or eligible individual). In addition, related provisions which are subject to the monitoring provisions include certain offence provisions (as listed in proposed section 219UA of the Administration Act).

As a result of triggering the monitoring framework in the Regulatory Powers Act, only “authorised officers” (who are authorised under the framework established in Part 2 of the Regulatory Powers Act) will be able to enter premises, by consent or, with a judicially issued warrant. Authorised persons will be able to exercise related powers, such as powers to ask questions and secure evidence. The amendments in the Bill make a small modification to the operation of the Regulatory Powers Act by ensuring that consent for entry can be provided by either the occupier of premises or a person apparently representing the occupier. This modification is intended to address the business reality that many child care services are operated by staff and employees of a provider or operator who may invite authorised persons onto premises, without necessarily being an “occupier” for the purposes of Part 2 of the Regulatory Powers Act.

Triggering the monitoring provisions in the Regulatory Powers Act engages the protection against arbitrary or unlawful interference with privacy. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, and protects a person’s honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with
the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of “reasonableness” as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances.

To the extent that the triggering of the monitoring provisions may limit the right to privacy, this limitation is provided by law. The power to secure things in the exercise of monitoring powers is necessary to enable collection of evidence of contraventions of provider obligations under the family assistance law. The exercise of the power is constrained and not arbitrary because the powers are focussed on ensuring compliance with obligations that approved providers have accepted as part of their approval as a child care service.

Monitoring important provider obligations also ensures the safety of children cared for by child care services and their best interests, consistently with Article 3 of the CRC.

The monitoring powers are also intended to be subject to the implied privilege against self-incrimination at common law.

Civil penalties and infringement notices

Proposed Divisions 2 and 3 of Part 8C of the Family Assistance Administration Act state that all “civil penalty provisions” are subject to Parts 4 and 5 of the Regulatory Powers Act.

As noted, triggering Parts 4 and Part 5 of the Regulatory Powers Act ensures that civil penalty orders and processes for issuing infringements are dealt with under a consistent whole of Government framework.

Civil penalties and infringement notices mean that the Secretary has the capacity to enforce provider obligations by pursuing financial penalties rather than through prosecuting criminal offences. Most of the civil penalty provisions proposed by the Bill contain “parallel” offence provisions, which means that there is a civil enforcement option open and that criminal enforcement can be reserved for serious cases.

Triggering of the civil penalty and infringement provisions in the Regulatory Powers Act is compatible with the right to liberty and security of the person and freedom from subjection to arbitrary arrest or detention, as set out in article 9 of the ICCPR.

Establishing a strong civil enforcement regime also ensures that considerations relating to the safety of children cared for by child care services and their best interests, underpin actions taken by agencies, consistently with Article 3 of the CRC.
Conclusion

The Bill is compatible with human rights. The current system is complex and difficult for families to navigate. It is inflexible and does not effectively meet families’ workforce participation needs. Measures in the Bill are compatible with and advance human rights under the ICCPR, the CEDAW, the CRC and the ICESCR which will ultimately enable parents who wish to work, or to work more, by providing a simpler, more affordable, more flexible and more accessible child care system. As described above, to the extent that the proposed Bill may limit some rights, those limitations are reasonable, necessary and proportionate.

Senator the Hon Simon Birmingham, Minister for Education and Training
FAMILY ASSISTANCE LEGISLATION AMENDMENT
(JOBS FOR FAMILIES CHILD CARE PACKAGE) BILL 2016

NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **ACCS** means Additional Child Care Subsidy;
- **ATI** means adjusted taxable income;
- **CCB** means Child Care Benefit;
- **CCR** means Child Care Rebate;
- **CCS** means Child Care Subsidy;
- **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;
- **Family assistance law** means the Family Assistance Act and the Family Assistance Administration Act;
- **FTB** means Family Tax Benefit;
- **JETCCFA** means Jobs, Education and Training Child Care Fee Assistance;
- **National Law** means the *Education and Care Services National Law Act 2010* (Vic) (and equivalent legislation in other State and Territory jurisdictions);
- **TFN** means Tax File Number.
Clause 1 provides for the short title of the Act to be the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2016*.

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the Bill. The key provisions located in Schedule 1, and which introduce the new CCS regime, commence on 2 July 2018 (being the first Monday of the 2018-19 financial year). Other Schedules, including those containing consequential and transitional provisions, commence at other times, as specified. Two compliance related provisions to enable the Secretary to determine when applications for approval are taken not to be made, and reassess an approved child care service against the approval criteria, commence early from Royal Assent to target fraudulent or non-complying service types prior to the introduction of the new CCS regime on 2 July 2018.

Clause 3, for the avoidance of doubt, provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1—Main Amendments

Summary

Schedule 1 contains the main amendments of this Bill, which are effective to:

- cease CCB and CCR;
- introduce, from 2 July 2018, a new CCS, which is subject to both an income and activity test;
- introduce various rates of ACCS that are available to individuals (and in one case, child care providers) in various circumstances; and
- make other amendments to deal with CCS and ACCS claims, reviews of decisions, provider approvals and compliance obligations of approved providers of child care services.

Background

Prior to the amendments proposed by this Schedule, the Family Assistance Act provided the eligibility criteria and method for calculating rates for the CCB and the CCR. The Family Assistance Administration Act provides for procedural matters relating to these payments, such as making claims, determinations of entitlement, how payment is made, recovery of overpayments and review of decisions. It also provides for a process for operators of child care services to be approved so that individuals can be eligible for child care payments for care they provide and places obligations on approved child care services, including to accurately report enrolments and attendance of children for a session of care.

In the 2015-16 Budget, the Australian Government announced a package of measures to simplify and strengthen the child care system and to ensure greater incentives for parents to work. This included replacing existing child care payments with a new payment, the CCS.
The Child Care Safety Net will provide additional targeted assistance to genuinely disadvantaged or vulnerable families. One of the components of the Child Care Safety Net is ACCS, which provides additional assistance:

- in relation to children at risk of serious abuse or neglect (through the ACCS (child wellbeing) payment);
- to individuals experiencing temporary financial hardship;
- to individuals on income support who are transitioning to work; and
- grandparent carers on income support.

This Schedule amends the Family Assistance Act and the Family Assistance Administration Act to replace CCB and CCR with CCS and ACCS. It also replaces the current approval process for child care services with a more streamlined process that more clearly distinguishes between the approved provider and the services they operate, consistent with the approach taken in the National Law.

The amendments made by this Schedule commence on 2 July 2018 (noting that other Schedules of this Bill commence earlier).
Explanation of the changes

Amendments to the Family Assistance Act

Definitions

Items 1, 3, 10, 12, 16, 19, 21, 25 and 26 repeal definitions relating to CCB and CCR that are not needed for CCS and ACCS.

Items 2, 4, 7, 9, 13, 15, 18, 20 and 22 insert new definitions of key terms, which will be used in provisions relating to CCS and ACCS.

Items 5, 6, 17, 24 and 26 amend various definitions by substituting references to CCB and CCR with references to CCS and ACCS.

Item 6 removes reference to subsections 24(4) and (6) from the definition of “FTB child” for child care purposes.

The previous reference to subsections 24(4) and (6) in the definition of FTB child for child care purposes was intended to ensure that an individual’s maximum period of eligibility for CCB when an individual is absent from Australia aligned with an individual’s maximum period of eligibility for FTB. This outcome is now achieved through a new provision proposed for the Family Assistance Act (section 85EE inserted by item 40), which specifies a maximum period of eligibility for CCS or ACCS during an individual’s absence from Australia (generally 6 weeks).

The definition of the term “FTB child” for child care purposes otherwise has the same meaning as for FTB purposes, including by aligning with the meaning in section 22 of the Family Assistance Act.

Item 8 substitutes the definition of “lower income threshold” to refer to subclause 3(4) of Schedule 2 of the Family Assistance Act and item 23 substitutes the definition of “upper income threshold” to also refer to that subclause. The new definitions reflect the income thresholds applicable to CCS, which are different from the income thresholds that applied to CCB. The lower income threshold is the ATI point below which an individual is able to receive 85 per cent of the hourly fee cap (or of the fee charged where is it lower than the hourly fee cap) through CCS—that percentage tapers to 20 per cent at the upper income threshold. There are also amendments at items 20 and 22 to refer to the intermediate thresholds “second income threshold” and “third income threshold” which are the income levels at which the applicable percentage of CCS tapers from 85 per cent to 50 per cent and from 50 per cent to 20 percent, as described in more detail below in relation to proposed new clause 3 of Schedule 2 to the Family Assistance Act.
**Items 11, 28 and 29** amend the definition of “paid work” that applies for FTB purposes. References to paid work in CCB provisions were excluded from the scope of the definition. The amendments remove references to CCB provisions that are repealed, and make clear that the definition of “paid work” for CCS purposes is contained in paragraph 12(2)(a) of Schedule 2 to the Family Assistance Act.

**Item 14** makes a consequential amendment to the definition of “receiving”. This paragraph modifies the concept of receiving under the *Social Security Act 1991* for provisions in the Family Assistance Act that use the term “receiving” in relation to a social security payment. The amendment removes references to CCB provisions that are repealed, and adds reference to new section 85CJ, which refers to social security payments (for ACCS (grandparent)).

Reference to new section 85CK, which also refers to social security payments, has not been included in the definition at paragraph (b) because the modification of the definition of “receive” for social security purposes is not intended to apply to the receipt of the income support payments required for eligibility of ACCS (transition to work)—for ACCS (transition to work), receipt will have the same meaning as in the social security law. The modification deems an individual to be receiving a social security payment for a period of 12 weeks from when their rate reduces to nil due to employment income. If the modification was applied in section 85CK individuals would have access to two 12 week transition payments (that is, noting the effect of subsection 85CK(2)) when they start earning employment income, which is not intended.

**Item 27** substitutes subsection 3AA(1) to remove references to CCB provisions that are repealed and to add in references to CCS provisions.

**Immunisation rules**

**Item 30** substitutes the reference to CCB in subsection 6(1) with a reference to individual eligibility to CCS in paragraph (a), and provider eligibility to ACCS (child wellbeing) in paragraph (b). This is so the immunisation requirements in section 6 of the Family Assistance Act apply for the purposes of determining an individual’s eligibility for CCS, and providers’ eligibility for ACCS (child wellbeing).

**Various interpretative provisions**

**Item 31** substitutes the reference to CCB in subsection 8(1) with a reference to CCS. Section 8 of the Family Assistance Act allows the Secretary to determine that an individual who is not an Australian resident is taken to be an Australian resident for CCS purposes, in cases of hardship or other special circumstances.
For CCB, a determination under section 8 was required to comply with guidelines determined by the Minister by legislative instrument. **Item 32** makes amendments so any new guidelines can be contained in the Minister’s rules (which are intended to be made as a single compilation), rather than in a separate legislative instrument.

**Item 33** repeals sections 10 through to 18 (noting that sections 11 to 18 are no longer required as they relate purely to CCB and CCR) and substitutes a new section 10 for CCS purposes.

New section 10 reflects repealed sections 10 and 11, with some modifications to address an anomaly that existed in repealed section 10 and to clarify the intended effect of the section.

The basic rule in new subsection 10(1) is that, for family assistance purposes, an approved child care service does not provide a session of care to a child unless the child is enrolled for care by the service and the child physically attends the service. Subsections (2), (3) and (4) specify circumstances in which a child is taken to have attended a session of care, even where they do not physically attend. There is also a power for the Minister to specify rules to ensure that there are certain days on which a child is definitely not to have been taken to have attended during a physical absence (paragraphs (2)(iv) and (3)(iv)).

Under new paragraph 10(1)(a) an approved child care service is taken to have provided a session of care to a child if the child attends part of the session of care. This provision is intended to ensure that where a parent picks their child up early, for example, but still pays for an entire session of care, they are able to access fee assistance in relation to their out of pocket expenses for the whole session of care.

New subsections 10(2) and (3) allow a child to be taken to have attended a session of care in certain circumstances—that is, these provisions allow for certain absences. Subsection 10(2) deals with when a session of care is taken to have been provided for up to 42 days in a single financial year (the initial 42 absences) and subsections 10(3) and (4) deal with the circumstances in which, following the initial 42 absences, it is still possible for a child to be taken to have attended a session of care (such as due to illness). The initial 42 absences limit applies per child. On the day the child does not attend, if CCS or ACCS would not have been paid even if the child had attended (for example, because the fortnightly limit of hours had already been reached), the day does not count towards the initial 42 absences limit.

Both subsections 10(2) and (3) require the session of care to occur on a day that is after the day the child first attended a session of care provided by the service and before the day the service permanently ceased providing care to the child. This means the child must have physically attended a session of care at the service
before subsection 10(2) or 10(3) can be relied on, and absence days under subsection 10(2) or 10(3) will not be available on and after the day the service permanently ceased providing care to the child. Subsection 10(5) clarifies that a service permanently ceases to provide care to a child on the day the child last physically attends a session of care provided by the service.

Repealed section 11 is no longer relevant as occasional care is not a distinct service type for CCS. Repealed section 12 is no longer relevant as there will not be registered carers for CCS.

Repealed section 13 allowed the Secretary to specify a day that would otherwise not be a school holiday as a school holiday for the purposes of the definition of school holiday session. The repeal of section 13 is consequential to the repeal of the definition of “school holiday session” by item 19.

Repealed section 17A provided activity requirements for CCB. The activity requirements for CCS will be in Part 5 of Schedule 2 of the Family Assistance Act.

Repealed section 18 was only used in relation to the schooling percentage in the CCB rate calculator. This definition is no longer required as there is no schooling percentage for CCS.

Eligibility and rate of family assistance

Item 34 amends the heading of Part 3 and item 38 amends the heading of Part 4. These amendments are consequential to the structural changes made by items 35, 39 and 40.

Item 35 repeals Divisions 4 and 5 of Part 3, which provide eligibility criteria for CCB and CCR. Item 39 repeals Divisions 4 and 4A of Part 4, which provide for the rate of CCB and CCR. New Part 4A inserted by item 40 provides for eligibility for and the rate of CCS and ACCS. This structural change places eligibility and rate provisions for CCS and ACCS closer together and is intended to simplify the layout of the child care provisions in the family assistance law.

Items 36 and 37 replace CCB and CCR references in subsection 57GI (note 2) and section 57GQ with references to CCS and ACCS. The effect of this is that Division 7 of Part 3 of the Family Assistance Act, which provides for loss of family assistance on security grounds, does not apply to CCS and ACCS.
New Part 4A – Child care subsidy

Item 40 inserts new Part 4A into the Family Assistance Act. This Part deals with eligibility for and how to calculate the rate of CCS and ACCS. A simplified outline of the Part is provided in section 85AA.

Section 85AB provides, without limitation, a statement of the Constitutional basis for provisions in the family assistance law that deal with child care payments.

Eligibility for CCS

Section 85BA provides when an individual is eligible for CCS for a session of care provided to a child by an approved child care service.

The definition in section 10 of the Family Assistance Act (as amended by item 33) is relevant for determining whether a session of care is “provided” to the child (which can include a day of absence because of that provision).

If the session of care is provided, all the following requirements must be met at the time the session is provided for the individual to be eligible for CCS for the session:

(i) the child is an FTB child, or regular care child, of the individual, or the individual’s partner;
(ii) the child is 13 years of age or under and does not yet attend secondary school (that is, the child is not yet at school or attends primary school), or where the child does not meet this criteria, the child is included in a class determined by the Minister under rules made for subsection 85BA(2);
(iii) the child meets immunisation requirements (set out in section 6 of the Family Assistance Act);
(iv) the individual, or the individual’s partner, meet the residency requirements (in new section 85BB).

These key eligibility criteria (as set out in subparagraphs 85BA(1)(i) to (iv)) are the criteria that the Secretary will assess at the time that an individual makes a claim for CCS. However further eligibility criteria also apply in relation to particular sessions of care as below.

In addition, the individual, or the individual’s partner, must have incurred a liability to pay for the session of care under a written arrangement with the provider of the service, and the session of care must satisfy all the following requirements:
(i) it is provided in Australia;

(ii) it is not part of a compulsory education programme in the State or Territory where the care is provided;

(iii) it is not provided in circumstances prescribed in the Minister’s rules (for example, where family day care is provided in a “child-swapping” arrangement).

Subsection 85BA(2) allows the Minister to make rules to ensure that an individual can be eligible for CCS in relation to certain prescribed children who are over 13 or at secondary school. Children prescribed by such rules may face specific accessibility issues, or be in circumstances of vulnerability, such as due to disability or in other circumstances where fee assistance for child care is necessary.

Note that new Division 5 in Part 4A provides some limitations on eligibility. An individual is only eligible for CCS for a session of care provided to a child if the individual, the child and the session of care meet all the eligibility requirements described above, and Division 5 does not prevent the individual being eligible.

“FTB child” and “regular care child” are terms defined for FTB that also apply for CCS purposes (see definitions in s 3(1)).

The immunisation requirements are in section 6 of the Family Assistance Act. They are the same as the immunisation requirements that apply for FTB.

The residency requirements are in section 85BB. These are the same as the residency requirements that apply to CCB.

Eligibility for ACCS (child wellbeing)

Subsection 85CA(1) provides when an individual is eligible for ACCS (child wellbeing) for a session of care provided to a child by an approved child care service. ACCS (child wellbeing) provides a short term, higher rate of assistance than CCS in order to reduce the possibility of the cost of child care being a barrier to children at risk of serious abuse or neglect, from either entering or remaining engaged with, child care.

For individuals, CCS eligibility is a pre-requisite to ACCS eligibility. This means the individual must be eligible for CCS for the session of care and meet additional criteria to be eligible for ACCS (child wellbeing) for the session of care.

The additional criteria for ACCS (child wellbeing) is that a certificate given by the approved provider of the service (under section 85CB), or a determination made by
the Secretary (under section 85CE), must be in effect in relation to the child for the week in which the session of care is provided certifying or determining that the child is at risk of serious abuse or neglect.

Even if these requirements are met, the limitations in Division 5 may prevent the individual being eligible for ACCS (child wellbeing).

Subsection 85CA(2) sets out when the approved provider of an approved child care service is eligible for ACCS (child wellbeing) for a session of care provided to a child.

