



# Child Care Service Obligations

Legislative extracts for approval and continued approval under the Family Assistance Law

## Important Information

In order to pass on fee reductions to individuals a child care service must be approved for Child Care Benefit (CCB) purposes and must comply with Family Assistance Law. Individuals that elect to claim CCB as a lump sum rather than receiving CCB by fee reductions can only do so in relation to care provided by an approved child care service.

Many conditions of approval are set out in Part 2 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (“the Eligibility Rules”) (**see Attachment A**).

In order to remain approved a service must continue to comply with the obligations set out in the legislation and those set out in Part 3 of the Eligibility Rules. Failure to comply with those obligations may result in sanctions being imposed on a service and in many cases is also a criminal offence. Some obligations are also subject to civil penalties if not met.

Key legislation relating to approved child care services and CCB includes:

- *A New Tax System (Family Assistance) Act 1999* (“the Family Assistance Act”)
- *A New Tax System (Family Assistance) (Administration) Act 1999* (“the Family Assistance Administration Act”)
- *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (“the Eligibility Rules”)
- *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Statements) Rules 2009* (No.1)
- *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000*
- *Child Care Benefit (Session of Care) Determination 2000*
- *A New Tax System (Family Assistance) (Administration) (Child care benefit-when enrolment ceases (number of weeks)) Specification 2007*
- *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006*
- *A New Tax System (Child Care Benefit – Eligible Hours of Care (Determination) 2006*

- Applicable Commonwealth State or Territory child care laws and local government laws.

Please note that the following are key extracts from the Commonwealth legislation only and do not represent a comprehensive description of all obligations. All Commonwealth legislation, including relevant legislative instruments, can be found on the [Comlaw](#) website.<sup>1</sup>

**Note:** This information was current at the time of publication – July 2015.

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<sup>1</sup> [www.comlaw.gov.au](http://www.comlaw.gov.au)

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

## Section 194 – Application for approval

### 194 - Overview

Only the person who operates or proposes to operate the service may apply for its approval. The applicant cannot make the application for approval if they will not be the operator. An application must be complete in order to be considered.

Information in the application form will help you assess whether you are the right person to make an application for approval under section 194 of the Act. Please consider the information carefully. If the service is approved on your application you will be responsible for the service's compliance with its obligations relevant to continued approval.

### 194(1) – Who may apply

A person who operates, or proposes to operate, any of the following kinds of child care service:

- (a) a centre based long day care service
- (b) a family day care service
- (ba) an in-home care service
- (c) an occasional care service
- (d) an outside school hours care service

may apply to the Secretary to have the service approved for the purposes of the family assistance law.

### 194(2) – Exception – person is a registered carer

However, a person cannot make an application under subsection (1) if the person is a registered carer.

### 194(3) – Form of application

An application under subsection (1) must:

- be made in a form and manner required by the Secretary; and
- state which of the kinds of service mentioned in subsection (1) the service is; and
- contain any information required by the Secretary; and
- be accompanied by any documents required by the Secretary; and
- in the case where a determination under section 206 is in force—be accompanied by the fee (if any) prescribed by the regulations for the making of applications under subsection (1).

## Section 195 – Approval of child care services

### 195 - Overview

If your application for child care service approval meets all the requirements specified in subsection (1), the service will be approved and you will be given a certificate of approval stating the kind of service approval and the date from which the service is approved to operate.

If your application does not meet one or more of the requirements specified in subsection (1), your service will be refused approval. You will receive a notice setting out the reasons for the refusal and your rights to seek a review of the decision.

### 195(1) - Approval

The Secretary must approve a child care service for the purposes of the family assistance law if the Secretary is satisfied that:

- (a) an application has been made in accordance with section 194 to have the service approved; and
- (b) the service is of the kind stated in the application; and
- (ba) if the operator of the service is a large long day care centre operator—the operator is financially viable and is likely to remain so; and
- (c) the service satisfies any eligibility rules applicable to the service under paragraph 205(1)(a); and
- (d) in the case where the service is covered by a determination in force under section 206—if the service were to be approved, child care places would be allocated to the service under section 207.

