



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

No. 79, 2011

**An Act to amend the law relating to family
assistance, social security and student assistance,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to family
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[Assented to 25 July 2011]

The Parliament of Australia enacts:

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

No. 79, 2011 1

1 Short title

This Act may be cited as the *Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 July 2011
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	26 July 2011
3. Schedule 1, Part 2	Immediately after the time specified in the <i>Family Assistance Legislation Amendment (Child Care) Act 2010</i> for the commencement of item 5 of Schedule 5 to that Act.	16 May 2009
4. Schedules 2 and 3	The 28th day after this Act receives the Royal Assent.	22 August 2011
5. Schedules 4 and 5	The day after this Act receives the Royal Assent.	26 July 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Set off and recovery of amounts

Part 1—Main amendments

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

1 Subsection 3(1)

Insert:

child care service payment means:

- (a) a payment under section 219Q or subsection 219QA(2) in respect of fee reduction; or
- (b) an enrolment advance under section 219RA; or
- (c) a payment under:
 - (i) subitem 97(5) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*; or
 - (ii) subitem 97A(5) of that Schedule (as modified by the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Regulations 2009*); or
- (d) the payment known as Jobs Education and Training (JET) Child Care fee assistance that is paid by the Commonwealth; or
- (e) a payment specified in an instrument under subsection (4A).

2 After subsection 3(4)

Insert:

- (4A) The Minister may, by legislative instrument, specify a payment for the purposes of paragraph (e) of the definition of *child care service payment* in subsection (1). The payment must be one made to child care services under a scheme or program (however described) administered by the Department.

3 Paragraph 66(2)(bb)

Omit “the payment of enrolment advances under section 219RA”, substitute “various payments”.

4 Paragraph 66(2)(bc)

Repeal the paragraph.

5 Paragraph 66(2)(cb)

Omit “payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA”, substitute “various payments”.

6 Paragraph 66(2)(cc)

Omit “payments under section 219Q or subsection 219QA(2) in respect of fee reduction or payments of enrolment advances under section 219RA”, substitute “various payments”.

7 Subsection 82(2)

After “service”, insert “(the *first service*)”.

8 Paragraphs 82(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) setting off the amount of the debt against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service;

Note: For *child care service payment* see subsection 3(1).

9 Section 86

Omit “, 87A or 87B” (wherever occurring), substitute “or 87A”.

Note: The heading to section 86 is altered by omitting “, 87A and 87B” and substituting “and 87A”.

10 Sections 87A and 87B

Repeal the sections, substitute:

87A Setting off debts of an approved child care service against child care service payments

- (1) This section applies if a debt owed by an approved child care service is to be recovered by the Commonwealth by means of setting off the debt against a payment referred to in paragraph 82(2)(a).
- (2) The Secretary must determine the amount by which the payment is to be reduced. The determination has effect accordingly.
- (3) A determination under subsection (2) may cover one or more payments and may make different provision for different payments.
- (4) The Secretary may vary a determination under subsection (2).
- (5) If a payment is reduced by an amount in accordance with this section, the debt is reduced by that amount.
- (6) A determination under subsection (2) is not a legislative instrument.

11 Subparagraph 88(6)(b)(i)

Omit “, 87B”.

12 Subparagraph 90(5)(b)(i)

Omit “, 87B”.

13 Subparagraph 95(3)(a)(iia)

Omit “enrolment advances”, substitute “a payment referred to in paragraph 82(2)(a)”.

14 Subparagraph 95(3)(a)(iib)

Repeal the subparagraph.

15 Paragraph 95(4)(d)

Omit “enrolment advances; or”, substitute “a payment referred to in paragraph 82(2)(a);”.

16 Paragraph 95(4)(e)

Repeal the paragraph.

17 Paragraph 99(2)(c)

Omit “enrolment advances; or”, substitute “a payment referred to in paragraph 82(2)(a).”.

18 Paragraph 99(2)(d)

Repeal the paragraph.