An approved provider can only be eligible for ACCS (child wellbeing) for a session of care if the provider cannot identify an individual who is eligible for CCS for the session of care—this is intended to ensure that provider eligibility is a last resort measure.

Other requirements which apply for an approved provider to be eligible for ACCS (child wellbeing) reflect those which apply to individuals:

- the child must be 13 or under and not yet attending secondary school (that is, the child must not yet be at school or be attending primary school) at the time the session of care is provided, or, where the child does not meet this criteria, the child is included in a class determined by the Minister under rules made for subsection 85CA(2);

- the child must meet immunisation requirements at the time the session of care is provided;

- the session of care must meet CCS eligibility criteria (the care must be provided in Australia, but not as part of a State/Territory compulsory education program and not be provided in circumstances prescribed in the Minister’s rules);

- a certificate or a determination, certifying or determining that the child is or was at risk of serious abuse or neglect, must be in effect in relation to the child for the week in which the session of care is provided; and

- the provider must not be prevented from being eligible under Division 5.

Note, importantly, the requirement for the child to meet immunisation requirements at the time the session of care is provided will also apply for provider eligibility to ensure that the “No Jab No Pay” measure, as recently enacted, applies to cases where a provider is eligible for ACCS (child wellbeing) in its own right.
**Subsection 85CA(4)** enables the Minister’s rules to prescribe circumstances in which a child is, or is not taken to be, at risk of serious abuse or neglect.

The power to prescribe these circumstances has been delegated to the Minister to ensure that there is ability for the law to adapt to changes in the understanding and definition of “abuse” and “neglect” into the future. The rules will specify the criteria which must be met in order to certify/determine a child to be at risk of serious abuse or neglect, and provide guidance to providers to ensure that “child wellbeing” assistance is targeted to those children who are genuinely at risk of serious abuse or neglect. The rules are intended to be made after having regard to criteria used by each State and Territory in relation to vulnerable children.

**Section 85CB** provides when the approved provider of an approved child care service can issue a certificate, what it must contain and when it takes effect.

An approved provider can only give a certificate if it considers that a child is at risk of serious abuse or neglect in accordance with the Minister’s rules made for **subsection 85CA(4)**.

The certificate must:

- be given in a form and manner approved by the Secretary;
- contain the information, and be accompanied by the documents, required by the Secretary;
- specify the day it takes effect and the weeks for which it has effect;
- identify the child and the service to whom it relates; and
- include any other matters prescribed by the Secretary’s rules.

The day the certificate takes effect must be a Monday that is no earlier than 28 days before the day it is given (to ensure that certificates are given relatively soon after a child is actually in circumstances of risk). Each week for which the certificate has effect must include at least one day when the child is at risk of serious abuse or neglect.

For each child, certificates given by the approved provider in relation to a particular service cannot be in effect for more than 6 weeks in any 12 month period.

The approved provider is not able to give a certificate if it would result in more than 50 per cent of the children cared for by the service on any one day (within the first
week that the certificate would have effect) having a certificate or a Secretary
determination for ACCS (child wellbeing) in effect. A different percentage can be
specified in the Secretary’s rules, and in appropriate circumstances the Secretary
can determine a different percentage for a particular service. Subsection (6), which
clarifies that a determination of a different percentage under paragraph (4)(c) is not a
legislative instrument, is merely declaratory and included to assist readers. It is not
an exemption from the Legislation Act 2003.

Subsection (5) enables the Minister’s rules to specify other circumstances when a
certificate given by a provider is not effective. This rule making power could be used
to address cases of inappropriate giving of certificates, or if the Minister decides it is
appropriate to limit providers to applying to the Secretary for a determination under
section 85CE.

Certificates issued by approved providers will include “protected Information” as
defined by section 3 of the Family Assistance Administration Act and, as such, that
information will be protected by safeguards offered by those secrecy rules, including
though exposing a person who misuses that information to an offence (e.g. sections
162 through to 168 of the Family Assistance Administration Act).

If an approved provider considers a child to be at risk of serious abuse or neglect
and is unable to give an effective certificate, the provider may apply under
section 85CE for a determination by the Secretary that the child is at risk of serious
abuse or neglect.

**Section 85CC** requires an approved provider to cancel a certificate they have given
if they no longer consider the child to be at risk during a week for which the
certificate has effect. However, if any of the weeks for which the certificate has
effect is a week for which the time for updating or withdrawing a report under
subsection 204B(6) has expired, the provider cannot cancel the certificate under this
section. Instead, the Secretary will need to take action to cancel or vary the
certificate under section 85CD. The time limit on provider cancellation of certificates
is intended to restrain the extent to which providers can backdate information on
which ACCS entitlement is based without intervention by the Secretary.

Under subsection 85CC(4), where the provider then issues a replacement certificate
on the basis that it now has the correct information to certify that a child was at risk
of serious abuse or neglect, the provider is able to backdate the replacement
certificate to take effect more than 28 days before the replacement certificate is
given but no earlier than the day the original certificate took effect. This has the
intention of not disadvantaging the provider by modifying the general rule of how far
back in time a certificate can take effect.
Section 85CD allows the Secretary to vary or cancel a certificate given by an approved provider if the Secretary is not satisfied the child to whom the certificate relates is at risk of serious abuse or neglect during a week for which the certificate has effect. Notice of the variation or cancellation must be given to the approved provider and the variation or cancellation takes effect from the day specified in notice. In exercising this power, the Secretary may rely on any source of information available to the Secretary, including, but not limited to, information approved providers are required to provide under section 67FC of the Family Assistance Administration Act.

The power to cancel or vary certificates will be delegated to officers with appropriate seniority.

Section 85CE provides that the Secretary may make a determination that a child is at risk of serious abuse or neglect on application by an approved provider.

An approved provider can apply for a determination in respect of a child if the provider considers the child is or was at risk of serious abuse or neglect at the time care was provided and the provider is unable to give a certificate under section 85CB. The application must be in the form and manner approved by the Secretary. It must also contain the information and be accompanied by the documents required by the Secretary. The provider must have also given notice to the relevant State or Territory body that they consider the child to be at risk of serious abuse or neglect prior to seeking a determination by the Secretary.

The Secretary must make a decision on the application within 28 days of receiving the application, and is required to give notice of the decision in accordance with subsection 27A(1) of the Administrative Appeals Tribunal 1975 (the AAT Act). The rationale for the inclusion of a 28 day timeframe is to ensure a timely response to applications.

Subsection (4) states that if the Secretary does not make a decision, the application is taken to be refused and the Secretary is not required to give notice of the deemed refusal. Although, the Secretary will make every effort to deal with applications in a timely manner, this provision is included to provide certainty to applicants about the status of their application in the unlikely event that the Secretary does not meet the obligation in subsection (3), such as due to the application becoming lost in the mail, or where it is not processed due to administrative oversight. In such circumstances, where the Secretary has neither made a determination nor refused the application, the application is taken to be refused so that there is a clear and effective outcome for an applicant. Despite subsection 27A(1) of the AAT Act providing that a person who makes a reviewable decision must take reasonable steps to give to an affected person a written notice of the decision and of their review rights, it would not be appropriate to do so in this circumstance. This is because of the practical reality that
any deemed refusals are likely to occur without the Secretary's actual and active knowledge. In situations where a deemed refusal has occurred, the applicant will have full access to review rights (both merits review through internal review and subsequently through the Administrative Appeals Tribunal, and judicial review). For example, the applicant may contact the Department to ask about the progress of their application, and the Secretary would be able to initiate an own motion review of the refusal decision. Alternatively, the person may make a formal application for an internal review of the refusal decision. In addition, there will also be nothing to prevent an applicant whose application is deemed to be refused from making a new application.

If the Secretary decides to determine the child to be at risk of serious abuse or neglect, the determination must specify the date it takes effect, which must be a Monday not more than 28 days before the date the application was made. The determination must also specify the weeks for which it is in effect. While a determination is in effect under this section, if the Secretary is satisfied the child will continue to be at risk of serious abuse or neglect after the determination ceases to have effect, the Secretary can make another determination to take effect immediately after the current determination ceases. Each determination cannot be in effect for more than 13 weeks. Notice of the determination must be given to any person affected by the determination.

Subsection (7) clarifies that a determination under this section is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the *Legislation Act 2003*.

If the Secretary refuses an application under this section, the Secretary must give the provider and any other affected person notice of the decision. The refusal is a reviewable decision.

**Section 85CF** allows the Secretary to vary or revoke a determination if the Secretary is no longer satisfied the child to whom the determination relates is at risk of serious abuse or neglect for a week when the determination has effect. The variation or revocation takes effect from the day specified in the notice of revocation or variation. The Secretary must give the provider and any other affected person notice of the decision.

*Eligibility for ACCS (temporary financial hardship)*

**Subsection 85CG(1)** provides for when an individual is eligible for ACCS (temporary financial hardship) for a session of care provided to a child by an approved child care service. ACCS (temporary financial hardship) provides a higher hourly rate of assistance than CCS in order to reduce the possibility that children, who are already engaged in mainstream child care, do not reduce or withdraw from child care due to
the costs involved, only because an exceptional circumstance or event has compromised a family’s short-term financial situation.

CCS eligibility is a prerequisite to ACCS eligibility. This means the individual must be eligible for CCS for the session of care and meet additional criteria to be eligible for ACCS (temporary financial hardship) for the session of care.

The additional requirement for ACCS (temporary financial hardship) is that a determination of temporary financial hardship must be in effect in relation to the child when the session of care is provided.

Even if these requirements are met, the limitations in Division 5 may prevent the individual being eligible for ACCS (temporary financial hardship).

**Subsection 85CG(2)** enables the Minister’s rules to prescribe circumstances in which an individual is taken to be experiencing temporary financial hardship. The power to prescribe these circumstances has been delegated to the Minister to ensure there is an ability for the law to adapt to unforeseen circumstances (such as certain natural disasters).

**Section 85CH** provides that the Secretary may make a determination of temporary financial hardship in relation to a child on application by an individual.

The Secretary may make such a determination on his or her own initiative, including on a class basis, or in response to applications.

Where an individual makes an application for a determination under this section, the application must be in a form and manner approved by the Secretary. It must contain the information, and be accompanied by the documents, required by the Secretary. The Secretary must make a decision on the application within 28 days of receiving the application.

If the Secretary makes a temporary financial hardship determination, it must take effect on a Monday not more than 28 days before the date the application was made, or 28 days before the determination where there was no application, and must be in effect for a whole number of weeks. The number of weeks the determination is in effect cannot exceed 13, reflecting that this assistance is intended to be short-term in nature. A state of temporary financial hardship cannot be determined in relation to more than 13 weeks for a particular reason.

Subsection (8) clarifies that a determination under this section is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the *Legislation Act 2003*. 31
If the Secretary refuses an application under this section, the Secretary must give the individual and any other affected person notice of the decision. The refusal is a reviewable decision.

If the Secretary does not make a decision within 28 days of receiving the application, the Secretary is deemed to have refused the application under subsection 85CH(5). This provision has been included for the same reasons as described above in relation to deemed refusals under subsection 85CE(4). It is not intended to be relied on in the vast majority of circumstances and is included simply to ensure that the status of an application, in the unusual circumstance where it has not been dealt with in time, is clear. The Secretary will make every effort to deal with applications in a timely fashion. A deemed refusal is reviewable, but the Secretary is not required to give notice of the deemed refusal in view of the fact that deemed refusals are likely to occur where the Secretary is not aware of the application. Where an application is deemed to be refused under subsection 85CH(5), there is no restriction to an individual making a new application.

Section 85CI allows the Secretary to vary or revoke a temporary financial hardship determination if the Secretary is no longer satisfied the individual concerned is or was experiencing temporary financial hardship for a week when the determination has effect. The variation or revocation takes effect from the day specified in the notice of variation or revocation. The Secretary must give the notice to the individual concerned and any other affected person.

*Eligibility for ACCS (grandparent)*

Section 85CJ provides for when an individual is eligible for ACCS (grandparent) for a session of care provided to a child by an approved child care service. ACCS (grandparent) provides a higher hourly rate of assistance than CCS for eligible grandparents in order to reduce the possibility of the cost of mainstream child care being a barrier to a child in their care from either entering or remaining engaged with, child care.

CCS eligibility is a pre-requisite to ACCS eligibility. This means a grandparent (or great-grandparent) must be eligible for CCS for the session of care and meet additional criteria to be eligible for ACCS (grandparent) for the session of care.

The additional criteria for ACCS (grandparent) include that: the individual or their partner is a grandparent or great-grandparent of the child; at the start of the CCS fortnight in which the session of care is provided, they are the primary carer for their grandchild (that is, they must be responsible for 65% or greater of the child’s care); and the individual or their partner is receiving an income support payment as listed in paragraph 85CJ(1)(d). Note that the term “receive” for this purpose is defined in section 3 of the Family Assistance Act and has a specific meaning by reference to
the social security law (generally to include periods of an income support rate above nil).

Subsection (3) requires adoptive and step parent relationships to be treated as biological relationships when determining whether an individual is a grandparent or great-grandparent of a child. Subsection (4) defines the terms adoptive parent and step-parent used in subsection (3).

Even if these requirements are met, the limitations in Division 5 may prevent the individual being eligible for ACCS (grandparent).

Eligibility for ACCS (transition to work)

Section 85CK provides when an individual is eligible for ACCS (transition to work) for a session of care provided to a child by an approved child care service. ACCS (transition to work) provides a higher rate of assistance than CCS and is intended to support families to meet the costs of child care where an eligible parent is undertaking approved work, training or study activities that will support an increased workforce engagement.

CCS eligibility is a pre-requisite to ACCS eligibility. This means the individual must be eligible for CCS for the session of care and meet additional criteria to be eligible for ACCS (transition to work) for the session of care.

The additional requirements for ACCS (transition to work) include that, at the start of the CCS fortnight in which the session of care is provided, the individual is receiving a transition to work payment (as set out in subsection (3)) and meets any other requirements specified in the Minister’s rules. It is intended to be open to Minister’s rules to set out other eligibility matters including, for example, an income test or to clarify the relationship between subsection 85CK(2) eligibility with eligibility under subsection 85CK(1). It would be open to rules to state that eligibility under subsection (2) only follows directly from a period of eligibility under subsection (1), for instance.

Except where the transition to work payment is a payment prescribed in the Minister’s rules, the individual is required to also have an employment pathway plan or a participation plan in effect at the start of the CCS fortnight in which the session of care is provided.

When the individual stops receiving a transition to work payment, the individual continues to be eligible for ACCS (transition to work) for all sessions of care for which the individual is eligible for CCS that are provided in the period of 12 weeks from the start of the CCS fortnight after the CCS fortnight in which the individual stops receiving the transition to work payment.
Even if these requirements are met, the limitations in Division 5 may prevent the individual being eligible for ACCS (transition to work).

**Eligibility in substitution for a deceased person**

Section 85DA applies when an individual dies in circumstances where an amount of CCS or ACCS for which the individual was eligible has not been paid. In those circumstances, another individual can become eligible in substitution for the individual who has died, if the other individual makes a claim in accordance with Part 3A of the Family Assistance Administration Act, and the Secretary considers the other individual ought to be eligible for the unpaid amount. Only unpaid amounts relating to sessions of care provided after the start of the income year before the income year in which the individual died can be paid in substitution to another individual.

**Example:** if David dies on 31 July 2019 (i.e. in the 2019-20 income year), only unpaid amounts relating to sessions of care provided on or after 1 July 2018 can be paid in substitution to Yasmin, and only if she meets the requirements under section 85DA and claim rules in new Part 3A of the Family Assistance Administration Act. Because most amounts will have already been paid to David for the 2018-19 income year, Yasmin can only be paid any further owing amounts (including any amount that might be owing as part of the reconciliation process for the 2018-19 income year).

**Limitations on eligibility for CCS and ACCS**

Section 85EA prevents more than one individual being eligible for CCS for the same session of care (for instance, two parents of the same child). A reason why more than one individual can become eligible relates to the eligibility criterion in paragraph 85BA(1)(b) which allows either an individual, or the individual’s partner to incur a liability for child care fees for eligibility of the individual. If more than one individual meets the eligibility criteria for CCS for a session of care, the individual determined in writing by the Secretary under subsection 85EA(2) will be the eligible individual. This section reflects repealed section 48, which applied for CCB. Note that the Secretary will still have the power to make determinations even if the Minister chooses not to make rules.

As eligibility for CCS is a pre-requisite for an individual to be eligible for ACCS, this section also prevents more than one individual being eligible for ACCS for the same session of care.

Subsection (3) clarifies that a determination under subsection (2) is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the *Legislation Act 2003.*
Section 85EB prevents an individual being eligible for more than one type of ACCS for the same session of care.

The section establishes the following order of hierarchy:

1. ACCS (child wellbeing);
2. ACCS (grandparent);
3. ACCS (temporary financial hardship);
4. ACCS (transition to work).

Note that ACCS (transition to work) does not need to be listed in the operative provisions in the legislation, as only the ACCS types that can take priority over another need to be listed to produce the hierarchy set out above.

Where an individual is eligible for more than one type of ACCS for a session of care, the type of ACCS higher up in the hierarchy takes precedence.

**Example:** if Odetta is eligible for ACCS (child wellbeing) and also eligible for ACCS (temporary financial hardship) for a session of care, she is taken to be eligible for ACCS (child wellbeing) and not eligible for ACCS (temporary financial hardship) for that session of care.

Section 85EC prevents more than one individual being eligible in substitution for the same unpaid amount under section 85DA when an individual dies.

Section 85ED prevents CCS and ACCS eligibility for a session of care provided to a child who is under the care of a person (other than a foster parent) under a State or Territory child welfare law. The purpose of this is to ensure that the Commonwealth does not financially support care that is financed by another level of government. It also prevents CCS and ACCS eligibility for a session of care provided to a child who is a member of a class prescribed by the Minister's rules. This section reflects repealed section 49, which applied for CCB. The rules will allow the Minister to prescribe “State/Territory welfare laws” for the purposes of this provision, however, if rules are not made, any State or Territory law that relates to the welfare of children will be taken to be a “State/Territory welfare law” for the purposes of subsection (1).