### 195(1A)

For the purpose of paragraph (1)(ba), in determining whether the operator of the child care service is financially viable, and likely to remain so, the Secretary must have regard to any financial information provided under section 219GA in relation to the operator. The Secretary may take into account any other matters he or she considers relevant.

### 195(3)

If the Secretary approves the service, the Secretary must give the applicant a certificate of approval, stating:

- (a) the kind of approved child care service; and
- (b) the day from which the approval operates.

### 195(4)

For the purposes of paragraph (3)(b), the day from which the approval is expressed to operate:

- (a) may be a day before the day the Secretary approves the service; but
- (b) must not be a day that is earlier than 6 months before the day on which the application for the approval was made.

## 195(5) - Refusal

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).

## 195(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.

## Section 195A – Obligations and permissions of an approved child care service are those of the operator

### 195A - Overview

This section clarifies that any obligation imposed on an approved child care service by the family assistance law is taken to be imposed on the operator of that service. This makes it clear that the operator is responsible for the obligations imposed on the service. Any permissions conferred on the approved child care service are also taken to be conferred on the operator of that service.

### 195A

For the purposes of the family assistance law:

- (a) when an obligation is imposed by that law on an approved child care service it is taken to be imposed on the person operating the service; and
- (b) when a permission is conferred by that law on an approved child care service it is taken to be conferred on the person operating the service.

## Section 196 – Conditions for continued approval – compliance with rules and laws

### 196 - Overview

Subsection (1) requires a service to satisfy the rules for continued approval set out in the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* as amended from time to time (**see Attachment A**).

Subsection (2) requires a service to continue to comply with all requirements of the family assistance law, including the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* and the relevant instruments (these instruments are referred to in this document).

Subsection (2A) requires a service to co-operate with officers authorised under the Act to enter child care service premises to inspect records and monitor compliance with conditions of continued approval.

Subsection (3) requires a service to comply with the Commonwealth or the State or Territory laws where the service operates.

A service may also be subject to a civil penalty or be sanctioned for not complying.

### 196(1) – Eligibility requirements

It is a condition for the continued approval of an approved child care service that the service satisfies any eligibility rules that are from time to time applicable to the service under paragraph 205(1)(b).

### 196(2) – Compliance with family assistance law

It is a condition for the continued approval of an approved child care service that the service not contravene an obligation imposed on the service by the family assistance law (whether or not such a contravention constitutes an offence or is of a civil penalty provision).

Note: Enforcement under this Division of this and other conditions is not limited or affected by other compliance measures in this Act (for example, infringement notices, proceedings for civil penalty orders and prosecutions).

### 196(2A)

It is a condition for the continued approval of an approved child care service that the service cooperate with a person exercising powers under sections 219K, 219KA, 219L and 219LA.

### 196(3) – Compliance with child care laws

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.

## Section 201A – Immediate suspension for certain breaches

### 201A - Overview

This section provides for the immediate suspension of the approval of a child care service in the specified circumstances.

#### 201A(1)

The Secretary may, by notice given to an approved child care service, suspend the approval of the service if the Secretary reasonably believes that:

- (a) the service is not complying with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care; or
- (b) there is an imminent threat to the health or safety of a child, or children, because of the care provided by the service to the child or children; or
- (c) due to urgent circumstances, it is no longer appropriate for the service to provide child care.

#### 201A(2)

The Secretary must, in the notice:

- (a) specify a day, not earlier than the day on which the notice is given, on which the suspension is to take effect; and
- (b) specify the grounds upon which the Secretary has suspended the service's approval; and
- (c) inform the service of its rights under this Act to seek a review of the decision to suspend the service's approval.

#### 201A(3)

If the Secretary suspends the approval of an approved child care service, the Secretary may at any time, by notice to the service, revoke the suspension with effect from the day specified in the notice.

## Section 204 – Notification of matters affecting eligibility for approval

### 204 - Overview

This section describes the obligation of an approved child care service to notify in writing any matter affecting its compliance with conditions of approval or continued approval.

**Failure to comply with this obligation is a criminal offence.** A service may be subject to a civil penalty and may also be sanctioned for not complying.