19 After paragraph 108(2)(da)

Insert:

(daaa) a decision under subsection 219RA(1A) not to pay an enrolment advance; or

20 After subparagraph 111(2)(a)(xv)

Insert:

(xva) paragraph 219RA(1A)(b), (1B)(b) or (1C)(b);

21 After subparagraph 111(2)(a)(xvi)

Insert:

(xvia) paragraph 219RC(3)(d);

22 Paragraph 219Q(3)(c)

After “ceases”, insert “or where notification of decision to cease operating service”.

23 Subsection 219QA(3)

Omit all the words after “against”, substitute:

one or more child care service payments that are to be made to the service (the *first service*) or to another approved child care service operated by the person who operates the first service.

Note: For *child care service payment* see subsection 3(1).

24 After subsection 219RA(1)

Insert:

Effect of notification of decision to cease operating service

- (1A) However, the Secretary may decide not to pay the advance to the service under subsection (1) if:
- (a) before the day the Secretary proposes to pay the advance, the operator of the service notified the Secretary under subsection 219M(1) of the operator's decision to cease operating the service; and
 - (b) before that day, the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service.
- (1B) If:
- (a) the Secretary does not pay the advance to the service because of subsection (1A); and
 - (b) the operator of the service notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service; and
 - (c) the enrolment concerned has not ceased before that notification;
- the Secretary must pay the amount of the advance to the credit of a bank account nominated and maintained by the service.
- (1C) If:
- (a) in respect of an enrolment, the Secretary sets off an amount under subsection 219RC(3) against a payment to an approved child care service; and
 - (b) after the set off, the operator of the applicable service (within the meaning of that subsection) notifies the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the service; and
 - (c) the enrolment has not ceased before that notification;
- then the Secretary may pay an enrolment advance (in respect of the enrolment) equal to the amount worked out in accordance with section 219RB to the credit of a bank account nominated and maintained by that applicable service.

Note: The heading to section 219RA is replaced by the heading "**Payment of enrolment advance**".

25 Paragraph 219RA(2)(c)

After “ceases”, insert “or where notification of decision to cease operating service”.

Note: The following heading to subsection 219RA(2) is inserted “*Interpretation*”.

26 Subsection 219RA(3)

Omit “the payment”, substitute “a payment under this section”.

Note: The following heading to subsection 219RA(3) is inserted “*Notice of payment*”.

27 Section 219RC

Before “If”, insert “(1)”.

Note 1: The heading to section 219RC is altered by adding at the end “**or decision to cease operating service is notified**”.

Note 2: The following heading to subsection 219RC(1) is inserted “*Enrolment ceases*”.

28 Section 219RC

After “enrolment” (first occurring), insert “of a child for care by an approved child care service (the *first service*)”.

29 Section 219RC

Omit all the words after “amount of the enrolment advance”, substitute:
against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.

Note: For *child care service payment* see subsection 3(1).

30 At the end of section 219RC

Add:

- (2) Subsection (1) does not apply in relation to an enrolment advance if subsection (3) has applied in relation to the advance.

Notification of decision to cease operating service

- (3) If:
- (a) an operator of an approved child care service (the *applicable service*) notifies the Secretary under subsection 219M(1) of the operator’s decision to cease operating the applicable service; and

(b) either:

- (i) an enrolment advance was paid to the applicable service in respect of an enrolment; or
 - (ii) an enrolment advance would have been so paid but for a set off under subsection 82(2), section 219QA, this section or section 219RE or the imposition of a sanction under paragraph 200(1)(f); and
- (c) subsection (1) has not applied in relation to the advance; and
- (d) the operator has not notified the Secretary (in the form, and in the manner or way, approved by the Secretary) of a decision by the operator to continue operating the applicable service;

the Secretary must set off an amount equal to the amount of the advance against one or more child care service payments that are to be made to the applicable service or to another approved child care service operated by the person who operates the applicable service.

Note: For *child care service payment* see subsection 3(1).

31 Section 219RE

After “approved child care service”, insert “(the *first service*)”.