Section 85EE limits the period for which an individual can be eligible for CCS or ACCS while they are overseas and details the circumstances in which the Secretary may extend the period. This mirrors the effect of recent amendments to the portability period for family tax benefit and reduces, from 56 weeks to six weeks, the
period during which CCS payments can be paid to an individual who is outside Australia in relation to sessions of care provided during their absence.

The effect of an individual not returning to Australia by the end of the portability period is that the individual ceases to become eligible for CCS for any sessions of care that were provided after the portability period ended. The short return rules will continue to apply such that the portability period will not be reset if, where an individual returns to Australia after the end of their portability period, remains in Australia for less than six weeks and then leaves again. In other words, if the individual returns to Australia after the end of the six week period and then leaves Australia again less than six weeks later, the individual will not be eligible for CCS during the length of that subsequent absence (even if that absence is less than six weeks) as it is effectively treated as a continuation of the initial absence (see subsection 85EE(2)).

Where the individual returns after six weeks, or such longer period as extended, the Secretary may make a determination under new subsection 67CC(2) of the Family Assistance Administration Act that the individual’s eligibility for future CCS payments has ceased. In this case, the individual would be required to make a new claim for CCS. If the Secretary does not make a determination under subsection 67CC(2) of the Family Assistance Administration Act, the Secretary may require the individual to again confirm necessary details that were provided at the time of claim, using the power to require more information from the individual about present and future eligibility in section 67FI of the Family Assistance Administration Act.

The capacity for the Secretary to extend the portability period will remain under subsections 85EE(3) to (6) (although modified, to take account of the reduced portability period). This maintains the capacity to extend the six week portability in certain circumstances (for example, where an individual cannot return to Australia because they have been hospitalised or in the case of an individual who is deployed overseas as a member of the Defence Force).

Division 6—Amount of CCS and ACCS

Section 85FA requires an individual's amount of CCS for a week to be worked out under Part 1 of Schedule 2 of the Family Assistance Act (which contains a detailed rate calculator).

Sections 85FB and 85FC require an individual's amount of ACCS for a week to be worked out under Part 2 of Schedule 2 for sessions of care for which the individual is eligible for ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) and Part 3 of Schedule 2 for sessions of care for which the individual is eligible for ACCS (transition to work).
Section 85FD requires a provider’s amount of ACCS (child wellbeing) for a week for a child to be worked out under Part 4 of Schedule 2.

Division 7—Miscellaneous

Section 85GA provides legislative authority for Commonwealth grants for purposes related to child care, where the expenditure is consistent with the constitutional heads of power listed in paragraph (1)(b).

This provision is intended to ensure that future child care funding programmes will have requisite legislative authority in view of the High Court of Australia’s decision in Williams v Commonwealth of Australia (2012) 248 CLR 156.

Section 85GB enables the Minister to make the Minister’s rules and enables the Secretary to make the Secretary’s rules by legislative instrument (including, in particular, in relation to provisions that expressly empower “rules” to be made by the Minister or the Secretary).

New Schedule 2 – Amounts of CCS and ACCS

Item 41 repeals and substitutes Schedule 2 of the Family Assistance Act. Repealed Schedule 2 contained the rate calculator for CCB. New Schedule 2 is the rate calculator for CCS and ACCS.

Calculations are based on weeks in a CCS fortnight, to accommodate the activity test which applies to activity or circumstances across a fortnight (but payments can be made weekly).

A CCS fortnight is defined in subsection 3(1) of the Family Assistance Act as the two week period beginning on Monday 2 July 2018 and each subsequent two week period. CCS fortnights are fixed for everyone, with the first CCS fortnight being 2 July 2018 to 15 July 2018.

For CCS and ACCS, a week is defined in subsection 3(1) of the Family Assistance Act to always commence on a Monday to ensure consistency in payment administration and attendance reporting. The term “week” was defined in the same way for CCB purposes.

Part 1—Amount of CCS

Clause 1 contains a method statement for calculating an individual’s amount of CCS for a week for sessions of care provided by an approved child care service to a child. The rate is calculated per week per child per service.
This means that if the child is attending two services, there will be two applications of the rate calculator, one for sessions of care provided by the first service and one for sessions of care provided by the second service. It is open to the Secretary to calculate amounts in the order in which the services submit attendance reports under section 204B of the Family Assistance Administration Act, unless an “election” as referred to in clause 4, applies to allow another approach to calculation in accordance with the election.

The method statement contains the following steps:

1. work out the individual’s activity test result in relation to the child for the CCS fortnight in which the week occurs;
2. if the annual cap applies, work out whether the annual cap has been reached;
3. identify all sessions of care provided by the service in the week to the child for which the individual is eligible for CCS;
4. work out the hourly rate of CCS for each session of care;
5. work out the activity-tested amount of CCS for the sessions of care;
6. if the annual cap applies, adjust the activity-tested amount for the annual cap.

Each step is explained in more detail below.

Step 1:

The **activity test result** is the maximum number of hours of CCS the individual and their partner (if any) can be paid in a CCS fortnight for a child. This will usually depend on the amount of activity the individual and their partner (if any) engage in during the CCS fortnight. There are some exceptions explained below under “Part 5 – Activity Test”. If the activity test result is zero, the individual’s CCS amount for the week is nil, and the other steps in the method statement need not be applied. If the activity test result is more than zero, the calculation proceeds to step 2.

Step 2:

The **annual cap** ($10,000, as indexed) is the maximum amount of CCS an individual and their partner can receive for a child for CCS fortnights starting in the income year if their combined adjusted taxable income (ATI) for the income year is greater than the annual cap threshold (see subclauses 1(2) and (3)). For the 2018-19 income
year the annual cap threshold is $185,710. The threshold, like the cap itself, is subject to annual indexation.

If the combined ATI is at or below the annual cap threshold, there is no annual cap and the calculation proceeds to step 3.

If the annual cap applies (i.e. combined ATI is greater than the annual cap threshold), the calculation only proceeds to step 3 if the annual cap has not already been reached in the income year. If the annual cap for the income year has been reached, the individual’s CCS amount for the week is nil, and the other steps in the method statement are not applied.

Step 3:

The relevant sessions of care are identified by applying the eligibility criteria in section 85BA to each session of care provided to the child by the service.

Step 4:

The hourly rate for each session of care identified in step 3 is determined by applying clause 2. The hourly rate is the applicable percentage multiplied by the lower of the hourly session fee and the CCS hourly rate cap.

The applicable percentage is worked out under clause 3 based on the combined ATI of the individual and the individual’s partner in the income year in which the CCS fortnight starts. If the combined ATI is at or below the lower income threshold (initially set at $65,710 prior to indexation), the applicable percentage is 85%. If the combined ATI is above the lower income threshold but below the second income threshold (of $170,710), the applicable percentage tapers from 85% to 50%, using the formula at subclause (2). If the combined ATI is at or above the second income threshold (of $170,710), but below the third income threshold (of $250,000) the applicable percentage is 50%. If the combined ATI is above the third income threshold (of $250,000) and below the upper income threshold (of $340,000), the applicable percentage is calculated using the formula in subclause 3(3), which tapers the applicable percentage down from 50% to 20%. Finally, if the combined ATI is equal to or above the upper income threshold (of $340,000), the applicable percentage is 20%. The effect of the formulas at subclauses (2) and (3) is to reduce the applicable percentage at a rate of 1 percentage point for every $3000 to ensure a consistent and graduated taper. Subclause (4) defines the various thresholds by reference to a dollar figure above the lower income threshold of $65,710. This means that the indexation of the lower income threshold against the consumer price index will result in the higher threshold points shifting by the same amount.
For weekly payment decisions prior to a reconciliation process, the applicable percentage will be based on an estimate of ATI.

The **hourly session fee** is defined in **subclause 2(2)** as the amount the individual or the individual's partner is liable to pay for the session of care, divided by the number of hours in the session, and reduced by the hourly rate of any other subsidy from which the individual benefits in respect of the session (e.g. subsidy provided by a State or Territory).

The **CCS hourly rate cap** depends on the type of service providing the session of care (see **subclause 2(3)**). The CCS hourly rate caps are:

- $11.55 for care provided by a centre-based day care service;
- $10.70 for care provided by a family day care service;
- $10.10 for care provided by an outside school hours care service;
- the rate prescribed by the Minister’s rules for care provided by a service type prescribed in the Minister’s rules.

Note that these amounts are subject to indexation, as dealt with in Schedule 4, item 5, to this Bill.

The ability to prescribe service types in the Minister’s rules provides flexibility to add more service types in the future (including to adapt to changes in the child care sector) without amendments to the family assistance law.

**Step 5:**

To determine the activity tested amount under **clause 4**, for each session of care identified in step 3, the hourly rate is multiplied by the number of hours in the session of care that is counted for CCS purposes and the results for all sessions of care identified in step 3 are added together.

The number of hours in a session of care that is counted for CCS purposes is the lowest of the following amounts:

- the number of hours in the session of care;
- the balance of the activity test result worked out under subclause 4(2);
if the Secretary is satisfied it is appropriate to have regard to an election under subclause 4(3), the number determined in accordance with the election.

The balance of the activity test result, in relation to a particular session of care, is the activity test result worked out in step 1 reduced by:

- the number of hours (if any) in the CCS fortnight for which the individual is entitled to be paid CCS or ACCS in respect of the child;

- if the individual is a member of a couple on each day in the CCS fortnight, the number of hours (if any) in the CCS fortnight for which the individual's partner is entitled to be paid CCS or ACCS in respect of the child; and

- the number of hours in any earlier sessions of care identified in step 3.

This clause ensures that the number of hours for which the individual and their partner are paid do not exceed the activity test result.

The election made under subclause 4(3) is intended to apply where a child attends more than one service. The election enables individuals to nominate the proportion of their subsidy that should be paid to each service. An election must be made in a form and manner approved by the Secretary.

Step 6:

If the annual cap applies to the individual, and the activity tested amount when added to the "total previous CCS" (as set out in subclause (3)) exceeds the annual cap, the activity tested amount is adjusted so the activity tested amount, when added to the total previous CCS, equals the annual cap. This essentially ensures that an individual who is subject to the annual cap is only paid CCS up to that cap. The total previous CCS is the sum of the amount of CCS the individual is entitled to receive for the child for CCS fortnights starting in the income year and the amount of CCS the individual's partner is entitled to receive for the child for CCS fortnights starting in the income year.

In determining whether the annual cap is reached in Steps 2 and 6, if the individual becomes a member of a couple or separates during the income year in which the CCS fortnight starts, entitlement of the individual's partner is not taken into account.
Part 2—Amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for an individual

Clause 5 sets out the method for calculating an individual’s amount of ACCS (child wellbeing), ACCS (temporary financial hardship) or ACCS (grandparent) for a week for sessions of care provided by an approved child care service to a child. The rate is calculated per week per child per service.

The method requires applying the CCS rate calculator in Part 1 with some modifications:

- references to CCS in Part 1 are read as reference to the relevant type of ACCS, except in subclause 4(2);
- parts of the CCS rate calculator relating to the annual cap are not applied as the annual cap does not apply to amounts of ACCS;
- the hourly rate is worked out under clause 6 instead of clause 2.

These modifications mean that in applying the method statement, the relevant eligibility criteria in section 85CA, 85CG or 85CJ are used to identify the relevant sessions of care in step 3 of the method statement.

In calculating the hourly rate under clause 6 there are two differences compared to clause 2:

- 100% is used instead of the applicable percentage;
- the ACCS hourly rate cap, which is 120% of the CCS hourly rate cap, is used instead of the CCS hourly rate cap.

Paragraph 6(2)(b) enables the ACCS hourly rate cap to be increased in the Secretary’s rules.

In exceptional circumstances the Secretary can specify a higher ACCS hourly rate cap for a particular individual in a determination under paragraph 6(2)(c).

Subclause 6(3) clarifies that a determination under paragraph (2)(c) is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the Legislation Act 2003.
Part 3—Amount of ACCS (transition to work)

Clause 7 sets out the method for calculating an individual's amount of ACCS (transition to work) for a week for sessions of care provided by an approved child care service to a child. The rate is calculated per week per child per service.

The method requires applying the CCS rate calculator in Part 1 with some modifications:

- references to CCS in Part 1 are read as reference to ACCS (transition to work), except in subclause 4(2);
- parts of the CCS rate calculator relating to the annual cap are not applied as the annual cap does not apply to amounts of ACCS;
- 95% is used instead of the applicable percentage to work out the hourly rate.

These modifications mean that in applying the method statement, the eligibility criteria in section 85CK is used to identify the relevant sessions of care in step 3 of the method statement.

Part 4—Amount of ACCS (child wellbeing) for an approved provider

Clause 8 sets out the method statement for calculating an approved provider's amount of ACCS (child wellbeing) (where a provider is eligible for a child) for a week for sessions of care provided by an approved child care service of the provider to a child at risk of serious abuse or neglect.

The method statement contains the following steps:

1. work out the provider's deemed activity test result in relation to the child and the service for the CCS fortnight in which the week occurs;
2. identify all sessions of care provided by the service in the week to the child for which the provider is eligible for ACCS (child wellbeing);
3. work out the hourly rate of ACCS for each session of care;
4. work out the activity-tested amount of CCS for the sessions of care.
Step 1:

The **deemed activity test result** is the maximum number of hours of ACCS the provider can be paid in a CCS fortnight for sessions of care provided by the service to the child. This will usually be 100.

Step 2:

The relevant sessions of care are identified by applying the eligibility criteria in subsection 85CA(2) to each session of care provided to the child by the service.

Step 3:

The **hourly rate** for each session of care identified in step 2 is determined by applying clause 9. The hourly rate is 100% of the lower of the hourly session fee and the ACCS hourly rate cap.

The hourly session fee is defined in **subclause 9(2)** as the amount the provider would ordinarily charge an individual for the session of care, divided by the number of hours in the session, and reduced by the hourly rate of any other subsidy (for example, a subsidy provided by a State or Territory).

The ACCS hourly rate cap is defined in **subclause 6(2)**.

Step 4:

To determine the activity tested amount under clause 10, for each session of care identified in step 2, the hourly rate is multiplied by the number of hours in the session of care that is counted for ACCS purposes and the results for all sessions of care identified in step 2 are added together.

The number of hours in a session of care that is counted for ACCS purposes is the lower of the number of hours in the session of care and the balance of the deemed activity test result worked out under subclause 10(2).

The balance of the deemed activity test result, in relation to a particular session of care, is the deemed activity test result worked out in step 1 reduced by:

- the number of hours (if any) in the CCS fortnight for which the provider is entitled to be paid ACCS in respect of the child;
- the number of hours in any earlier sessions of care identified in step 2.

This clause ensures that the number of hours for which the provider is paid do not exceed the deemed activity test result.
Step 5:

This step ensures that the amount of ACCS (child wellbeing) for the provider for the relevant week (to which the rate calculator is being applied) for sessions of care identified at step 2 is the activity tested amount.

**Part 5—Activity test**

**Division 1—Individual’s activity test result**

The activity test result for an individual is worked out using subclause 11(1). The activity test result is the maximum number of hours for which CCS or ACCS can be paid to the individual and their partner for a child in a CCS fortnight.

If the individual is not a member of a couple, for the purposes of working out an amount of CCS or ACCS, the individual’s activity test result is the highest of:

- the result specified in item 1 of the table below for the amount;
- any other result specified in any other table item for the amount that applies.

If the individual is a member of a couple, the individual’s activity test result is the lower of the result worked out using the table for the individual and the result worked out using the table for the individual’s partner.

<table>
<thead>
<tr>
<th>Item</th>
<th>Result for:</th>
<th>Amount of CCS</th>
<th>Amount of ACCS other than ACCS (transition to work)</th>
<th>Amount of ACCS (transition to work)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Recognised activity result (clause 12)</td>
<td>Recognised activity result (clause 12)</td>
<td>100</td>
<td>Recognised activity result (clause 12)</td>
</tr>
<tr>
<td>2</td>
<td>Low income result (clause 13)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Minister’s rules result (clause 14)</td>
<td>Minister’s rules result (clause 14)</td>
<td>Minister’s rules result (clause 14)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>child wellbeing result (clause 15)</td>
<td></td>
<td></td>
<td>child wellbeing result (clause 15)</td>
</tr>
<tr>
<td>5</td>
<td>Exceptional circumstances result</td>
<td>Exceptional circumstances result</td>
<td>Exceptional circumstances result</td>
<td></td>
</tr>
</tbody>
</table>
Subclause 11(4) clarifies that a determination under subclause (2) is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the Legislation Act 2003.

Subclause 11(5) deals with the situation where an individual’s activity test result changes during a CCS fortnight because they are eligible for CCS or ACCS (transition to work) in one week of the fortnight and ACCS (child wellbeing) or ACCS (temporary financial hardship) in the other week of the fortnight. In this case, the higher activity test result that applies for ACCS (child wellbeing) or ACCS (temporary financial hardship) is maintained for the whole CCS fortnight.

The recognised activity test (clause 12) result is determined based on the activity engaged in by the individual in the CCS fortnight as follows:

<table>
<thead>
<tr>
<th>Hours of activity</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>fewer than 8</td>
<td>0</td>
</tr>
<tr>
<td>at least 8 and no more than 16</td>
<td>36</td>
</tr>
<tr>
<td>more than 16 and no more than 48</td>
<td>72</td>
</tr>
<tr>
<td>more than 48</td>
<td>100</td>
</tr>
</tbody>
</table>

A note to clause 12 explains that the number of hours of recognised activity for an individual to be counted towards the recognised activity result may be affected by Minister’s rules made for subclause (4) or a Secretary’s determination made for subclause (5).