#### 204(1)

If an approved child care service has:

- (a) after the service was approved, become aware of any matter existing when the service was approved as a result of which the service should not have been approved; or
- (b) become aware of any matter occurring after the service was approved as a result of which a condition for the continued approval of the service has not been complied with

the service must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

#### 204(2)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty:      \*\*20 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$3,400 for an individual and \$1,700 for a body corporate.)

## Section 219A – Obligation to notify Secretary of enrolment of a child by an individual

### 219A - Overview

This section is about the obligation of an approved child care service to notify of all enrolments (including re-enrolments of children previously provided with care).

#### 219A(1)

An approved child care service must notify the Secretary of the enrolment of a child by an individual for care by the service.

#### 219A(2)

A child is **enrolled** by an individual for care by an approved child care service if the individual enters into an arrangement with the service for the provision of care to the child by the service.

Note: If two individuals each enter into an arrangement for the provision of care to the child by the service, each enrolment will need to be notified to the Secretary.

#### 219A(3)

If:

- (a) an individual enters into an arrangement for the care of a child by an approved child care service (the **original arrangement**); and
- (b) the enrolment of the child by the individual for care by the service ceases under section 219AD; and
- (c) a session of care is, or sessions of care are, later provided to the child by the service under the original arrangement.

the individual is taken to enter into a new arrangement for the provision of care to the child by the service at the time the session, or the first of the sessions, of care is provided.

Note: As a result, there will be a new enrolment which will need to be notified to the Secretary.



## Section 219AA – Obligation to notify Secretary of enrolment where approved child care service eligible

### 219AA - Overview

This section requires a service to notify enrolments of children certified by the service, or determined by the Department, to be at risk.

#### 219AA(1)

If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk during a period:

- (a) for which the service has given a certificate under subsection 76(2) of that Act; or
- (b) during which a determination by the Secretary under subsection 81(4) of that Act in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act is in effect

the service must notify the Secretary of the enrolment of the child for care by the service.

#### 219AA(2)

The child is taken to be **enrolled** for care by the service when the session, or the first of the sessions, of care begins.

## Section 219AB – When and how notice to be given

### 219AB Overview

This section imposes specific requirements on the giving of notice of enrolments by services. These requirements deal with the way a notice must be given, the information that must be included in the notice and when a service must give a notice.

#### 219AB(1)

A notice under section 219A or 219AA must:

- (a) be given in the form, and in the manner or way, approved by the Secretary; and
- (b) contain any information required by the Secretary.

#### 219AB(2)

Subject to subsections (3) and (4), the notice must be given no later than:

- (a) if the child is enrolled after the day on which the Secretary approves the service—the last day of the week immediately following the first week in which care is provided as a result of the enrolment; or
- (b) if the child is enrolled before that day but after the day from which the approval is expressed to operate—seven days after the day on which the approval is given.

#### 219AB(3)

If:

- (a) a child care service's approval is suspended at the time a child is enrolled by an individual for care by the service; and
- (b) that suspension is later revoked

the service must give notice of the enrolment under subsection (1) within 7 days after the suspension is revoked.

#### 219AB(4)

If:

- (a) a payment is made to the service under section 219RD in relation to a period (the **initial period**) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the **applicable week**) in respect of one or more enrolments; and
- (c) for another enrolment referred to in subsection 219A(1) or 219AA(1), the last day of the period referred to in subsection (2) of this section:
  - i. is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
  - ii. occurs during the initial period

the notice of the other enrolment must be given no later than:

- (a) seven days after the end of the initial period; or
- (b) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—seven days after the end of the last of those periods.

Example: a payment is made under section 219RD to an approved child care service for a week starting on the 22nd day of a month. This week is the initial period. Assume no other payments under that section are made to the service.

The payment is made because of the service failing to give a report under subsection 219N(1) (in respect of one or more enrolments) for the week starting on the first day of the month. This is the applicable week. Assume the last day for giving the report is the 21st day of the month.

For another enrolment, assume the last day for giving notice of the enrolment under subsection (2) of this section is the 21st day of the month or a day occurring in the initial period.

The notice in relation to the other enrolment must be given by the end of the week commencing on the 29th day of that month.