32 Section 219RE

Omit all the words after “amount equal to the payment”, substitute:
against one or more child care service payments that are to be made to the first service or to another approved child care service operated by the person who operates the first service.

Note: For *child care service payment* see subsection 3(1).

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

33 Subitem 97C(1) of Schedule 1

Repeal the subitem, substitute:

- (1) Subitem 97(5) and subitem 97A(5) are subject to:
 - (a) paragraph 82(2)(a) of the Family Assistance Administration Act (about set off of debts); and

- (b) subsection 219QA(3) of that Act (about set off where amount of applicable fee reduction reduced on recalculation); and
- (c) section 219RC of that Act (about set off of enrolment advances); and
- (d) section 219RE of that Act (about set off of business continuity payments).

34 Application and saving

- (1) The amendments made by items 8, 23, 29 and 32 apply in relation to payments that are to be made on or after the commencement of those items.
- (2) Subsection 87A(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, applies in relation to:
 - (a) debts arising on or after the commencement of this item; and
 - (b) debts arising before that commencement, to the extent that the debts were outstanding immediately before that commencement.
- (3) The amendment made by item 10 does not affect the validity of any action taken under section 87A or 87B of the *A New Tax System (Family Assistance) (Administration) Act 1999* before the commencement of that item.
- (4) Subparagraphs 88(6)(b)(i) and 90(5)(b)(i) of the *A New Tax System (Family Assistance) (Administration) Act 1999* apply on and after the commencement of this item as if a reference in those subparagraphs to section 87A of that Act included a reference to sections 87A and 87B of that Act as in force at any time before that commencement.
- (5) Subsections 219RA(1A) and 219RC(3) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as amended by this Act, apply in relation to notices given under subsection 219M(1) of that Act on or after the commencement of this item.

Part 2—Technical amendment

Family Assistance Legislation Amendment (Child Care) Act 2010

35 Item 5 of Schedule 5

Omit “item” (first occurring).

Note: This item corrects a misdescribed amendment.

Schedule 2—Child care absences

A New Tax System (Family Assistance) Act 1999

1 Subparagraph 10(2)(b)(ii)

Omit “stopped providing care for the child (otherwise than temporarily)”, substitute “permanently ceased providing care for the child”.

2 After subsection 10(2)

Insert:

- (2A) Without limiting subparagraph (2)(b)(ii), an approved child care service is taken to have permanently ceased providing care for a child in the circumstances specified in an instrument under subsection (2B).
- (2B) The Minister may, by legislative instrument, specify circumstances for the purposes of subsection (2A).
- (2C) If an approved child care service has permanently ceased providing care for a child (including because of subsection (2A)), then, for the purposes of subparagraph (2)(b)(ii), the service is taken to have done so on the day the child last physically attended a session of care provided by the service.

3 Application

The amendments made by items 1 and 2 apply in relation to working out whether an approved child care service has permanently ceased providing care for a child on or after the commencement of those items (regardless of whether the absences from sessions of care occurred before, on or after that commencement).

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

4 At the end of section 219N

Add:

- (8) Subsection (7) does not prevent rules under paragraph 205(1)(b) making provision for, and in relation to, child care services doing either or both of the following:
- (a) substituting reports given by the services under this section;
 - (b) withdrawing reports given by the services under this section.

Schedule 3—Scope of family assistance law

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

1 Subsection 3(1) (paragraph (c) of the definition of *family assistance law*)

Repeal the paragraph, substitute:

- (c) any instrument (including regulations) made under this Act or the Family Assistance Act;

2 At the end of subsection 108(2)

Add:

- ; or (h) a decision under an instrument (including regulations) made under this Act or the Family Assistance Act.

3 After subsection 108(2)

Insert:

- (2A) Paragraph (2)(h) does not apply in relation to a decision under an instrument if the instrument provides that the decision is reviewable for the purposes of this section.

4 Section 195A

Omit “, and an instrument under that law”.

5 Paragraphs 195A(a) and (b)

Omit “or instrument”.

6 Application

The amendments made by items 2 and 3 apply in relation to decisions made on or after the commencement of those items.