Recognised activity is defined in clause 12 to include paid work, a training course, an approved course of education or study or another activity as prescribed by Minister’s rules or a Secretary’s determination. Further notes clarify that “paid work” takes its ordinary meaning, whilst “approved course of education or study” has the meaning given to it by subsection 541B(5) of the Social Security Act 1991 and subsection 3(1) of the Family Assistance Act. However, the Minister’s rules (or a Secretary’s determination) can also extend the definition of “recognised activity” in prescribed circumstances. For example, for paragraph 12(2)(d) or (e), unpaid work experience may be prescribed or determined as a recognised activity. It is intended that Minister’s rules (or a Secretary’s determination) (under subclauses 12(4) or (5)) may also provide for time limitations, for instance, by setting out that a certain kind of activity is only recognised for the activity test for the first 3 months during which an individual engages in that activity.
**Associated activities**

For subclause 12(3) (or subclause 12(5)), the Minister's rules (or Secretary’s determination) can also prescribe activities that are taken to be “associated activities” for the purpose of describing when an individual is taken to be engaged in recognised activity under clause 12. For example, the Minister’s rules (or Secretary’s determination) may prescribe that periods of paid leave granted under the terms and conditions of an individual’s employment are taken to be included in the recognised activity of paid work. The Minister’s rules (or Secretary’s determination) may also provide that an individual enrolled in an approved course of education or study is taken to continue to engage in the course during a break between semesters of the course. The note clarifies that activities are taken to be associated if they are prescribed to be so by the rules or determination, even if they are not associated in the ordinary sense of that word.

**Subclause (4)** specifies that the Minister’s rules (or Secretary’s determination) can also prescribe how to work out a number of hours of recognised activity of that kind that is taken to be counted towards the activity in that fortnight (which may be more or less than the actual number of activities during which the individual engaged in the activity during the fortnight). In other words, the rules may prescribe a formula or method for how to take into account hours to work out the individual’s activity test result. The instruments may also prescribe a maximum number of hours, which can either be attached to the prescribed method or stand alone, in respect of an activity in subclause 12(2). The intention of these provisions is to allow for the flexibility for the following possibilities to be covered:

- activities prescribed for subclause 3(1) for which something different from a 1:1 relationship is to apply to the hours engaged in for the purposes of the activity test; or
- maintaining the capacity to fix a maximum number of hours in any particular fortnight for certain kinds of activity.

The Minister’s rules under clause 12 (in paragraph 12(2)(d), (3) and (4)) are expressed broadly to allow sufficient flexibility to provide beneficial treatment to individuals who are engaging in kinds of activity that would not ordinarily be regarded as one of the recognised activities listed in paragraphs 12(2)(a) to (c). By providing the capacity for the Minister’s rules to deem other activities as “associated activities” to a “recognised activity” for the purposes of working out an individual’s activity test result, the rules can capture a broad spectrum of activities that individual’s may be engaged in or taken to be engaged in, to ensure adequate child care fee assistance is available to parents. Any Minister’s rules made in accordance with clause 12 will be subject to further parliamentary scrutiny through the disallowance process for
legislative instruments, which means that Parliament will be able to disallow any rules that are considered non-beneficial or otherwise unfair.

**Subclause (5)** simply states the the Secretary may make a written determination (the Secretary’s determinations referred to above) for an individual, which can cover all matters that the Minister’s rules may cover for subclauses (3) and (4). This is to ensure that the Secretary can make decisions on a case by case basis where an individual is not covered by the Minister’s rules which will have general application. A person affected by a Secretary’s determination made under this provision will have full access to review rights (both merits review through internal review and subsequently through the Administrative Appeals Tribunal, and judicial review).

**Subclause (6)** is merely declaratory and included to assist readers. It is not an exemption from the *Legislation Act 2003*.

Any changes in the individual’s circumstances during the CCS fortnight are disregarded for the purpose of determining this result (and are applied to the next CCS fortnight, should those circumstances apply) under **subclause 12(7)**. This provision ensures that, should an individual’s routine activity pattern be affected on an ongoing basis part way through a fortnight, the individual’s activity test for the whole fortnight can be taken to be based on their circumstances at the beginning of the fortnight.

The low income result under **clause 13** applies to an individual if the individual’s estimate ATI for the income year in which the CCS fortnight starts is equal to or below the lower income threshold. This result allows the individual to receive up to 24 hours of CCS in a CCS fortnight for each child. It gives effect to a measure of the Child Care Safety Net by allowing assistance to low income families that do not meet the CCS activity test.

**Clause 14** provides for the Minister’s rules result. It enables the Minister to prescribe in Minister’s rules a result, or a method for working out a result, by reference to the circumstances of the individual, the individual’s partner or the child. This power could be exercised to effectively grant certain individuals an exemption from activity test requirements, or a certain result in particular circumstances that are not necessarily associated with their actual level of activity (in contrast to the rules that are able to made under clause 12).

Rules under this clause could be made to deal with shift workers or others with irregular activity who may need to obtain a child care place to cover their busiest fortnights. In this case, the rules could say that an individual’s activity test result is determined by their most active fortnight within a particular three month period, for instance.
**Clause 15** applies to an individual for a CCS fortnight in relation to a particular child if the individual is eligible for CCS for a session of care provided to the child in the CCS fortnight and on the first day of the CCS fortnight it has been less than 18 months since an extended “child wellbeing” period for the child ended.

An extended “child wellbeing” period is a continuous period of at least 6 months during which a certificate or determination was in effect in relation to the child due to the child being at risk of serious abuse or neglect.

If the “child wellbeing” result in clause 15 applies, the individual’s activity test result will be 100, unless a higher result applies to the individual under another clause.

**Division 2—Provider’s deemed activity test result**

The deemed activity test result for a provider, in relation to a particular child and service, is worked out using **clause 16** and will be 100, unless a higher result applies under the Minister’s rules.

In exceptional circumstances, the Secretary can specify a higher deemed activity test result for the provider in a determination under paragraph (1)(c). This might occur in cases of particular need or vulnerability.

Subclause (3) clarifies that a determination under paragraph (1)(c) is not a legislative instrument. It is merely declaratory and included to assist readers. It is not an exemption from the *Legislation Act 2003*.

**Amendments to Schedule 3—Adjusted taxable income**

**Items 42, 43 and 44** amend Schedule 3 of the Family Assistance Act to replace references to CCB with references to CCS and to restrict the rule in subclause 3(1) to FTB and schoolkids bonus, in view of new clause 3AA for CCS.

**Item 45** amends Schedule 3 of the Family Assistance Act to confirm that there is a different way to work out the adjusted taxable income (ATI) for members of a couple for CCS purposes. That different way is set out in new **clause 3AA** (adjusted taxable income of members of a couple – child care subsidy). This establishes a method for the Secretary to calculate an individual’s adjusted taxable income, to work out an individual’s rate of child care assistance (through an applicable percentage of their fees) where the individual is, or was, a member of a couple during an income year. Where the individual has the same partner (a “TFN determination person”) for the whole income year, the individual’s ATI is taken to include that TFN determination person’s adjusted taxable income for that year. However, new **paragraph 3AA(2)(b)** deals specifically with individuals who have a partner for only some of an income year (for example, where they cease to become
a member of a couple, or subsequently re-partner and become a member of a new couple, or enter into a partnership for the first time). For these individuals, the provision sets out a proportionality principle whereby, in addition to the individual’s ATI, the partner’s ATI is added only in proportion to the period of time of the partnership. This is an attempt to only add to an individual’s ATI the amount that a new or former partner notionally contributed to the relationship. A note clarifies that, where the individual has re-partnered, and therefore there are a number of different TFN determination persons during an income year, the individual’s adjusted taxable income for that year is taken to include the sum of the amounts worked out under paragraph (b) for each such person.

**Example:** Nigel is an individual eligible for CCS. At the start of the income year he is partnered with Mabel and Nigel estimates that his and Mabel’s adjusted taxable income (ATI) combined will be $130,000, based on estimates of annual income of approximately $65,000 each. Four months into the income year, Nigel and Mabel separate, and Nigel’s income reduces to $65,000. However, another four months passes and Nigel re-partners with Norma, whose estimated ATI for the year is $60,000. Using new paragraph 3AA(2)(b), the Secretary would work out Nigel’s ATI by applying the proportionality principle in including both Mabel and Norma’s estimated ATI relative to the number of weeks in the income year each of them was a member of a couple with Nigel and by adding the amounts together to work out a single ATI amount that applied across the year. That is, the following calculation would be undertaken at the end of the income year:

- **Nigel’s ATI** - $65,000.00;
- **Mabel’s ATI (for period of partnership)** - $65,000.00 (divided by 3 as Mabel only partnered with Nigel for Mondays in first third of the income year) = $21,666.67;
- **Norma’s ATI (for period of partnership)** - $60,000.00 (divided by 3 as Norma only partnered with Nigel for Mondays in the final third of the income year) = $20,000.00.

Nigel’s final ATI result at the end of the income year will be his ATI of:

\[
\text{Nigel's ATI} = 65,000 + 21,666.67 + 20,000 = 106,666.67
\]

(assuming that there are exactly a third of all Mondays in each four month period in the particular income year).

This provision is intended to operate along with, rather than as an exception to, existing clause 3A, which can still apply on its terms.

An ATI result affected by clause 3AA is also affected by other clauses in Schedule 3, including in relation to fringe benefits and other amounts that can be added towards ATI calculation.
Amendments to Schedule 4 of the Family Assistance Act—Indexation and adjustment of amounts

Items 47 and 48 repeal items in Schedule 4 of the Family Assistance Act relating to CCB and CCR and substitute new items to provide for indexation of the lower income threshold for CCS, the CCS hourly rate caps and the annual cap for CCS.

Because the other thresholds in clause 3 of Schedule 2 of the Family Assistance Act are defined as the lower income threshold plus certain fixed dollar amounts, each time the lower income threshold is indexed, the other income thresholds will increase by the same amount as the lower income threshold.

Note that the first indexation of these amounts is dealt with by item 5 of Schedule 4 of this Bill (which effectively requires first indexation to occur on 1 July 2018, prior to commencement to keep pace with the Consumer Price Index).

Items 46 and 49 make minor consequential amendments dealing with the cessation of CCB and CCR.
Amendments to the Family Assistance Administration Act

Definitions

Items 50 to 84 amend section 3 of the Family Assistance Administration Act, which contains the definitions for terms used in that Act. A number of items repeal definitions of terms that were required for CCB and CCR, but are no longer relevant to CCS. Other items replace definitions with new definitions that are adapted to the new CCS and ACCS system.

Item 85 inserts new section 4A. Subsection (1) sets out the meaning of “large centre-based day care provider”, which is a kind of provider that is subject to additional approval rules, including a financial viability test. This replaces the definition of “large long day care centre operator” in existing section 3. In broad terms, a provider is a large centre-based day care provider if the provider alone, or jointly with other related providers, operates or proposes to operate, 25 or more approved child care services that are centre-based day care services. Subsection (2) allows the Minister to prescribe in the Minister’s rules, a number other than 25 for the purposes of subsection (1). This will allow the law to adapt to business practices in the child care sector. Subsection (3) provides for when 2 or more providers are considered to be “related providers” for the purposes of paragraph (1)(c).

Items 86 to 90 amend various provisions in Part 3, by repealing the provisions relating to the payment of CCB and CCR in Division 4 and 4AA of Part 3, and making consequential amendments to section 66. These amendments are intended to ensure that Part 3 of the Family Assistance Administration Act is now solely about payment of kinds of family assistance other than CCS and ACCS (such as FTB). Provisions relating to the payment of CCS and ACCS will be contained in new Part 3A, as inserted by item 92.

Part 3A—Payment of Child Care Subsidy and Additional Child Care Subsidy

Section 67AA contains a simplified outline of new Part 3A, which is self-explanatory.

Note that the new payment rules attempt to simplify many of the complications of the former CCB payment system, including by removing the long and complex stream of “determination” and “variation” rules that followed a decision about an individual’s “conditional eligibility” to CCB by fee reduction (for example, former sections 50 to 51E of the Family Assistance Administration Act). Many of the old child care payment rules in Part 3 were unnecessarily complicated.

Section 67AB sets out a summary of the kinds of child care payments an individual and a provider can become entitled to under new Part 3A (following their eligibility
Division 2—Making Claims

Division 2 of new Part 3A provides for rules in relation to making claims.

Section 67BA contains a simplified outline.

An individual must make a claim for CCS in order to become entitled to be paid CCS or ACCS (section 67BB). Only an individual can make a claim for CCS (section 67BC). The two kinds of claims that an individual may make are CCS by fee reduction, and CCS in substitution for an individual who has died (section 67BD). Some kinds of ACCS payments, however, will require an additional application.

Section 67BE provides that a claim is effective if the claim meets the requirements set out in paragraphs (a) to (h). Notably, in relation to claims for CCS in substitution for an individual who has died, paragraph (f) specifies that the claim must be made before the end of the income year after the income year in which the individual has died. Paragraph (g) allows the Secretary to prescribe further requirements for claims in the Secretary’s rules.

One of the requirements that must be met for a claim to be effective is the bank account requirements as set out in section 67BG. The bank account requirements are met for the purposes of a claim if:

- the individual provides details of a bank account into which amounts of CCS or ACCS can be paid; or
- the individual makes a statement that she or he will provide details of such a bank account within 28 days after the claim is made; or
- the Secretary is satisfied that it is appropriate to exempt the individual from the bank account requirements for the purposes of a claim.

Other requirements that must be met for a claim to be effective include the TFN requirements as set out in section 67BH. The provision of tax file numbers is important to enable identification of claimants and for the reconciliation process that follows an individual meeting the reconciliation conditions in section 103A following the end of a financial year. Subsection (1) provides the tax file number requirement is met for the purposes of a claim if, in relation to each TFN claim person (as defined in subsection 3(1)), one of the following statements is made:
• a statement stating their TFN; or

• a statement that they have authorised the Tax Commissioner to tell the Secretary what their TFN is; or

• a statement that they have applied for a TFN.

Subsection 67BH(3) provides that if the Secretary makes a determination that she is satisfied that the claimant cannot obtain the TFN from a TFN claim person who is their current or ex-partner, the TFN requirements do not apply in relation to that TFN claim person. Subsection (4) makes clear that this determination is not a legislative instrument (which is intended to be declaratory rather than an exemption from the Legislation Act 2003).

The TFN requirements for the purposes of a claim for CCS in substitution for an individual who has died are set out in section 67BI, which mirrors section 67BH. The main difference being that the TFN requirements must be met in relation to each TFN substitution person, which is defined in subsection 3(1) to mean the deceased individual and any partner of the deceased individual during the period in respect of which the payment is claimed.

Section 67BF makes clear that a claim that is not in effect is taken not to have been made.

Division 3—Determinations

Section 67CA sets out a simplified outline for this Division, which crucially deals with eligibility and entitlement decisions for payments.

While an individual or approved provider may be eligible for CCS or ACCS, section 67CB makes clear that an individual or an approved provider can only be entitled to be paid CCS or ACCS if the Secretary makes a determination to that effect under this new Division. In general, eligibility is about who can be paid and entitlement is about how much.

Note that subsection 67CB(4) is important because it ensures that entitlement is lost with respect to an income year (the relevant income year) where an individual fails to meet the reconciliation conditions. There are two deadlines:

• by the end of the first income year after the relevant year, if the reconciliation conditions are not met, the individual loses entitlement for the relevant income year (this can be reversed if the reconciliation conditions are met during the next income year—before the “second deadline”);
• if the reconciliation conditions are still not met by the end of the second income year after the relevant income year, their non-entitlement remains and the individual loses eligibility for CCS (because of paragraph 67CC(2)(b)).

Section 67CC provides for the determination of an individual’s eligibility for CCS by fee reduction.

If an individual makes an effective claim, the Secretary must determine:

• if the Secretary is satisfied at the time of making the determination that the FTB child, age, immunisation and residency requirements are met—that the individual is eligible for CCS by fee reduction, and

• if the Secretary is not so satisfied—that the individual is not eligible for CCS by fee reduction for the child.

The Secretary may determine that an individual is not eligible for CCS by fee reduction for the child concerned, if:

• the Secretary is satisfied that the individual’s eligibility has ceased permanently (for example, where all their children have grown up or where the individual has lost their residency status) or is not reasonably likely to become eligible again (for example, where the individual ceases to be eligible under section 85EE of the Family Assistance Act for sessions of care during a period of absence from Australia exceeding 6 weeks and the Secretary considers that they may not return or may not require child care assistance on their return);

• an individual has had no entitlement to CCS or ACCS for at least 52 consecutive weeks (for example, this would apply where the individual has not met the CCS reconciliation conditions by the second deadline under subsection 103C, because in this case section 105E would require 52 weeks of no-entitlement decisions following from the “first deadline”); or

• the child ceased to meet the immunisation requirements in section 6 of the Family Assistance Act more than 63 days ago.

Where the Secretary has made a determination under subsection 67CC(2) (cessation of eligibility), the individual will be notified under section 67CE and be provided with details, including the date of effect of the determination, and whether a new claim must be made under section 67BE for the individual to once again become eligible for CCS.
The Secretary may also revoke a determination of eligibility upon request by the individual under subsection (3).

Subsection (4) provides for when a determination of eligibility comes into effect, which must be the first Monday of a CCS fortnight, no earlier than 28 days before the date of claim.

**Example:** Rhys has met the eligibility requirements in subsection 85BA(1) since the beginning of 2018. He makes a claim for CCS on Tuesday 7 August 2018. Tuesday 10 July 2018 is the 28th day before the day the claim was made. A **CCS fortnight** is defined in subsection 3(1) of the Family Assistance Act to mean the period of two weeks beginning on Monday 2 July 2018 or each subsequent period of two weeks. The determination that Rhys is eligible for CCS by fee reduction will take effect on Monday 23 July 2018, which is the first day the Secretary is satisfied that the eligibility requirements are met, that is also the first Monday of a CCS fortnight that is within 28 days from the date of claim.

Subsections (5) and (6) apply on their terms and set out when certain determinations under this section have effect from.

**Section 67CD** provides for determinations of an individual’s entitlement to be paid CCS or ACCS.

**Preconditions for making determinations**

Subsection (1) provides for when the Secretary is to make a determination of entitlement under this section. Each determination of entitlement is made in relation to an individual, for a week, in relation to sessions of care provided to a child, by an approved child care service.

**Example:** Greta has two children, Uditha and Jo, each attending two different child care services in a week—in this case, the Secretary would make four entitlement determinations for Greta for that week.