## Section 219AC – Failure to notify

### 219AC - Overview

This section imposes a criminal penalty for failure to give notice of enrolments in accordance with the specified requirements. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219AC(1A) – Civil penalties

An approved child care service contravenes this subsection if:

- (a) the service is required to give notice under section 219A; and
- (b) the service does not give the notice in accordance with that section and section 219AB

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219AC(1B)

An approved child care service contravenes this subsection if:

- (a) the service is required to give notice under section 219AA; and
- (b) the service does not give the notice in accordance with that section and section 219AB

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219AC(1) - Offences

An approved child care service commits an offence if:

- (a) the service is required to give notice under section 219A; and
- (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

## 219AC(2)

An approved child care service commits an offence if:

- (a) the service is required to give notice under section 219AA; and
- (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: \*\*60 penalty units.

(\*\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

## 219AC(3)

Subsections (1) and (2) are offences of strict liability.

## Section 219AF – Obligation to update enrolment information

### 219AF - Overview

This section imposes particular requirements, including time limits, on services to report updates and corrections to enrolment information. A service may be sanctioned for not complying with these requirements.

### 219AF(1)

If:

- (a) an approved child care service gives notice of enrolment in accordance with sections 219A and 219AB, or sections 219AA and 219AB; and
- (b) after the notice is given:
  - i. information provided in the notice becomes incorrect; or
  - ii. information becomes available that, had it been available at the time the notice was given, should have been included in the notice; or
  - iii. information becomes available that, had it been available at the time the notice was given, would have required the notice to have been given in a different form;

the service must notify the Secretary of the correction or available information.

### 219AF(1A)

Subject to subsection (1B), the notice must be given within 7 days after the information becomes incorrect or becomes available.

### 219AF(1B)

If:

- (a) a payment is made to the service under section 219RD in relation to a period (the **initial period**) notified to the service under subsection 219RD(4); and
  - (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the **applicable week**); and
  - (c) for any enrolment, the last day of the period referred to in subsection (1A) of this section:
    - i. is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
    - ii. occurs during the initial period
- the notice must be given no later than:
- (d) seven days after the end of the initial period; or
  - (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—seven days after the end of the last of those periods.

### 219AF(2)

The notice must be given in the form, and in the manner or way, approved by the Secretary.

## Section 219AG – Failure to update enrolment information

### 219AG - Overview

This section imposes a criminal offence for failure to report updates to enrolment information. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219AG(1A) – Civil penalty

An approved child care service contravenes this subsection if:

- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
- (b) the service does not notify the Secretary in accordance with that section.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219AG(1) - Offence

An approved child care service commits an offence if:

- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
- (b) the service does not notify the Secretary in accordance with that section.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219AG(2)

Subsection (1) is an offence of strict liability.

## Section 219B – Obligation to pass on fee reductions where individual conditionally eligible

### 219B - Overview

This section describes the obligation on a service to pass on amounts of fee reduction notified to the service. Failure to comply with the obligation is a criminal offence.

A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219B(1)

This section applies if:

- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the **claimant**) and a child for a session of care provided by an approved child care service to the child in a week; and
- (b) the Secretary calculates under section 50Z, or recalculates under section 50ZA, the amount of fee reduction applicable in respect of the session of care; and
- (c) the Secretary has notified the service of the amount in accordance with subsection 50Z(3), or the recalculated amount in accordance with subsection 50ZA(2).

### 219B(2)

The service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the claimant, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.

Note 1: This amount must be passed on, even if the payment of amounts to the service in respect of fee reduction has been suspended under paragraph 200(1)(h).

Note 2: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219B(2A)

An approved child care service commits an offence if the service contravenes subsection (2).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219B(2B)

Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.



## 219B(2B)(4)

If:

- (a) the service reduces the amount by which it charges the claimant in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of fee reduction for that session (the **anticipated fee reduction**); and
- (b) the service was an approved child care service at the time the session of care was provided

the service is taken to have passed on to the claimant an amount equal to the anticipated fee reduction.

## 2192B(5)

The amount is taken to have been passed on to the claimant on the day on which the Secretary notified the service of the amount in accordance with subsection 50Z(3) or 50ZA(2).

## Section 219BA – Obligation to pass on fee reductions where approved child care service eligible

### 219BA - Overview

This section describes the obligation on a service to pass on to itself amounts of fee reductions notified to the service when the service is eligible for sessions of care provided to a child at risk. These fee reductions are usually referred to as 'Special Child Care Benefit'.