Child Care Act 1972

7 Subsection 4(1) (paragraph (c) of the definition of *family assistance law*)

Schedule 3 Scope of family assistance law

Repeal the paragraph, substitute:

- (c) any instrument (including regulations) made under the *A New Tax System (Family Assistance) Act 1999* or the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Social Security Act 1991

8 Subsection 23(1) (definition of *family assistance law*)

Repeal the definition, substitute:

family assistance law has the meaning given by subsection 3(1) of the Family Assistance Administration Act.

Schedule 4—Protected information

Age Discrimination Act 2004

1 Subsection 41(2A)

Omit “a determination in force under subparagraph 169(1)(a)(i)”, substitute “guidelines in force under paragraph 169(a)”.

2 Subsection 41(3A)

Omit “a determination in force under subparagraph 209(1)(a)(i)”, substitute “guidelines in force under paragraph 209(a)”.

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

3 After subsection 161(1)

Insert:

State and Territory laws

- (1A) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of:
- (a) the Education and Care Services National Law applying as a law of a State or Territory; or
 - (b) a law of a State or Territory that applies the Education and Care Services National Law as a law of that State or Territory (whether or not that law has commenced); or
 - (c) regulations made under the Education and Care Services National Law; or
 - (d) a law of a State or Territory that substantially corresponds to the provisions of the Education and Care Services National Law (whether or not that law has commenced); or
 - (e) regulations made under a law referred to in paragraph (d).
- (1B) In subsection (1A):

Education and Care Services National Law means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

Note 1: The following heading to subsection 161(1) is inserted “*Commonwealth laws*”.

Note 2: The following heading to subsection 161(2) is inserted “*No effect on operation of the Freedom of Information Act 1982*”.

4 At the end of subsection 162(2)

Add:

; or (f) with the express or implied authorisation of the person to whom the information relates.

5 Subsections 168(2) and (3)

After “guidelines”, insert “(if any)”.

6 Section 169

Repeal the section, substitute:

169 Guidelines for exercise of Secretary’s disclosure powers

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

- (a) the Secretary’s power to give certificates for the purposes of paragraph 168(1)(a);
- (b) the Secretary’s power under paragraph 168(1)(b).

7 Transitional—guidelines for exercise of Secretary’s disclosure powers

- (1) Guidelines in force under section 169 of the *A New Tax System (Family Assistance) (Administration) Act 1999* immediately before the commencement of this item continue in effect, after that commencement, as if they had been made under that section, as in force after that commencement.
- (2) Subitem (1) does not prevent the variation or revocation of the guidelines after that commencement.

Social Security (Administration) Act 1999

8 At the end of subsection 202(2)

Add:

; or (f) with the express or implied authorisation of the person to whom the information relates.

9 Subsections 208(2) and (3)

After “guidelines”, insert “(if any)”.

10 Section 209

Repeal the section, substitute:

209 Guidelines for exercise of Secretary’s disclosure powers

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

- (a) the Secretary’s power to give certificates for the purposes of paragraph 208(1)(a);
- (b) the Secretary’s power under subsection 208(1) to disclose information to a person referred to in subparagraph 208(1)(b)(i).

11 Transitional—guidelines for exercise of Secretary’s disclosure powers

- (1) Guidelines in force under section 209 of the *Social Security (Administration) Act 1999* immediately before the commencement of this item continue in effect, after that commencement, as if they had been made under that section, as in force after that commencement.
- (2) Subitem (1) does not prevent the variation or revocation of the guidelines after that commencement.

Student Assistance Act 1973

12 At the end of subsection 351(2) (before the note)

Add:

; or (f) with the express or implied authorisation of the person to whom the information relates.

13 Subsections 355(2) and (3)

Omit “from time to time in force under subsection 356(1)”, substitute “(if any) from time to time in force under section 356”.