The Secretary is only able to make an entitlement determination if, and once, all of the following conditions are satisfied:

- the approved provider of the service has given the Secretary a report under section 204B (commonly known as attendance reports); or

- if the approved provider of the service has not given the Secretary a report under section 204B (because of subsection 204B(3))—the Secretary has corrected the report under section 204C; and
- if the individual’s claim was made less than 28 days ago—the bank account requirements in section 67BG are met for the purposes of an entitlement determination; and

- if the individual’s claim was made less than 28 days ago—the tax file number requirements in 67BH are met for the purposes of a determination under this Division for the individual; and

- if the Secretary has given the individual a notice under subsection 67CD(11) in relation to the child’s enrolment for those sessions—the individual has complied with the notice.

The clarifying note at the end of this provision emphasises the requirement for the provider to have given an accurate and complete report under section 204B, for the Secretary to be satisfied that this precondition has been met. Where the Secretary has a reasonable basis to believe that a report purporting to be given under section 204B is not accurate and complete, a determination of no entitlement will be made in respect of the sessions of care for that week. However, the Secretary may still make an entitlement determination where, despite the provider failing to comply with the obligation to submit a report under section 204B (because of subsection 204B(3)), the Secretary has exercised their power under section 204C to correct the report. It is possible that responses to a subsection 67CD(11) notice, where one is given, may supply relevant information to the Secretary to correct a report where appropriate.

Paragraphs (c) and (d) ensure that, where an individual still has time to meet the bank account and tax file number requirements (both of which need to be met in 28 days from the date of claim), the Secretary must hold off making entitlement determinations until these requirements are met.

*Entitlement to be paid CCS*

**Subsection 67CD(2)** sets out the conditions that must be met for a determination to be made that an individual is entitled to be paid CCS, and the amount of that entitlement.

These conditions are intended to ensure that an individual can only be paid an amount of CCS in relation to one or more sessions of care in a week if:

- they meet the eligibility criteria for CCS in relation to those sessions of care (subject to the “immunisation grace period” referred to in subsection (9));

- they meet information requirements for the week (they: have provided bank account details unless exempt; have provided TFN unless exempt; have not
failed to comply with certain types of information requests; and have not failed to lodge tax return in time);

- they have not been determined to be entitled to be paid ACCS for those sessions of care.

In addition, if an individual meets the above conditions but the amount of CCS to which the individual will become entitled for the sessions of care is nil, the Secretary must determine in writing that the individual is not entitled to CCS.

**Entitlement to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship)**

**Subsection 67CD(3)** sets out the conditions that must be met in order for a determination to be made that the individual is entitled to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship), and the amount of that entitlement.

These conditions are intended to ensure that an individual can only be paid either of these two categories of ACCS for one or more sessions of care in a week if: the individual meets the eligibility criteria for ACCS (child wellbeing) or ACCS (temporary financial hardship) in relation to those sessions of care; no provider has been determined to be eligible for ACCS (child wellbeing) for those sessions of care; and the individual meets the information requirements for the week.

**Entitlement to be paid ACCS (grandparent)**

**Subsection 67CD(4)** sets out the conditions that must be met for a determination to be made that an individual is entitled to be paid ACCS (grandparent), and the amount of that entitlement.

These conditions are intended to ensure that an individual can only be paid ACCS (grandparent) for one or more sessions of care in the week if the individual: has applied to the Secretary for ACCS (grandparent); meets the eligibility requirements for ACCS (grandparent); has not been determined to be entitled to be paid ACCS (child wellbeing) for those sessions of care; and meets the information requirements for the week. Determinations of entitlement cannot be made for a week if the CCS fortnight that includes the week starts earlier than 28 days before the individual made the application for ACCS (grandparent).
**Entitlement to be paid ACCS (transition to work)**

**Subsection 67CD(6)** sets out the conditions that must be met for a determination to be made that an individual is entitled to be paid ACCS (transition to work), and the amount of that entitlement.

These conditions are intended to ensure that an individual can only be paid ACCS (transition to work) for one or more sessions of care in the week if the individual: has applied to the Secretary for that payment; meets the eligibility requirements; has not been determined to be entitled to be paid ACCS (child wellbeing) or ACCS (temporary financial hardship); and meets the information requirements. Determinations of entitlement can be made for a week in a CCS fortnight that starts after the date of application.

**Subsection 67CD(7)** ensures that such determinations can only relate to whole CCS fortnights following an application under paragraph 6(a).

**No entitlement to be paid CCS or ACCS**

**Subsection 67CD(8)** provides that if the Secretary is not satisfied that an individual meets the conditions of entitlement for either CCS, ACCS (child wellbeing), ACCS (temporary financial hardship), ACCS (grandparent), or ACCS (transition to work), for one or more sessions of care in a week, the Secretary must determine that the individual is not entitled to be paid CCS or ACCS for those sessions. Determinations under this provision can be made, on Secretary initiated review, in certain cases where an individual has not met the CCS reconciliation conditions under section 103A.

**Immunisation grace period**

**Subsection 67CD(9)** defines the concept of an “immunisation grace period”. Even if a child ceases to meet immunisation requirements and therefore the individual is no longer eligible for CCS or ACCS, the Secretary must still determine that the individual is entitled to CCS or ACCS if the individual would be eligible to CCS or ACCS except the session falls in an immunisation grace period. The following example illustrates the application of the immunisation grace period.

*Example:* Amanda ceased to meet immunisation requirements on 1 July 2019 and starts to meet immunisation requirements again on 1 October 2019. Her father Jeff meets all other eligibility and entitlement requirements for CCS during this period. 1 September 2019 would be the 63rd day after the day Amanda ceased to meet the immunisation requirements. Subsection (9) means that the days following 1 July 2019 up to 1 September 2019 would fall within the immunisation grace period. In accordance with paragraphs (2)(a) and (9)(b) of section 67CD, Amanda’s father Jeff
would be determined to be entitled to CCS for sessions of care up to the end of the week beginning on 26 August 2019. Jeff would be determined not to be entitled to CCS from the week beginning 2 September 2019.

Subsection 67CD(11) is about notices requiring information about enrolments. Where the Secretary has issued a notice to an individual in relation to the child’s enrolment for sessions of care, compliance by the individual with a notice is a precondition to the Secretary making a determination of entitlement for the individual under paragraph 67CD(1)(e).

The notice may be issued either in respect to information provided by the approved provider under an initial enrolment notice given under section 200A, or through an update to an enrolment notice given under section 200D. The idea behind these notices is to make sure that future attendance reporting under section 204B is consistent with the Secretary’s understanding of basic enrolment details (such as usual care days and fees). The notice will require individuals to verify certain information given by the provider under either section 200A or section 200D about a child’s enrolment. This information is expected to reflect terms in a “complying written arrangement” between the provider and the individual, which should set out basic information about days of attendance and agreed fees.

Therefore, where an individual is asked to comply with a notice, they will simply be confirming whether enrolment details provided to the Secretary by a provider match with the parent’s understanding of their arrangement. It is intended that this provision will provide the Secretary with an additional source of information to confirm an individual’s present and ongoing entitlement, and calculate the correct amount of entitlement, to ensure payment integrity and accuracy. Where the individual does not comply with a notice under subsection (11), the Secretary cannot make a determination of entitlement, and this will stall the making of the payment for the period during which the individual does not verify the information by complying with the notice (all preconditions in subsection 67CD(1) will not be met). Where compliance with a subsection 67CD(11) notice results in the Secretary doubting the accuracy of an attendance report provided under section 204B, the Secretary may request the approved provider to correct the attendance report under section 204C (or the Secretary could correct the report themselves under section 204C). If the correction is made, the Secretary will then be able to make a section 67CD determination (if other preconditions in subsection 67CD(1) are met).

Section 67CE and section 67CG provides for when the Secretary must give notice of determinations under Subdivision B and C, both to individuals and to approved providers. In particular, subsection 67CE(6) provides that, where the Secretary has decided to make a fee reduction payment directly to the individual under subsection 67EC(2), the provider will be notified to that effect. The obligation to
pass on fee reductions in section 201A does not apply to the amount which the provider is notified has been paid directly to the individual.

**Section 67CF** provides for determinations of an individual’s entitlement to be paid CCS or ACCS in substitution for individual who has died.

**Section 67CH** provides for determinations of a provider’s entitlement to be paid ACCS (child wellbeing).

Determinations of entitlement for approved providers are made under this section in relation to sessions of care provided during a week to a child, by an approved service of the provider. The intention is that the Secretary must only make such a determination when all of the following conditions are met:

(a) either a certificate in relation to risk of serious abuse or neglect, or a determination in relation to risk of serious abuse or neglect, is in effect;

(b) the provider has given the Secretary a section 204B report (an attendance report);

(c) the provider has given the Secretary a declaration that the provider has not been able to identify an eligible individual after making reasonable endeavours.

If the Secretary is satisfied that the provider is eligible for ACCS (child wellbeing) under subsection 85CA(2) of the Family Assistance Act for sessions of care provided to the child in the week, the Secretary must determine that the provider is entitled to be paid ACCS (child wellbeing) and the amount of the entitlement. Conversely, if the Secretary is not satisfied that the provider is eligible, the Secretary must determine that the provider is not eligible.

**Section 67CI** requires the Secretary to give written notice of determinations made under section 67CH.

**Division 4—Estimates of ATI**

**Section 67DA** is a simplified outline of this Division which is self-explanatory.

**Section 67DB** provides that where the actual ATI of an individual is not known at the time of making an entitlement determination, the Secretary has the power to make entitlement determinations on the basis of the most recent estimate that exists on the first Monday of the CCS fortnight.
This can be either:

(a) a reasonable estimate given to the Secretary by the claimants;

(b) the indexed estimate;

(c) the indexed actual income; or

(d) the estimate the claimant is taken to have given the Secretary in an election made under subsection (3).

Subsections (3) and (4) allow a claimant to make an election in relation to the estimate adjusted taxable income that is to be used in entitlement determinations that would result in an applicable percentage of between 20% and 50%. By making an election, a claimant is taken to have given the Secretary an estimate adjusted taxable income of an amount between the third income threshold ($250,000) and the upper income threshold ($340,000). Incorrect elections can be effectively remedied at reconciliation when ATI is known and this may result in further payments being made or debts.

Subsection (5) provides that if none of the estimates referred to in subsection (2) exists on the first Monday of the CCS fortnight, the Secretary must make a determination that the individual is not entitled to be paid CCS or ACCS for that fortnight.

New sections 67DC (indexed estimates), 67DD (indexed actual incomes) and 67DE (indexed estimates and indexed actual incomes for members of couples) replace existing sections 55AA, 55AB and 55AC in the current Family Assistance Administration Act. The difference between the old and new provisions are consequential to the new machinery provisions supporting the administration of CCS and ACCS payments.

Division 5—Payments

Section 67EA is a simplified outline of this Division which is self-explanatory.

New section 67EB replaces existing section 219Q. It provides that if the Secretary makes a determination of entitlement for an individual or an approved provider, the Secretary must pay the amount of the determination, less the withholding amount, to the bank account of the provider. However, the Secretary may instead pay the amount directly to the individual under section 67EC.
If the Secretary increases the amount of CCS or ACCS upon review of a determination of entitlement, the Secretary must pay an amount equal to the increase, less the withholding amount, to the bank account of the provider.

The withholding amount for a payment of CCS is 10% of the payment, unless the Minister’s rules prescribe a different percentage. The Minister may exercise this power after monitoring whether the 10% is adapted and proportionate to managing debts for most individuals. There is no withholding amount for a payment of ACCS.

The Secretary also has the ability to make a determination to specify a different percentage of withholding for an individual. The Secretary may make such a determination if she is satisfied that the percentage is appropriate to avoid the individual incurring a debt, or to reduce the potential size of the debt. Subsection (5) makes it clear that such a determination (as distinct from the Minister’s rules which will apply as a matter of general application) is not a legislative instrument—this is just declaratory of the law and is not an exception to the Legislation Act 2003.

**Subsection 67EC(1)** requires the Secretary to pay directly to an individual, an amount that would have otherwise been paid to an approved provider under section 67EB as a result of a fee reduction decision made, but for the child no longer being enrolled at the service. It is intended that this provision will enable the Secretary to make a direct payment to an individual in respect of a session of care provided at the time the child was still enrolled, but after the child ceases to be enrolled. The reason why the Secretary is required to make the payment to the individual in this circumstance, as opposed to the provider under section 67EB, is due to the fact it may no longer be practicable for the provider to pass on the fee reduction in accordance with its obligation to do so under section 201A as the child is no longer enrolled. Note that payment could still effectively be made to the provider in discharge of any of an individual’s outstanding fee liability under paragraphs 67EC(1)(b) and 67EC(5)(b).

**Subsection 67EC(2)** provides the Secretary with a discretion to make payments directly to individuals following a fee reduction decision being made, where appropriate, despite the child still being enrolled at the service. Where the Secretary has made a decision to pay the individual directly under this provision, the individual and approved provider will be notified of this decision under **section 67CE**. The notice to the provider will state that the payment has been made directly to the individual under **subsection 67EC(2)** and will have the effect that the obligation upon the provider to pass on the fee reduction amount under **section 201A** does not apply in respect of the amount paid directly to the individual (see subsection 67CE(6)).

The broad nature of the power in this provision, to pay an individual directly, is considered reasonable given that CCS is an individual’s entitlement and it simply
operates to allow a more direct method of providing that entitlement to an individual, including where it is not appropriate, for any reason, to pay the amount to a child care provider to pass on as a fee reduction (such as in cases of suspected provider non-compliance). In a case where the individual is paid directly, the provider will still, of course, be able to recover fees from individuals under their fee arrangements, established at enrolment.

Subsection 67EC(3) provides the Secretary with a discretion to pay directly to an individual fee reduction amounts which have not already been passed on by the provider, either because the provider has remitted the amount to the Secretary in accordance with paragraph 201A(1)(b) or has failed to remit the amount and incurred a debt to the Commonwealth under section 71D.

Subsection 67EC(4) requires the Secretary to pay directly to an individual, the difference between the total amount of CCS or ACCS the individual is entitled to be paid for sessions of care provided by a child care service in CCS fortnights starting in an income year, and the amount the provider was required to pass on to the individual under section 201A for those sessions.

Subsection 67EC(5) sets out how amounts are to be paid if a decision to pay individuals directly is made under this section. It allows for amounts to be paid to discharge an obligation of an individual and allows, in cases where subsection 67EC(1) applies (because the enrolment has ceased), for the Secretary to make a payment to a provider if the individual still owes them child care fees.

Subsection 67EC(6) provides the Secretary with a discretion to defer paying the above amounts until after the individual meets the CCS reconciliation conditions in section 103A.

Section 67ED, provides for the payment of CCS or ACCS in substitution for an individual who has died.

Section 67EE deals with payments to providers who are eligible in their own right to ACCS (child wellbeing), stating that payments are to be paid to a bank account held by the provider (rather than by “passing on” the amount to any individual).

Division 6—Giving Information

Section 67FA is a simplified outline of this Division which is self-explanatory.

Section 67FB replaces existing section 56C which provides for the requirement for individuals to notify the Secretary of change of circumstances relevant to individuals CCS or ACCS eligibility and entitlement such as any change in activity or income.
Section 67FC replaces existing section 56D which provides for the requirement for approved providers to notify the Secretary of change of circumstances relevant to whether a child remains at risk of abuse or neglect. Contravention of this provision carries an offence of 60 penalty units.

Section 67FD, which gives the Secretary the power to approve a manner of notifying changes of circumstances, replaces existing section 57 with minor consequential modifications.

Section 67FE (request for bank account details), section 67FF (request for tax file number etc. in claim forms), section 67FG (request for tax file number etc. of TFN determination persons), and section 67FH (request for information about care provided) replace existing sections 57A, 57B, 57D and 57G with minor consequential modifications.

Section 67FI is a new provision that gives the Secretary the power to request information from individuals in relation to present or future entitlement for CCS or ACCS. The Secretary may do so by giving a written notice to an individual, specifying the information that is requested, and the time in which the information must be provided. This power reflects the fact that some CCS claimants may cease to be eligible or entitled for payment in relation to sessions of care for various reasons after their initial claim and allows the Secretary to ask for current information. This power exists alongside existing coercive information powers in the Family Assistance Administration Act.

Division 7—Payment protection and garnishee orders

Section 67GA is a simplified outline of this Division which is self-explanatory.

Section 67GB stands alongside existing section 66 (which now deals with only family assistance other than child care payments) and is consistent with the policy that, except for the limited exceptions specified, a family assistance payment is inalienable and is absolutely protected from sale, assignment, charge, execution, bankruptcy or other types of alienation.

Section 67GC is related to the inalienability provision set out in section 67GB and clarifies that if a garnishee order comes into effect in relation to a bank account into which payments listed in subsection 66(1) are credited, the garnishee order is not effective in relation to the “saved amount”, calculated according to the formula specified.
Part 4—Overpayments and debt recovery

**Item 93** makes amendments to clarify that amounts of family assistance are taken to be “paid” to a person where the amount is applied against certain liabilities or debts, or is set off against another amount (section 68). **Section 69** clarifies that references to amounts paid to approved providers are taken to apply in relation to providers who are no longer approved (or approved in respect of a particular service).

**Items 94 and 95** are minor technical amendments.

**Items 96 and 97** insert new provisions that raise debts of CCS or ACCS. Amounts are debts due to the Commonwealth where:

- an amount of CCS or ACCS is paid to an individual or provider who is not entitled to it at all for one or sessions of care (section 71B);

- an overpayment of CCS or ACCS is received (section 71C) by an eligible individual or provider;

- a provider fails to pass on an amount of CCS to an eligible individual or does not remit the amount to the Secretary if required (section 71D);

- because of an individual’s false or misleading statement, a provider would incur a debt where they have made themselves eligible for ACCS (child wellbeing) in respect of a child (section 71E)—in this case the individual incurs the debt rather than the provider;

- because of a provider’s false or misleading statement or contravention an individual would incur a debt (section 71F)—in this case the provider incurs the debt rather than individual; and

- a provider’s approval is suspended or cancelled and fee reduction payments or business continuity payments are subsequently made (sections 71G and 71H).

**Items 98 and 99** make amendments consequential to the introduction of “approved providers” to a provision dealing with methods of debt recovery. The intention is that the listed methods of recovery for individuals and providers will be common, but will only operate to the extent legally possible. It may be, for example, that some methods are not legally available in respect of partnerships or unincorporated providers, notwithstanding sections 230A and 230B.
Items 100 to 108, 110, 111 and 113 are technical amendments consequential upon the introduction of CCS and ACCS.