### 219BA(1)

This section applies if:

- (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to a child at risk; and
- (b) the Secretary calculates under section 50ZB, or recalculates under section 50ZC, the amount of child care benefit by fee reduction applicable in respect of the session of care; and
- (c) the Secretary has notified the service of the amount in accordance with subsection 50ZB(3), or the recalculated amount in accordance with subsection 50ZC(2).

### 219BA(2)

The service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to itself, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.

### 219BA(4)

If:

- (a) the service reduces the amount it charges in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of child care benefit by fee reduction for that session (the **anticipated fee reduction**); and
- (b) the service was an approved child care service at the time the session of care was provided

the service is taken to have passed on to itself an amount equal to the anticipated fee reduction.

### 219BA(5)

This amount is taken to have been passed on, on the day on which the Secretary notified the service of the amount in accordance with subsection 50ZB(3) or 50ZC(2).

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

### 219BB - Overview

This section prohibits a service from charging more than the normal fee to a person receiving what is informally referred to as Special Child Care Benefit (child at risk or in hardship).

Failure to act in accordance with this section is a criminal offence. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219BB(1)

If:

- (a) an approved child care service certifies under subsection 76(1) or (2) of the Family Assistance Act the hourly rate of fee reductions or child care benefit applicable for sessions of care provided by the service to a child during a period; or
- (b) the Secretary determines under subsection 81(2), (3) or (4) of the Family Assistance Act the hourly rate of fee reductions or child care benefit for sessions of care an approved child care service provides to a child during a period

the service must ensure that the fees set for each of those sessions do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219BB(2)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219BB(3)

Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## Section 219BC – Obligation to charge no more than usual fee – special grandparent rate

### 219BC - Overview

This section prohibits a service from charging more than the normal fee to a person eligible for the special grandparent rate of CCB.

Failure to act in accordance with this section is a criminal offence. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219BC(1)

If a determination is in force under subsection 50T(1) with the effect that an individual is eligible for the special grandparent rate for a child in respect of a session of care provided to the child by an approved child care service, the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219BC(2)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219BC(3)

Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## Section 219BD – Obligation to charge no more than usual fee – Jobs Education and Training Child Care fee assistance

### 219BD - Overview

This section prohibits a service from charging more than the normal fee to a person receiving JET Child Care fee assistance.

Failure to act in accordance with this section is a criminal offence. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219BD(1)

If:

- (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual and a child for a session of care provided by an approved child care service to the child; and
- (b) the service becomes aware that the individual is eligible to receive Jobs Education and Training (JET) Child Care fee assistance in relation to the session of care

the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge an individual who was not eligible for that assistance for the same session for the same child.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219BD(1A)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219BD(1B)

Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219BD(2)

In subsection (1):

**Jobs Education and Training (JET) Child Care fee assistance** means the payment of that name that is paid by the Commonwealth.

## Section 219E – Obligation to provide statements

### 219BE - Overview

Approved child care services must issue statements to the individuals who have children in the care of the service at least every 3 months. More detail about the statement requirements is contained in the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Statements) Rules 2009 (No. 1)* (**see Attachment A**).

Failure to issue statements as required is a criminal offence. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219E(1)

If:

- (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) a session or sessions of care are provided by an approved child care service to the child during a period (the **statement period**) described in subsection (4); and
- (c) the service is required to pass on an amount under section 219B for the session or sessions

the service must, before the end of one month starting on the day after the end of the statement period, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219E(2)

An approved child care service commits an offence if:

- (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) a session or sessions of care are provided by the service to the child during a period (the **statement period**) described in subsection (4); and
- (c) the service is required to pass on an amount under section 219B for the session or sessions; and
- (d) the service does not, before the end of one month starting on the day after the end of the statement period, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219E(3)

Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219E(4)

The statement periods for the service are as follows:

- (a) the first statement period is the period of 3 months starting on the day (the **initial day**) that is:
  - i. the day Schedule 2 to the Family Assistance Legislation Amendment (Child Care) Act 2010 commences; or
  - ii. if the Secretary approves the service under section 195 of this Act on a day later than the one described in subparagraph (i)—that later day;or, if before or during that 3-month period the service chooses a shorter period starting on the initial day, the shorter period;
- (b) each of the later statement periods is:
  - i. the period of 3 months starting on the day after the end of the immediately preceding statement period; or
  - ii. if before or during that three-month period the service chooses a shorter period starting on that day—the shorter period.