14 Section 356

Repeal the section, substitute:

356 Guidelines for exercise of Secretary’s disclosure powers

The Minister may, by legislative instrument, make guidelines for the exercise of either or both of the following:

- (a) the Secretary’s power to give certificates for the purposes of paragraph 355(1)(a);
- (b) the Secretary’s power under paragraph 355(1)(b).

15 Transitional—guidelines for exercise of Secretary’s disclosure powers

- (1) Guidelines in force under section 356 of the *Student Assistance Act 1973* immediately before the commencement of this item continue in effect, after that commencement, as if they had been made under that section, as in force after that commencement.
- (2) Subitem (1) does not prevent the variation or revocation of the guidelines after that commencement.

Schedule 5—Other amendments

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

1 Subsection 50ZA(2)

Omit “Subject to subsection (3), the”, substitute “The”.

2 Subsection 50ZA(3)

Repeal the subsection.

3 Subsection 50ZC(2)

Omit “Subject to subsection (3), the”, substitute “The”.

4 Subsection 50ZC(3)

Repeal the subsection.

5 Subparagraph 71G(1)(a)(i)

After “section 219Q”, insert “or subsection 219QA(2)”.

6 Subparagraph 111(2)(a)(vii)

Omit “50ZA(3)”, substitute “50ZA(4)”.

7 Subparagraph 111(2)(a)(vii)

Omit “50ZC(3)”, substitute “50ZC(4)”.

8 Subsection 195(1)

Omit “Subject to subsection (2), the”, substitute “The”.

9 Subsection 195(2)

Repeal the subsection.

10 At the end of section 195

Add:

Refusal

- (5) The Secretary must refuse to approve a child care service for the purposes of the family assistance law if the Secretary is not satisfied of one or more of the matters referred to in subsection (1).
- (6) If the Secretary refuses to approve a child care service for the purposes of the family assistance law, the Secretary must give the applicant notice of:
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's rights under this Act to seek a review of the refusal decision.

11 Subsection 196(3)

Repeal the subsection, substitute:

Compliance with Commonwealth, State and Territory laws

- (3) It is a condition for the continued approval of an approved child care service that:
 - (a) the operation of the service; and
 - (b) the provision of care by the service; and
 - (c) the construction of the premises of the service; and
 - (d) the equipment at the premises of the service;comply with all applicable requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the service operates.

12 Subsection 219B(2)

Omit "Subject to subsection (3), the", substitute "The".

13 Subsection 219B(3)

Repeal the subsection.

14 At the end of subsection 219B(5)

Add "or 50ZA(2)".

15 Subsection 219BA(2)

Omit "Subject to subsection (3), the", substitute "The".

16 Subsection 219BA(3)

Repeal the subsection.

17 At the end of subsection 219BA(5)

Add “or 50ZC(2)”.

18 Subsection 219QA(1)

Repeal the subsection, substitute:

- (1) This section applies if the Secretary, on recalculating under section 50ZA or 50ZC the amount in which the Secretary considers fee reduction is applicable in respect of a session or sessions of care provided by an approved child care service to a child in a week, reduces the amount (including to nil).

19 Subsection 219QA(2)

After “amount”, insert “(if any)”.

20 Subparagraph 219QB(1)(a)(i)

After “section 219Q”, insert “or subsection 219QA(2)”.

21 Application

- (1) The amendments made by items 1 to 4 and 12 to 19 apply in relation to recalculations done under section 50ZA or 50ZC of the *A New Tax System (Family Assistance) (Administration) Act 1999* on or after the commencement of those items in respect of weeks beginning before, on or after that commencement.
- (2) The amendments made by items 5 and 20 apply in relation to amounts paid on or after the commencement of those items.
- (3) The amendments made by items 8 to 10 apply in relation to applications made under section 194 of the *A New Tax System (Family Assistance) (Administration) Act 1999* on or after the commencement of those items.
- (4) The amendment made by item 11 applies, on and after the commencement of that item, in relation to child care services approved before, on or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 23 February 2011
Senate on 12 May 2011]*

(4/11)

24 *Family Assistance and Other Legislation Amendment (Child Care and Other Measures)*
Act 2011 No. 79, 2011