Item 109 deals with the time for recovering certain CCS debts. This provision is intended to be practical and gives the Secretary the discretion to not pursue recovery where it is possible that an individual may be belatedly meet CCS reconciliation conditions (generally, by lodging their tax return) and thereby resume entitlement for a former income year after having lost entitlement because of subsection 105E(2).

Item 112 inserts a new kind of debt that can be written off into section 95. Under new subsection (4B), the Secretary may write off a debt that arises in circumstances where the reconciliation conditions are not met (generally because a tax return has not been lodged) if the reason why the reconciliation conditions were not met was because an individual’s former partner had not lodged a tax return at the time the individual and the partner separated (where the separation occurred as specified in paragraph (a)).

Part 5—Review of decisions

Item 114 inserts new Division 1A, which deals with preliminary matters in relation to child care decisions and sets out important rules for the CCS reconciliation process.

Section 103 defines “child care decision”. A child care decision includes an original determination made by the Secretary under Division 3 of Part 3A (determinations of eligibility and determinations of entitlement to CCS or ACCS) as well as an internal review decision by the Secretary or a review decision by the AAT of a determination under Division 3 of Part 3A. The intention is to ensure that the same outcome (for example, as relevant for limitations on arrears) will be achieved for original decisions and in relation to reviews.

Section 103A sets out when an individual is considered to have met the “CCS reconciliation conditions”, which relate to tax assessments becoming available for the individual and anyone who was a partner of the individual in the income year (unless the individual or partner is not required to lodge a tax return because of their low income, for example). Subsection (4) ensures that, where a relationship has ended during the year, individuals with former partners are not disadvantaged during the end-of-year reconciliation process where their former partners do not lodge their tax return and this would result in unfairness for the individual. This provision allows the Secretary to treat an individual’s former partner as having lodged their tax return so that the individual can be taken to have met the reconciliation conditions in these circumstances.

Sections 103B and 103C define the “first deadline” and “second deadline” for the purposes of provisions relating to meeting the CCS reconciliation conditions. The
deadlines are the end of the first and second whole income years following the income year that is subject to reconciliation.

**Item 115** makes amendments to **section 104** to list some limited exceptions to the default rule that decisions under the family assistance law are reviewable on internal review by the Secretary. The exceptions relate to events that cannot or should not be reversed, including a decision to pay a fee reduction amount (review may instead be sought in relation to the entitlement determination) or decisions to issue compliance notices (reviews may instead be sought in relation to a non-compliance decision).

**Paragraph 104(d)** provides funding agreement decisions made under section 85GA are not reviewable by the Administrative Appeals Tribunal (AAT) to ensure certainty to contractors. In accordance with the Administrative Review Council’s (the Council) publication “**What decisions should be subject to merit review?**” (which, as at August 2016, could be viewed on the Council’s website: [http://www.arc.ag.gov.au](http://www.arc.ag.gov.au)), such decisions are not generally considered appropriate for merits review given they will relate to the allocation of a finite resource, drawn from Annual Appropriations, and only a proportion of claims for a share of the resource can be met. Furthermore, if these decisions, in relation to funding agreements, were open for review, any outcome overturning the original decision made would likely affect the interests of a contracted party who was successful after a competitive grants round. One-off payments may also be made to certain service providers in accordance with section 85GA, for instance, under the Community Child Care Fund, and such decisions should also be excluded from merits review for the following reasons considered by the Council to outweigh the benefits of review in these circumstances: review would only promote competition among community groups, no effective remedy could be provided without reducing funding to other service providers, and to avoid delays in effectively channelling funds into service provision. Finally, as acknowledged by the Council:

“…**such decisions by the Government to allocate funding to programmes as a whole are not suitable for review, as they are budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person’s interests. Those decisions are subject to parliamentary scrutiny…**”

This provision would also align the treatment of contracts made pursuant to items listed in the **Financial Framework (Supplementary Powers) Regulations 1997**, for which decisions under section 32B of the **Financial Framework (Supplementary Powers) Act 1997** are also not subject to AAT review.

**Item 116** inserts new **section 105C** which ensures that certain information is not taken into account on review where the information was provided to the Secretary unreasonably late (after the 28 day period as referred in paragraph (c)) following a
notification obligation in respect to that information. This provision attempts to encourage the prompt notification of information that might increase the amount of CCS or ACCS that a person might be entitled to. The limitation does not apply where the new information is the adjusted taxable income of the individual.

**Section 105D** ensures that a person’s entitlement for CCS or ACCS cannot be increased on review for a week that falls in the income year immediately before the income year in which the decision on review is made. This provision is intended to discourage unreasonably late requests for review. Subsection (2) ensures that an exception applies where the review is conducted because the reconciliation conditions are met (generally, following a person’s tax assessment becoming available and their adjusted taxable income becoming known).

**Section 105E** obliges the Secretary to conduct an own motion review once the reconciliation conditions for an individual are met (usually where a person’s tax assessment becomes available after they lodge a tax return). This provision enables the Secretary to review the entitlement determinations made throughout the year based on income estimates, and substitute with the correct amount of entitlement based on information about the person’s adjusted taxable income as determined by the Commissioner of Taxation following a tax assessment being made.

Subsections 105E(2) and (3) notably deal with consequences for missing the “first deadline” and the “second deadline”, and require the Secretary to make no entitlement decisions where the first deadline is missed and only allow for entitlement to resume if, and once, the reconciliation conditions are met by the “second deadline”.

**Items 117 to 122** are minor technical amendments.

**Item 123** inserts new **section 106A**, which sets out circumstances in which the Secretary is required to give notice of review decisions about eligibility or entitlement to CCS or ACCS to an individual and a provider affected by the decision. In particular, the provision clarifies that if the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), the notice provided must include a statement to this effect.

**Section 106B** acknowledges the possibility that a Secretary may initiate an own motion review after a person has applied to the AAT for review of the same original decision. If this occurs, this provision requires the Secretary to give the AAT written notice of the Secretary’s review decision so that the AAT can take it into account.
Items 124 and 125 make consequential amendments to section 107 to maintain the existing law about the date of effect of certain internal review decisions with respect to family tax benefit.

Item 126 adds new section 107A into the Family Assistance Administration Act to address the date of effect of a review decision made under section 105 to vary, or set aside and substitute a new determination about eligibility for CCS. The provision ensures that the date of effect of favourable decisions in respect of CCS eligibility (made on review under section 105) cannot be earlier than the beginning of the income year before the income year during which the review decision was made.

Items 127 to 132 make amendments to section 108 of the Family Assistance Administration Act, which is a provision that deals with decisions that may and may not be reviewed under section 109A (which relates to applicant initiated reviews). These amendments:

- remove references to decisions about CCB from the list of exceptions to the default rule that all decisions are reviewable on request (because they are no longer relevant);

- insert new exceptions in relation to decisions that cannot or should not be reviewed (including funding agreement decisions, decisions to pay an amount through a provider to pass on a fee reduction, decisions to give non-compliance notices or decisions to publish non-compliance information);

- make other minor amendments consequential upon the introduction of CCS and ACCS; and

- ensure that an applicant may only initiate a review of a decision about an individual’s entitlement based on the individual’s income and activity levels after a person’s tax assessment becomes available following an income year (where a tax return is required to be lodged).

Items 133 and 134 (as well as the minor amendments made by items 135 and 136) alter section 109A of the Family Assistance Administration Act (the provision under which persons can apply for internal review) to ensure that requests for review of Part 8 decisions about the approval of providers can only be made by providers. Requests in relation to other decisions can be made by a person that is “affected” by those decisions, which is a broader standing rule. However, for decisions under Part 8, standing is limited reduce possibly numerous and identical applications from individuals who may be affected by a provider approval decision, leaving it to the provider themselves to apply for review. Another reason for limiting standing to providers is because any review of a Part 8 decision would only take into account
information relating to the child care provider. An individual’s loss of access to a child care service that attracts CCS due to the provider’s loss of approval would not be a relevant consideration in a review of any decisions under Part 8. Note that this provision will not limit an individual’s right to apply to a court in relation to a question of law, including under the Administrative Decisions (Judicial Review) Act 1977, where they have standing under that Act.

Items 137, 138 and 139 make technical amendments to a provision that deals with providing notice of applicant initiated review decisions, to make references to CCS and ACCS and to remove references to repealed provisions relevant to CCB. There are also new obligations in this provision to provide notification to “providers”. In particular, the provision clarifies that if the review decision is a fee reduction decision, and the Secretary has decided to pay the fee reduction amount directly to the individual under subsection 67EC(2), the notice provided must include a statement to this effect.

Item 140 amends section 109D to require that applications for review of decisions under section 109A must be made no later than 13 weeks after the applicant is notified of the decision (if the decision is in relation to CCS or ACCS). Otherwise, the application can be made 52 weeks after notification, which is the existing rule. This provision is intended to encourage prompt requests for review in relation to child care decisions. Items 141 to 147 are related technical amendments.

Item 148 provides a longer period in which internal reviews can be requested where the decision on review is made because a person’s ATI has become known because the person’s tax assessment has become available or where the Taxation Commissioner has reviewed a decision under taxation law about the taxable income of an individual.

Items 149 and 150 make minor technical amendments.

Item 151 replaces section 109DA to provide for a time limit on applications by providers for internal review in relation to decisions made about provider approval.

New section 109DB ensures that new section 105C (which limits information that can be taken into account in a decision on review) also applies where the review occurs because of a request under section 109A. New section 109DC operates similarly with respect to time limits on increases (by ensuring that section 105D also applies where the review occurs because of a request under section 109A). New section 109EA (as inserted by item 152) operates similarly, by ensuring that section 107A (which limits the date of effect of review decisions to no earlier than the first day of the income year before a review decision was made) also applies where the review occurs because of a request under section 109A in relation to determinations of eligibility or entitlement for CCS or ACCS.
Items 153 to 156 make a series of technical amendments to section 109G (which is about payments pending the outcome of a review process) consequential upon the introduction of CCS and ACCS.

Items 157 to 163 make a number of technical amendments to section 111, which deals with applications to the AAT for “first review”. Some limited exceptions to review at the AAT are inserted through these items where review is inappropriate or would be ineffective to yield a remedy (such as in relation to “form and manner” requirements for notices or forms). Item 163 is important because it ensures that review of decisions relevant to a person’s income changes or activity cannot be made at “AAT first review” until after a reconciliation process has occurred following an income year (that is, generally once a person’s tax assessment becomes available). This provision also recognises that, once reconciliation conditions are met, the Secretary will conduct an internal review to take account of known ATI and activity.

Item 166 makes amendments to section 111A, which deals with time limits on applications for “AAT first review”. Generally a person has 13 weeks to request such review after notification of a decision, however new subsection (2A) provides for a longer period where the decision is made following reconciliation conditions being met (generally, because a person’s tax assessment has become available, where the person is required to lodge a tax return). Items 164, 165 and 167 make related technical amendments.

Items 168 to 172 make minor technical amendments.

Item 173 makes amendments to section 124 to ensure that complex calculations required to give effect to the AAT’s decision on first review are performed by the Secretary on the AAT’s direction, because the Secretary has access to the computer system that calculates child care payments.

Item 174 inserts new section 125A to deal with the date of effect of certain AAT first review decisions relating to CCS and ACCS. The new provision limits the date of effect for favourable decisions (in respect of eligibility or entitlement to CCS or ACCS) to no earlier than the first day of the income year prior to the income year in which the application for review was made.

Item 175 amends section 128 of the Family Assistance Administration Act, which deals with “AAT second review”. The amendments adding subsections (3) and (4) ensure that the same rules that apply to limitations on first review (as dealt with by subsections 111(2A) and (2B)) apply to second review. Like for amendments to section 111, these provisions ensure that decisions relevant to a person’s income changes or activity cannot be reviewed at “AAT second review” until after a
reconciliation process has occurred following an income year (that is, generally once a person’s tax assessment becomes available). New subsection 128(5) gives applicants more time to lodge an application for “AAT second review” where the application is made because an individual meets the reconciliation conditions (generally because their tax assessment has become available) or where the Taxation Commissioner has reviewed a decision under taxation law about the taxable income of an individual.

**Item 176** inserts new sections 134A and 134B which ensure that sections 124 and 125C (about ensuring that the Secretary makes complex calculations to give effect to AAT decisions and about date of effect of CCS and ACCS decisions) apply at AAT second review in the same way that they do at AAT first review.

**Item 177** inserts new section 136 which outlines the requirements for the Secretary to notify relevant providers of certain AAT decisions that impact an individual’s eligibility or entitlement to CCS or ACCS.

**Item 178** inserts new section 137A which limits how far back in time favourable changes affecting individuals and providers can take effect, where information is not provided promptly. This provision is intended to encourage the prompt provision of information in response to the Secretary’s information gathering powers, and the prompt notification of change in circumstances that would affect eligibility or entitlement.

New section 137B ensures that favourable decisions made on first or second review by the AAT do not have effect prior to the income year before the income year in which an application is made. This provision gives people a reasonable chance to request review, but ensures that applicants have an incentive to apply for AAT relatively reasonably promptly. An exception applies where the application for review is made because the reconciliation conditions are met (generally because a person’s tax assessment is made available) or where the Commissioner of Taxation reviews a tax decision with respect to an individual’s taxable income.

**Items 179 and 180** (and **item 181**, as a consequence) amend section 138 to limit standing for decisions about the approval of providers to providers rather than other persons who may be affected by an approval decision. Standing is limited to reduce vexatious and possibly numerous applications from individuals who may be affected by a provider approval decision, leaving it to the provider themselves to apply for review. Note that this provision will not limit an individual’s right to apply to a court in relation to a question of law, including under the *Administrative Decisions (Judicial Review) Act 1977* where an individual has standing under that Act.

**Item 182** repeals a Division that is no longer required because of the cessation of CCR.
Part 6—Provisions relating to information

Item 183 makes amendments to the compulsory information gathering power in section 154 of the Family Assistance Administration Act that are consequential upon the introduction of CCS and ACCS.

Items 184 to 187 make technical amendments to an information gathering power consequential upon the cessation of CCB and the introduction of CCS and ACCS.

Item 188 inserts new section 157A which empowers the Secretary to obtain records kept by approved providers about whether a child is at serious risk of abuse or neglect.

Item 189 amends subsection 158(3) to allow the Secretary to specify, in a notice given under Division 1 of Part 6 of the Family Assistance Administration Act, a period shorter than 14 days in which the information is to be provided where a shorter period is reasonable to ensure the effective administration of the family assistance law. A shorter period may be imposed where urgent provision of information is required to mitigate risk to children in care or to limit debts.

Item 190 also amends section 158 to require notices to specify a time and place for a person to appear where relevant and that the time for appearing must be at least 14 days, unless a shorter period is reasonable to ensure the effective administration of the family assistance law. A shorter period may be imposed where urgent provision of information is required to mitigate risk to children in care or to limit debts.

Item 191 adds to the list of legislative schemes that protected information can be disclosed for the purposes of, by adding the National Law of a State or Territory jurisdiction. This amendment will authorise the flow of child care information between the Commonwealth and States and Territories for the limited purposes of child care payments and child care quality under Commonwealth and State/Territory legislation.

Item 192 is a minor technical amendment.

Item 193 is a consequential amendment required because of the cessation of CCB.

Items 194 and 195 amend section 172 to ensure that references to claims for family assistance in this provision include certain applications in relation to ACCS.

Item 196 makes a consequential amendment to paragraph 173(1)(d), required because of the cessation of CCB and CCR.
Items 197, 198, 199 are minor technical amendments.

Item 200 clarifies that the reference to a person for the offence in section 175 includes a provider or an individual who obtains a fee reduction amount.

Item 201 consolidates offences that had applied to CCB and CCR into a single provision that operates in respect of payments obtained by fraud.

Items 202, 203 and 204 are minor consequential amendments required because of the cessation of CCB and because of the introduction of CCS and ACCS.

Part 8—Approvals

Item 205 repeals and substitutes Part 8 of the Family Assistance Administration Act. New Part 8 provides for approval of providers of child care services in respect of particular services. The Part attempts to draw consistencies in terminology between the family assistance law and the Education and Care Services National Law Act 2010 (Vic) and equivalent legislation in other State jurisdictions (the National Law), which refers to “providers” as distinct from “services”.

New Part 8 aims to streamline the approval process by tailoring the approval criteria to take into account matters relevant to the provider’s suitability to administer child care payments on behalf of the Commonwealth. The approval process is also streamlined by consideration of a smaller set of service specific criteria when a provider seeks to add new service(s) to their approval.

Division 1—Provider approval

Section 194A sets out the requirements for an application for approval.

Subsection (1) limits the types of entities that can apply for approval. An application for approval can be made by an individual, body corporate, partnership, or other entity or body prescribed by the Minister’s rules.

Subsection (2) provides the form, manner and content requirements for applications.

Subsection (3) clarifies that applications that do not comply with the form and substance requirements in subsection 194A(2) are taken not to have been made and also allows the Minister’s rules to prescribe circumstances in which an application is taken not to be made. This rule making power is intended to be used to limit applications to address excessive growth within a particular child care service type specifically where there are concerns about proven or alleged non-compliance with family assistance law.
Section 194B deals with when the Secretary may approve a provider (essentially where an applicant can satisfactorily demonstrate that they can meet the eligibility criteria in sections 194C and 194D) and when the Secretary can approve the provider in respect of services it operates. A provider must operate, or propose to operate, at least one approved service, otherwise the provider cannot be approved. There are also administrative provisions in this section dealing with notification of approval and the circumstances in which the Secretary must refuse to approve a provider as a provider in respect of a service it operates. By default, an approval will take effect on a Monday, unless the Secretary has determined it is more appropriate for the approval to take effect on another day.

Sections 194C and 194D set out the provider and service eligibility rules. For a provider to meet the eligibility rules, they will need to: hold any approvals or licences required under the National Law or other State or Territory laws that relate to child care; demonstrate that they, and any person with management or control of the provider, are fit and proper persons (as defined in section 194E); where they are a large centre-based day care provider, demonstrate that they are financially viable and are likely to remain as such; and meet any other criteria specified by the Minister.