### 219E(5)

The matters required to be set out in a statement for a statement period are:

- (a) the start and end of the statement period; and
- (b) the amount that would have been the fees payable for the session or sessions of care provided by the service to the child during the statement period if no amount had been passed on under section 219B for the session or sessions; and
- (c) the amount of fee reductions required to be passed on under section 219B for the session or sessions; and
- (d) any other information the Secretary specifies in the rules (if any) made under subsection (6).

Note: The amount of fee reductions required to be set out in the statement may be a nil amount (see section 4A).

### 219E(6)

The Secretary may, by legislative instrument, make rules dealing with any of the following matters:

- a) how statements should be given
- b) to whom the statements should be given
- c) for particular approved child care services or classes of approved child care services—different statement periods
- d) other information that must be given in the statements.

## 219E(7) – Correcting or reissuing statements

If:

- (a) an approved child care service has, under subsection (1), given an individual or other person a statement (the **earlier statement**) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the **notification day**) of a recalculated rate or amount in respect of any of those sessions

the service must, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## 219E(8)

An approved child care service commits an offence if:

- (a) the service has, under subsection (1), given an individual or other person a statement (the **earlier statement**) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the **notification day**) of a recalculated rate or amount in respect of any of those sessions; and
- (c) the service does not, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: \*\*\*60 penalty units.

(\*\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

## 219E(9)

Subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.



## Section 219F – Obligation to keep records

### 219F - Overview

This section describes an approved child care service's record-keeping obligations. More detail about the kinds of records that must be kept is contained in the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006* as amended from time to time (**see Attachment A**).

Failure to keep records in accordance with this section and with the Record Keeping Rules is a criminal offence. A service may be subject to a civil penalty and may also be sanctioned for not complying.

### 219F(1) – Records must be kept

An approved child care service must keep records as provided for in rules made under subsection (3) of information and events relating to the following matters:

- (a) an individual's eligibility for payment of child care benefit under this Act
- (b) the service's eligibility for payment of child care benefit under this Act in respect of a child at risk
- (c) the service's compliance with the conditions for the continued approval of approved child care services
- (d) any other matter the Secretary specifies in the record keeping rules made under paragraph (3)(b).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219F(1A)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219F(1B)

Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219FB(2) – Records to be kept for at least 36 months – civil penalty

An approved child care service contravenes this subsection if the service stops keeping the records referred to in subsection (1) before the later of the following times:

- (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related

- (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
- i. the period mentioned in paragraph (a); or
  - ii. proceedings relevant to a previous application of this paragraph.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219FB(2A) – Records to be kept for at least 36 months - offence

An approved child care service commits an offence if the service stops keeping the records referred to in subsection (1) before the later of the following times:

- (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related
- (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
  - i. the period mentioned in paragraph (a); or
  - ii. proceedings relevant to a previous application of this paragraph.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219FB(2B)

Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219FB(3) – Secretary must make rules

The Secretary must, by legislative instrument, make rules relating to the keeping of records specifying:

- (a) the kinds of records an approved child care service must keep in relation to a matter listed in subsection (1); and
- (b) other matters (if any) in respect of which an approved child care service must keep records.

### 219FB(4) – Meaning of offence against this Act

In this section:

**offence against this Act** includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

## Section 219G – Former approved child care service to keep records

### 219G - Overview

This section describes the record keeping obligations on a person who has ceased to be the operator of an approved child care service, including keeping the Department informed of the location of the records while they continue to be required to be kept.

Failure to meet these obligations is a criminal offence. A person who does not comply may be subject to a civil penalty. A person who does not comply may also be considered unsuitable to be the operator of another approved child care service.

### 219G(1) – Obligation to keep records

A person who operates an approved child care service, immediately before the service ceases to be an approved child care service, must keep a record referred to in subsection (2) for the period for which the service would have been required, under section 219F, to keep the record if the service had not ceased to be an approved child care service.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219G(1A)

A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219G(1B)

Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219G(2) – Type of records to be kept

The records the person is required to keep are the records that the service was required to keep under section 219F immediately before the service ceased to be an approved child care service.