The service eligibility rules refer to kinds of care that the service must not provide and refers to criteria that also apply to providers. Paragraph 194D(f) is notable for setting out factors that the Secretary must weigh up and be satisfied of regarding the appropriateness of the approval, including: any conditions that have already been imposed on the provider’s approval; whether there is a history of non-compliance with laws; whether there is a poor record of administering CCS, ACCS, CCR or CCB payments or other funding provided by the Commonwealth or States or Territories; the perceived capacity of staff to use the electronic child care payment system; and other matters prescribed in rules or that are considered relevant in a particular case (that are not set out in rules).

Section 194E lists the fit and proper person considerations that the Secretary must have regard to for the purposes of the provider and service eligibility rules. Notably, subsection (2) is intended to ensure that references to a “relevant person” in any of the factors listed in subsection (1) includes another person or body in respect of which the person is or has ever been a person with management or control. This provision is intended to ensure that the Secretary is able to take into account a person’s previous record of management or control of other entities in having regard to the factors in subsection (1). The fit and proper person considerations cover requirements which apply to applications for approval for the purposes of the family assistance law, and as ongoing conditions for continued approval, including ensuring that findings of guilt can be considered (as well as convictions). The Secretary’s capacity to require disclosure of such matters is subject to the application of Part VIIIC of the Crimes Act 1914, which is about spent convictions and pardons.
**Section 194F** provides a definition of “person with management or control” for the purposes of the fit and proper person considerations in the provider and service eligibility rules. In particular, paragraph (b) ensures that even if a person does not have the legal authority or responsibility for the planning, direction or control of the activities of a body, but has a significant influence over the planning, direction or control of the activities of the body, that person would be considered a “person with management or control” of the body. For example, a parent company who has a significant influence over the activities of a subsidiary would be considered a “person with management or control”, even where the parent company has no legal authority to direct the activities of the subsidiary.

**Section 194G** provides a definition of “approved child care service” and clarifies that a service is not approved during a period of suspension (although a service could be taken to be approved during a period of suspension if a suspension is revoked with backdated effect or on review).

**Section 194H** puts beyond doubt that any obligation or permission imposed or conferred under the family assistance law on an approved child care service is taken to be imposed or conferred on the approved provider that is approved with respect to that service. This provision reflects the fact that, under the family assistance law, an approved child care service is effectively the business operations of an approved provider, who is the controlling legal entity or body.

**Division 2—Conditions for continued approval**

**Section 195A** sets out the conditions for continued approval of an approved provider that relate to ongoing compliance with eligibility rules, the family assistance law and other laws of the Commonwealth or States and Territories that apply to the provider (including the National Law).

**Section 195B** states that it is a condition of continued approval that, where a service (with respect to which they are approved) has been allocated places, the service is to fill no more places than those allocated. This provision has no effect in respect to services where places have not been allocated.

**Section 195C** outlines, as a condition of continued approval, the minimum period that an approved child care service must operate (that is, provide child care) per year. The provision enables rules to be made to prescribe alternative periods to the default periods listed in subsection (2) and empowers the Secretary to determine shorter periods in “special circumstances”, which are intended to be very unusual circumstances in which it would be unfair or inappropriate for the provider to provide care for the minimum period.
Section 195D ensures that details of the working with children cards that staff are required to hold who work in an approved child care service are provided to the Secretary so that the Secretary can be satisfied that the staff have been subject to the requisite checks to work with children.

Section 195E allows the Minister to prescribe further conditions of continued approval by legislative instrument. This power is intended to ensure that additional conditions of continued approval may be imposed in the future, to deal with unforeseen changes affecting the child care sector.

Section 195F gives the Secretary the ability to impose specific conditions in relation to a particular provider or service (for example, where these are required because of the particular characteristics of the provider or service). Such conditions might include restrictions on a provider from operating in a particular geographical location, or a requirement in relation to particular alterations to the facilities provided at an approved service.

Subsection 195F(4) clarifies that notices of conditions imposed by the Secretary are not legislative instruments. This provision is included simply to assist readers, as any such notice is not a legislative instrument within the meaning of section 5 of the Legislation Act 2003.

Section 195G empowers the Secretary to assess, at any time, a provider’s compliance with the conditions for its continued approval, including whether the provider eligibility continues to satisfy the provider eligibility rules and whether the provider and persons with management control of the provider are fit and proper persons to be involved in the administration of CCS and ACCS.

Section 195H sets out the consequences that follow a breach of a condition of continued approval, otherwise known as “sanctions” that the Secretary can impose. Provisions in this section: list the sanctions that can be imposed (subsection (1)); empower the Minister to set out rules that the Secretary must have regard to in applying sanctions to approved providers (subsection (2)); and the processes involved to impose a sanction and following the imposition of a sanction.

Division 3—Adding or removing services

Section 196A enables approved providers to apply to add or remove services from their approval. Subsection (3) clarifies that applications that do not comply with the form and substance requirements in subsection 196A(2) are taken not to have been made and allows the Minister to prescribe other circumstances in respect of which applications are taken not to have been made as referred to in subsection 194A(3).
Sections 196B and 196C empowers the Secretary to vary the provider’s approval by adding or removing a service to the provider’s approval. It also sets out the administrative steps the Secretary may take in response to an application under section 196B.

Division 4—Suspension, variation and cancellation of approval

Section 197A provides the Secretary the power to immediately suspend the approval of an approved provider, or a service in which a provider is approved in respect of, in the circumstances listed in subsection (1). For example where there are immediate threats to the health and safety of a child. There are also provisions in this section outlining the administrative steps that the Secretary is to follow.

Section 197B allows the Secretary to suspend the approval of an approved provider, or a service in respect of which they are approved, if the provider has been given numerous infringement notices (10 within 12 months, or just 5 in 12 months, where the infringement penalty has not been paid in accordance with the notices). Note that infringement notices are given for non-compliance.

Section 197C allows providers to request that the Secretary cancel their approval and provides for administrative steps following such a request. Providers may wish to do this where they want to remain operating as a child care service without CCS approval.

Sections 197D and 197E allow the Secretary to cancel a provider’s approval or vary an approval (so that the provider is not approved in respect of service) if the Secretary becomes aware that the approval should not have been made because the factors in section 194B were not satisfied at the time the provider/service was approved.

Sections 197F and 197G allow the Secretary to cancel approvals (of providers or services) where services have not operated for 3 months (unless the exceptions in (1)(b) apply). This provision ensures that providers who, and services that, stop operating can be removed from the CCS payment system.

Sections 197H and 197J require the Secretary to cancel or vary the approval of a provider where the provider ceases to operate its services.

Section 197K ensures the Secretary can cancel a provider’s approval where they are no longer approved in respect of any services.
Division 5—Allocation of child care places

Section 198A allows the Minister to prescribe rules dealing with the matters listed with respect to the allocation of child care places. If a condition of a service’s approval is that they are subject to these rules, section 198B provides that the Secretary must allocate places in accordance with them and allows approved providers to apply for additional places.

Section 198C empowers the Secretary to reduce the number of places allocated where the number allocated exceeds the number of places actually provided or able to be provided under a State or Territory law because of licensing restrictions.

Division 6—Miscellaneous

Division 6 is the final Division in Part 8 and deals with a number of miscellaneous matters including the procedure for imposing sanctions (section 199A) and a power to publicise action taken on providers or individuals (section 199B).

Section 199C is an obligation imposed on approved providers to notify the Secretary of matters affecting the original approval and whether it should continue to be approved. The obligation is punishable by an offence carrying a penalty of 80 penalty units or through a civil penalty of 60 penalty units. This offence is not one of strict liability and therefore the prosecution would need to establish relevant fault elements.

Section 199D applies alongside the obligation to provide notices of reviewable decisions under section 27A of the Administrative Appeals Tribunal Act 1975 and requires the Secretary to notify of review rights in notices of decisions under Part 8 of the Family Assistance Administration Act.

Section 199E empowers the Secretary to notify individuals whose eligibility for CCS or ACCS may be affected by an approved provider’s non-compliance with a condition of continued approval or by a cancellation, suspension or variation of an approved provider’s approval, were the Secretary to take such action. There are requirements in this provision for the form and content of such notices.

Section 199F allows the Minister to specify providers who are exempt from meeting certain approval criteria in order to become, or remain, approved. It is intended that the Minister would specify providers who are in difficult or unusual circumstances and who should nevertheless be able to provide child care with respect to which an individual can remain eligible for CCS or ACCS. This provision could be used for services formally funded under the Budget Based Funding model.
Section 199G, while appearing to provide a broad modification power of principal legislation (sometimes referred to as a “Henry VIII clause”), is intended to operate in a purely beneficial way to deal with any anomalies that may arise where an approval is taken to be backdated in time. Where approvals are made with an effective date in the past, providers may be unable to meet certain requirements (such as the requirement to provide reports under section 204B) within the time specified in legislation. This provision gives Ministerial power to make rules which modify the principal legislation, so that it operates without anomalous or unfair consequences for providers where their approval takes effect for a past period. Such modifications would be beneficial for providers as they would ensure providers are not retrospectively and unfairly exposed to obligations in the past that they are unable to meet. This provision provides flexibility to ensure that anomalous timing rules and other matters, consequent upon backdated approvals, can be dealt with in a reasonable, sensible and beneficial manner. Any rules made in accordance with this provision will be subject to further parliamentary scrutiny through the disallowance process for legislative instruments, which means that Parliament is able to disallow any rules that are considered non-beneficial or otherwise unfair.

Part 8A—Provider requirements and other matters

New Part 8A of the Family Assistance Administration Act sets out a number of obligations that are imposed on approved providers. A number of provisions in the new Part 8A include the application of strict liability offences on providers that fail to comply with particular obligations. The new sections that include strict liability offences are: 200A, 200D, 201A, 201C, 201D, 201E, 202A, 202B, 202C, 202D, 204B, 204C, 204F, and 2014K. The offences set out in these provisions, as part of a wider compliance regime, are aimed at deterring inappropriate practices and penalising those providers that continue to disregard their obligations under the family assistance law. Civil penalty provisions on their own may not be a sufficient deterrent or penalty as providers may choose not to pay these penalties and continue to operate. In some cases, civil penalties are not sufficient in their penalty amounts as it may be more profitable for providers to inappropriately submit attendance reports and pay the financial penalties.

The nature of these obligations is such that it is extremely difficult to prove an intention element, and the punishment of these offences not involving fault is likely to significantly enhance the effectiveness of the compliance regime.

The integrity of the subsidy system relies on child care services engaging in a range of important administrative and business practices to ensure that the financial benefit of child care subsidy payments are passed onto families, including by appropriate record keeping, invoicing practices and reporting attendance and enrolment of children.
The imposition of strict liability offences in relation to the contravention of obligations offers the ability for criminal prosecution only where a contravention is considered to be sufficiently serious to pursue in this manner. Strict liability offences are only proposed in relation to contraventions that would have a significant impact on the payment integrity of the new child care regime.

None of the strict liability offences introduced in the new Part 8A, as listed above, are punishable by imprisonment under the terms of the family assistance law. These offences are punishable by penalties not exceeding 60 penalty units for an individual, with the exception of 201A, 201C and 202C which are punishable by a penalty not exceeding 80 penalty units for an individual, and 204B and 204C, which are punishable by a fine not exceeding 70 penalty units for an individual. The five provisions containing strict liability offences punishable by over 60 penalty units relate to certain matters that may impact on the ability of families to access child care. The penalty units have been increased (as compared to penalties that apply prior to the amendments to the family assistance law made by this Bill) because non-compliance with these obligations is increasing and there is growing concern about child care provider compliance.

**Division 1—Requirements in relation to enrolments and relevant arrangements**

**Section 200A** requires approved providers to provide the Secretary notification of the enrolment of a child within the timeframe specified in paragraphs (3)(c) or (d). Subsection (2) deals with notification requirements in cases where a child is enrolled prior to an approval being given or during a period of suspension of approval.

**Subsection 200A(3)** requires providers to report on care provided to children whether or not the children are enrolled at a service under a complying written arrangement for the purposes of CCS eligibility. This requirement retains current arrangements and will assist the Secretary make payments should individuals become eligible after reports are provided and will otherwise assist the administration of the child care payments system and related early childhood programmes. A “relevant arrangement” is defined as being an arrangement, other than a complying written arrangement, entered into by the provider and an individual for the service to provide care to a child.

Due to the central importance of notifying enrolments to the CCS and ACCS payment system, subsections (4) and (5) provide for an offence of strict liability for failure to notify and a civil penalty. It is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. There is also a civil penalty and an option to issue infringement notices for less serious breaches of the obligation.
For the purposes of the notification obligation in subsections 200A(1) and (2), section 200B sets out when a child is taken to be enrolled. Importantly, (unless subsection (4) applies because the child is at serious risk of abuse or neglect) a child is only enrolled where the individual and the provider of the service enter into a complying written arrangement that complies with the requirements in the Secretary’s rules referred to in subsection (3). An arrangement can only be varied in writing in accordance with section 200C.

Section 200D imposes obligations on approved providers to notify the Secretary when a “complying written arrangement” or other “relevant arrangement” is varied in a way that results in the information that was notified about the enrolment to become incorrect (or in other circumstances prescribed by the Minister’s rules), where other information becomes available that should have been provided or where the information affects the currency of the enrolment or the arrangement. Due to the importance of the integrity of the payment system and the Secretary being updated on enrolment arrangements and changes, contravention on subsection (1) is punishable by an offence of strict liability, or through a civil penalty. It is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes.

Division 2—Requirements in relation to CCS and ACCS by fee reduction

Division 2 sets out obligations of approved providers that relate to ensuring that CCS and ACCS operate by passing on fee reductions to individuals (except for ACCS in respect to which a provider is eligible).

Section 201A requires providers, after they have received a notice of a fee reduction decision for an individual, to pass on the fee reduction or to remit the amount received to the Secretary where they cannot. A provider may pass on a fee reduction amount by reducing the fee that they charge the individual. Due to the central importance of passing on fee reductions of CCS and ACCS, provisions in this section provide for an offence of strict liability for failure to notify as well as a civil penalty. It is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. Subsection 201A(2) exempts a provider from complying with this obligation where the notice of the fee reduction decision to the provider states that the Secretary has decided to pay the individual directly under subsection 67EC(6).

Subsection 201A(5) is a practical provision that allows for fee reductions to be passed on to the individual otherwise than reducing fees (for instance by providing a refund of fees already charged). This provision is intended to deal with cases where certain decisions are backdated, such as a decision to approve a provider with backdated effect or where a suspension is revoked or overturned on review. Where the individual receives the benefit of the fee reduction from the provider, the provider
is taken to have passed on the amount, and the individual is taken to have been paid an amount of CCS or ACCS.

Section 201B is a provision that obliges approved providers to ensure that they recover, from individuals, the difference between a fee reduction (made available through CCS or ACCS) and the actual fee charged to the individuals, where there is a difference. The CCS payment is designed with a concept of co-contribution to the cost of child care. This provision intends to address an issue that has arisen with CCB where some child care services did not actually pursue the difference between fee reductions and actual fee charged to the individual. The fees the provider charges the individual are reported through to the current computer system and these fees and hours of child care provided form the basis for the calculation of fee reductions. Failure to satisfy this obligation carries both criminal and civil penalties as specified.

Section 201C imposes an obligation on approved providers to charge an individual who is eligible for ACCS no more in child care fees than they would charge an individual who is eligible for CCS for the same session of care. This provision is important to ensure that providers do not raise their fees in expectation of passing higher fee reductions onto individuals by way of ACCS. An offence of strict liability applies in cases where it is clear that services are establishing a pricing structure that is different for individuals who are eligible for CCS as opposed to ACCS to ensure that providers do not take advantage of situations where individuals are eligible for the ACCS rate (such as because of their low income, or where a child is at serious risk of abuse or neglect). Although there is a strict liability offence, it is intended that action to prosecute the offence would only be taken in serious or repealed cases.

Section 201D imposes an obligation on providers to give written statements in relation to a statement period (usually a CCS fortnight, or other otherwise prescribed) to an individual containing details about the session fees and other matters set out in subsection (3). Due to the importance of this provision to the payment system of CCS and ACCS, provisions in this section provide for an offence of strict liability and a civil penalty, however it is intended that action to prosecute the offence would only be taken in serious or repealed cases. A similar obligation applies where, as a result of a review, a determination about an individual’s entitlement is set aside or varied (section 201E).

Division 3—Requirements in relation to records

Section 202A imposes on obligation to make written records where an approved provider (who would not otherwise have a record) becomes aware of an event that relates to or impacts on eligibility for CCS or ACCS, compliance with conditions for continued approval or other prescribed matters. Although a penalty of strict liability
applies, the fact that the offence is only made out where the provider becomes aware of relevant events imports a knowledge element into the offence. It is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. There is also a civil penalty and an option to issue infringement notices for less serious breaches of the obligation. A similar obligation applies in relation to keeping records (section 202B) for the period specified in subsection 202B(2).

**Section 202C** imposes an obligation to make and keep records that evidence the matters certified in a certificate of risk of serious abuse or neglect (or its cancellation). A strict liability offence applies, however it is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. There is also a civil penalty and an option to issue infringement notices for less serious breaches of the obligation.

**Section 202D** imposes an obligation to keep the Secretary informed about the location of records following cancellation or suspension of approval (or a provider or in respect of a service). As for other provisions in this Division, a strict liability offence applies, however it is not intended that the offence would be prosecuted in respect of honest or reasonable mistakes. There is also a civil penalty and an option to issue infringement notices for less serious breaches of the obligation.

**Division 4—Requirements relating to large centre-based day care providers**

This Division imposes obligations that only apply in relation to “large centre-based day care providers” as defined in section 4A of the Family Assistance Act.

**Section 203A** allows the Secretary to require financial information for the current financial year and up to four previous financial years, where the information is relevant to determining the financial viability of the provider, but only where the provider is reasonably capable of providing it. Subsection (4) exempts persons registered under the *Australian Charities and Not-for-profits Commission Act 2012* who have provided financial information under that Act. Subsection (5) puts beyond doubt that the disclosure of any personal information under this provision is taken to be authorised by law for privacy purposes. **Section 203B** sets out who notices may be given to.

**Section 203C** empowers the Secretary to engage an auditor if she is concerned about information received under section 203A. An auditor engaged must provide a report that conforms with the requirements set out in **section 203D**.

**Division 5—Requirement in relation to information and reports**

**Section 204A** sets out a requirement for providers to notify the Secretary at least 42 days before their intention to stop operating a child care service, or to provide further
information about the cessation on request. An offence and a civil penalty applies for breach of this obligation.

**Section 204B** is a very important requirement that obliges approved providers to provide materially accurate reports about sessions of care provided to a child who is enrolled with the service, or is provided with care by the service under a “relevant arrangement”. These reports are used to help calculate CCS and ACCS entitlement amounts. There are content, form and manner requirements set out in subsections (2) and (3) for these reports. The provider must give attendance notices to the Secretary relating to all children for whom care is provided, including both enrolled children (for whom complying written arrangements exist) and others for whom relevant arrangements exist. The requirement to report care provided to all children replicates the requirement contained in its predecessor provision (see old section 219N of the Family Assistance Administration Act). As reports under this provision are essential to payments of CCS and ACCS, a strict liability offence applies, however it is not intended that action would be taken to prosecute the offence where there is an honest or reasonable excuse—only serious or repeated offences would be subject to prosecution. A civil penalty also applies and the Secretary would be able to issue infringement notices under the *Regulatory Powers (Standard Provisions) Act 2014* for contravention of the requirements in this provision. This section imposes an obligation on approved providers, and compliance with this is therefore a condition of continued approval. There is limited scope (subsection (6)) for providers to update reports and this must be done promptly.

**Section 204C** allows the Secretary to give a notice to a provider instructing them to withdraw, update or vary a report where the Secretary reasonably considers that a detail is inaccurate. If a provider does not respond to a notice within the time required, the contravention is an offence as well as being subject to a civil penalty. As for section 204B, because reports are essential to payments of CCS and ACCS, a strict liability offence applies, however it is not intended that action would be taken to prosecute the offence where there is an honest or reasonable excuse—only serious or repeated offences would be subject to prosecution.

**Section 204D** empowers the Secretary to give an approved provider a written notice requiring the provider to give the Secretary information the Secretary needs in order to determine whether to reduce the number of child care places allocated to the service (where the service is the subject of allocation of places). Failure to comply with the notice exposes a provider to the civil penalty outlined in subsection (5).

**Section 204E** imposes a requirement to comply with a notice to provide information about children who are enrolled. An offence and a civil penalty apply to contraventions.
Section 204F imposes a requirement for approved providers to provide information about matters prescribed by the Minister’s rules, commonly referred to as notifiable events. An offence and a civil penalty apply to contraventions.

Section 204G allows the Minister to prescribe rules that impose requirements about monitoring or investigating whether an approved service is providing care to a child who is of a class in respect of whom no one is eligible (under paragraph 85ED(1)(b) of the Family Assistance Act). Such children might be subject to “child-swapping” measures and the requirements could relate to the provision of information about this practice.

Section 204H sets out provisions that must be complied with notwithstanding a provider’s cancellation or suspension of approval. This provision has the effect that any penalty or offence contained in the listed provisions can still apply on contravention.

Section 204J clarifies, to avoid any doubt, that the collection, use or disclosure of personal information for the purposes of determining the financial viability of a large centre-based day care provider is authorised by law for privacy purposes.

Section 204K requires approved providers to inform an appropriate State/Territory body that, within six weeks after it has given a certificate certifying, or applied for a determination determining, that the provider considers the relevant child is or was at risk of serious abuse or neglect. The purpose of this provision is to ensure that State or Territory government agencies responsible for the welfare of children are informed and able to respond to the welfare risks that such children may be facing.

**Division 6—Business continuity payments**

This Division sets out provisions that allow for payments of CCS and ACCS to be made where there are good reasons why approved providers are unable to provide section 204B reports (for instance, where the computer system that facilitates such reporting is down).

**Items 203 and 204** make minor technical amendments consequential upon the introduction of CCS and ACCS by this Bill.

**Part 8C—Regulatory powers**

This Part triggers the monitoring provisions under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*. Prior to amendments to the child care provisions in the family assistance law proposed by this Bill, the family assistance law contained its own monitoring powers and processes. The purpose for triggering the *Regulatory Powers Act 2014* is to ensure that monitoring is brought into line with the consistent
approach embodied by that Act (subject to modifications where these are necessary in the child care payment context). The triggering of the *Regulatory Powers (Standard Provisions) Act 2014* by provisions in this Bill is not intended to expand the Commonwealth’s regulatory powers with respect to child care matters.

**Division 1—Monitoring powers**

**Section 219UA** sets out: which provisions in the family assistance law are subject to monitoring under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*; what information is subject to monitoring; and which provisions are “related provisions” for the purposes of Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*. Subsection (4) sets out matters that are required to be specified when triggering Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* and specifies who or what the following matters are: authorised applicant; authorised person; issuing officer; relevant chief executive; and relevant court.

**Section 219UB** sets out “listed child care information provisions” for the purposes of section 219UA (these provisions are subject to monitoring under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*).

**Section 219UC** modifies the *Regulatory Powers (Standard Provisions) Act 2014* to ensure that entry of premises for the purposes of monitoring where either an occupier or a person who apparently represents the occupier provides consent for entry. This is important in the child care context because it is likely that educators or staff working for an occupier may provide consent on behalf of an occupier when an authorised officer seeks entry for monitoring purposes.

**Section 219UD** empowers the Secretary to appoint authorised persons for the purposes of the monitoring powers in the *Regulatory Powers (Standard Provisions) Act 2014*. It is intended that persons appointed under this provision will be APS employees under the *Public Service Act 1999*.

**Division 2—Civil penalties**

**Section 219VA** ensures that the civil penalty provisions in the family assistance law are enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*. This ensures that orders can be obtained in the Federal Court or Federal Circuit Court under that Act to enforce the penalties.

**Section 219VB** imposes a requirement for persons to assist with applications for civil penalty orders, but only where the Secretary suspects or believes that the person can provide relevant information. This provision is not intended to displace the privilege in respect of self-incrimination and is intended to only be relied on in
limited cases where it is clear that a person’s assistance will assist to obtain an order.

Division 3—Infringement notices

Section 219WA provides that civil penalty provisions are subject to the infringement notice provisions in Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*. Infringement officers are appointed under subsection (3) and will be APS employees of the Department responsible for administering the Act (currently the Department of Education and Training).

Subsection (6) operates as a modification of the provision in the *Regulatory Powers (Standard Provisions) Act 2014* that ensures that infringement notices can only be issued with respect to a single contravention and ensures that a single notice can cover multiple contraventions. This provision is required because of the related contraventions that are possible under the family assistance law and enables providers and the Secretary to outline related contraventions that might occur in relation to multiple children (for example, multiple contraventions of the notice requirement in section 204B) or in relation to related behaviour in a single notice. It is not intended to rely on single notices in relation to behaviour that is, or contraventions that are, unrelated.

Division 4—General rules about offences and civil penalty provisions

Section 219XA clarifies that the physical elements required to prove an offence are as set out in the provision that provides for the contravention.

Section 219XBl is an interpretative provision that applies where one provision states that a person commits an offence or is liable to a civil penalty where they contravene another provision. Subsection (2) makes clear that a reference to the contravention relates to both provisions.

Items 209 and 210 make minor consequential amendment to the delegation provision in the family assistance law, including by listing important powers that should be exercised by the Secretary personally and cannot be delegated.

Item 211 replaces the provision that deals with notice requirements by referring to “providers”, which is a new concept introduced by this Bill.

Items 212, 213 and 214 are minor and technical amendments consequential upon the introduction of CCS and ACCS.

Item 215 inserts new section 230A into the Family Assistance Administration Act to deal with the application of the family assistance law to providers that are
partnerships and therefore not legal entities or persons in their own right. This provision essentially ensures that the obligations and permissions of the provider rest with the partners. New section 230B is a similar provision that ensures that the obligations and permissions of other unincorporated providers rest with each member of the entity or body’s governing body.

**Items 216, 217 and 218** further clarify the effect of the family assistance law in respect of partnerships and unincorporated bodies, which are both entity types that are not uncommon for child care providers.

**Items 219 and 220** amend and limit the standing appropriation in section 233 of the Family Assistance Administration Act to ensure that additional funds required to pay full rates of ACCS are drawn through Annual Appropriation Acts, rather than through the standing appropriation in the family assistance law. Generally item 1 and 2 operate to essentially require the calculation of a notional CCS amount that the individual would be entitled to if they were not entitled to ACCS—this amount is drawn through the standing appropriation—and require the remaining amount to meet the entire ACCS entitlement to be drawn elsewhere. A payment of an amount under a funding agreement entered into under section 85GA, is also drawn through Annual Appropriation Acts rather than through the standing appropriation.

**Item 221** is a minor technical amendment.
Schedule 2—Consequential amendments

Items 1 and 2 make an amendment to the A New Tax System (Goods and Services Tax) Act 1999 which is consequential on the removal of “registered care” as a kind of Commonwealth supported child care by Schedule 1 of this Bill.

Items 3 and 4 make some minor consequential amendments to the Early Years Quality Fund Special Account Act 2013 consequential upon the new terminology of “approved provider” and “large centre-based day care provider” introduced by Schedule 1 of this Bill.

Item 5 makes a minor consequential amendment to the Fringe Benefits Tax Assessment Act 1986. The previous references to an array of care types for the purposes of “exempt residual benefits” is replaced by the simpler term “approved child care service”, as introduced by Schedule 1 to this Bill.

Items 6, 7 and 8 make amendments to the Income Tax Assessment Act 1997 that are consequential upon the cessation of CCB and CCR and the introduction of CCS and ACCS by Schedule 1 of this Bill. The overall approach to the tax treatment of child care payments, however, remains unchanged.
Schedule 3—Other amendments

Part 1—Amendments commencing day after Royal Assent

**Items 1 and 2** amend section 4 of the Family Assistance Act by specifying that, despite subsection 14(2) of the Legislation Act 2003, a determination made for subsection (1) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. The departure from the general position reflected in section 14 of the Legislation Act 2003 is intended to ensure that future versions of the instruments that set out vaccination and immunisation details and schedules (including the Australian Immunisation Handbook) can continue to be meaningfully referred to. The Australian Immunisation Handbook is approved by the National Health and Medical Research Council to provide clinical advice on vaccination. As the Handbook is updated regularly to take account of scientific evidence as it becomes available (and is currently in its 10th edition of publication) it is important to ensure that any reference in a legislative instrument made under section 4 is a reference to the current and up to date edition. The Handbook is publicly, readily and freely available to access from the National Health and Medical Research Council website, through the Australian Government Department of Health, for those seeking to access the content of the law. It is understood that updates to the Handbook are also regularly notified on the National Health and Medical Research Council’s homepage.

**Items 3, 4, 5 and 6** introduce amendments to section 194 and section 199 of the Family Assistance Administration Act that allow the Minister to, firstly, prescribe circumstances in which applications (made commencement day from Royal Assent) for approval of a child care service are taken to not have been made. This rule making power could be used to limit applications to address excessive growth within a particular child care service type, specifically where there are concerns about proven or alleged non-compliance with family assistance law. It could also be exercised to establish a short “moratorium” on new applications in the lead up to transition to the new CCS regime. The second amendment to section 199 allows the Secretary to reassess whether a child care service continues to meet the conditions of continued approval. Where a service has been identified as no longer meeting their conditions of continued approval, the service’s approval may be cancelled. This provision ensures that sanction action in relation to non-compliant existing services can occur in the lead up to the new CCS system. This provision also aligns with the ability of the Secretary, following the commencement of Schedule 1 of this Bill, to review the approval of approved providers.

**Items 7 and 8** simplify a provision in the A New Tax System (Goods and Services Tax) Act 1999 that deals with the GST treatment of child care that is funded by the
Commonwealth. The provision allows the Minister to determine certain kinds of child care for this purpose to enable new child care funding programmes to be treated in a consistent way for GST purposes.

**Part 2—Amendments commencing 1 July 2017**

**Items 9 and 10** shorten the period in which CCB service approvals are able to be backdated from the date of application. A change is made from 6 to 3 months. This provision is transitional in nature and is designed to ensure that lengthy backdated approvals are not possible in the lead up to the new CCS system.

**Items 11 to 20** make amendments related to the cessation of enrolment advances. These amendments ensure that no new enrolment advances are payable in relation to enrolments that post-date 1 July 2017. The amendment will also ensure that, from 1 July 2017, enrolment advances can begin to be recovered where they were paid in relation to enrolments that occurred more than four years ago.
Schedule 4—Application, saving and transitional provisions

Part 1—Introduction

Item 1 sets out definitions for some terms specifically for the purposes of the application, savings and transitional provisions in Schedule 4 of the Bill. Notably, the “commencement day” is the day that Schedule 1 commences and the “pre-commencement period” is taken to be (approximately) the six month period leading up to that day.

Part 2—Child care subsidy and Additional Child Care Subsidy

Item 2 is essentially an application provision which puts beyond doubt that a person is only able to be eligible for (and therefore be paid) CCS or ACCS for a session of care provided on or after commencement day, and not before.

Item 3 is a provision that ensures that individuals who had been in receipt of CCB by fee reduction, or who had claimed CCB prior to commencement day, are taken to have made a claim for CCS after commencement day. This provision aims to ensure a smooth transition into the new CCS system for existing CCB recipients/claimants by ensuring that they do not need to make a new claim for assistance with their child care. However it is intended that the Secretary will require individuals, through her information gathering powers, to provide information that they will be eligible.

Item 4 is another provision that aims to ensure a smooth transition to the new CCS system by allowing amounts of CCS to be paid promptly after commencement day. Under this provision, individuals can make early claims for CCS, and the Secretary, through her delegates, can exercise certain powers and functions in anticipation of making CCS and ACCS payments. A provision at the end of the item clarifies that these powers and functions can only be exercised subject to the application provision in Item 2, about how a person can only be eligible for CCS and ACCS after commencement day.

Item 5 ensures that the effective first indexation day for certain new CCS amounts that are subject to indexation is 1 July 2018. This means that relevant dollar amounts provided for in the Bill will be deemed to have been indexed from commencement in line with consumer price index movement.

Item 6 ensures that the new requirement for arrangements (contracts with child care providers) to be in writing will apply to arrangements that are already in force on commencement day. This means, among other things, that any verbal contracts for
the provision of child care need to be set out in writing for a person to be eligible and entitled to CCS following commencement day.

**Part 3—Child care benefit and Child Care Rebate**

**Item 7** puts beyond doubt that from commencement day onwards, eligibility (and therefore entitlement) for CCB and CCR is no longer possible in relation to child care that occurs from that day onwards.

**Item 8** saves the operation of legislation and instruments as they were prior to amendments made by Schedule 1 of the Bill to ensure that eligibility and entitlement for CCB or CCR can still be determined and reviewed in respect of child care that occurred prior to commencement day.

**Part 4—Providers of child care services**

**Item 9** ensures continuity for operators of child care services prior to commencement day. Under this provision operators are taken to be “providers” under the new CCS system on and from commencement day.

The provision also provides the Secretary the power to determine that an approved child care service is a service of a type listed in subitem 9(2). The Secretary’s determination will be a legislative instrument where it is expressed to apply in relation to a class of approved child care services.

Where the Secretary’s determination relates to a particular approved child care service, it will not be a legislative instrument for the purposes of the *Legislation Act 2003*.

The provisions are beneficial in nature as they support existing operators to transition into the new CCS approval regime without having to make a new application for approval, as well as to assist continuity of business. Where a class determination is made, it will be subject to further parliamentary scrutiny through the disallowance process for legislative instruments.

Where a determination is made in relation to a particular service, the determination itself is not amenable to merits review, given its purpose is to efficiently and effectively transition currently approved services into the new system. However, there is nothing to prevent a provider who wishes to hold CCS approval for a service or services from making a new application for approval under section 194B of the Family Assistance Administration Act. The primary consequences of being deemed a certain service type relate to the kinds of conditions of continued approval which apply to that service type (see Part 8 of the Family Assistance Administration Act), as well as the hourly rate cap that will apply to sessions of care provided by that
service (see table in subclause 2(3) of Schedule 2 of the Family Assistance Act). Once transitioned, the obligations set out under the family assistance law, will apply without any differentiation between transitioned services, and services approved under the new CCS regime. Merits review will continue to be available in respect of any further decisions made under the family assistance law which affect the provider as a consequence of their transition.

**Item 10** saves the previous effect of the family assistance law to ensure that: liability for debts under the old law continues; new debts can arise under the old debt rules in relation to CCB and CCR payments; debts can be recovered under the recovery powers in the family assistance law as amended by Schedule 1 of this Bill; and old decisions are still reviewable.

**Part 5—Miscellaneous**

**Item 11** is declaratory and clarifies that the amendment of the delegation power in the family assistance law does not affect a delegation (or power exercised in reliance on one) previously in effect.

**Item 12** gives the Minister a power to make rules dealing with transitional issues. This power is worded broadly in order to ensure that any unforeseen and unintended consequences of repealing and amending legislation can be remedied promptly and flexibly by legislative instrument. Although the power is broad and allows the Minister to modify the effect of principal legislation, the power is intended to be limited to ensuring the smooth transition into the new CCS and ACCS system and the framing of this power means that any rules that attempt to modify the principal legislation other than to assist transition would be beyond power and ineffective. The power is intended to be relied on to ensure beneficial outcomes for providers, services and individuals who may otherwise be affected by unanticipated scenarios that arise at transition. The power to modify principal legislation is also limited to a two year period from commencement in light of the expectation that no further transitional issues will arise after that time. Any rules made under this power will be subject to further parliamentary scrutiny through the disallowance process for legislative instruments, which means that Parliament is able to disallow any rules that are considered non-beneficial or otherwise unfair. In addition, to avoid doubt, there is no ability to convict a person of an offence, or impose a pecuniary penalty, in relation to conduct which took place prior to registration of the rules, where the conduct would not have been unlawful but for any retrospective effect of rules made under this provision.