### 219G(3) – Notification of premises at which records are kept

The person must notify the Secretary in writing, within the period of 14 days beginning on the day after the cessation day, of the premises at which the records are kept on the day after the cessation day.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

## 219G(3A)

A person commits an offence if the person contravenes subsection (3).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

## 219G(3B)

Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 219G(4) – Notification if premises changes

If the premises at which the records are kept changes during the period:

- (a) beginning on the day after the cessation day; and
- (b) ending on the last day the person is required to keep the records under subsection (1);

The person must notify the Secretary in writing of the new premises within the period of 14 days beginning on the day the records begin to be kept at the new premises.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$34,000 for an individual and \$68,000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

## 219G(4A)

A person commits an offence if the person contravenes subsection (4).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10 200 for an individual and \$20 400 for a body corporate.)

## 219G(4B)

Subsection (4A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 219G(5)

In subsections (3) and (4):

**cessation day** means the day the service ceased to be an approved child care service.

## Section 219K – Power to enter premises to inspect records

### 219K - Overview

This section explains the powers of authorised officers and the responsibility of an approved child care service, as the case may be, to cooperate with officers exercising the powers. A service that does not cooperate may be sanctioned.

### 219K(1) – Access to inspect records

For the purposes of inspecting records referred to in section 219F or 219G, an authorised officer may enter:

- (a) in the case of records referred to in subsection 219F(1)—the premises of the approved child care service in respect of which the records are kept at any time during the service’s hours of operation; or
- (b) in the case of records referred to in subsection 219G(2)—the premises last notified under section 219G in respect of the records at any reasonable time of a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

### 219K(1A) – Access to monitor compliance

An authorised officer may enter the premises of an approved child care service, at any time during the service’s hours of operation, for the purposes of monitoring the service’s compliance with a condition for the continued approval of the service.

Note: The authorised officer could also inspect certain records while on the premises (see paragraph (1)(a)).

## Section 219L – Occupier to provide authorised officer with access to records and assistance

### 219L - Overview

This section describes the responsibilities of an occupier of the premises, or a person representing the occupier of the premises, where the records that are required to be kept are kept, to give records to an authorised officer or a person assisting that officer, and to provide all reasonable assistance.

Failure to meet these obligations is a criminal offence. A service that does not comply may be subject to a civil penalty and may also be sanctioned.

### 219L(1) – Obligation to produce records referred to in subsection 219F(1)

The occupier of premises referred to in paragraph 219K(1)(a), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219F(1).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

### 219L(1A)

A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219L(1B)

Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 219L(2)

The occupier of premises referred to in paragraph 219K(1)(b), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219G(2).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

## 219L(2A)

A person commits an offence if the person contravenes subsection (2).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

## 219L(2B)

Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 219L(3)

The occupier, or another person who apparently represents the occupier, must assist the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under section 219K.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$2,720 for an individual and \$5,440 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

## 219L(3A)

A person commits an offence if the person contravenes subsection (3).

Penalty: \*\*10 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$1,700 for an individual and \$3,400 for a body corporate.)

## 219L(3B)

Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 219L(4)

Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under subsection (1) or (3). An approved child care service that does not produce records or assist as provided for in those subsections is not complying with the responsibility. Failure to comply with the responsibility can result in a sanction being imposed under section 200.

## Section 219M – Obligations if operator decides to stop operating an approved child care service

### 219M - Overview

This section sets out the requirement for the operator of a service to notify the Department (using the template provided by the Department) at least 42 days before ceasing to operate the service, and to give further information to the Department on request. Failure to comply is a criminal offence. A service that does not comply may be subject to civil penalties and may also be sanctioned.

Other notification requirements are imposed under the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 as amended from time to time (**see Attachment A**).

### 219M(1) – Obligation to notify Secretary

If a person who operates an approved child care service decides to cease operating the service, the operator must, in the manner provided for in subsection (2), notify the Secretary of that decision:

- (a) unless paragraph (b) applies—at least 42 days before the operator ceases to operate the service; or
- (b) if the operator decides to cease operating the service:
  - i. to avoid being in breach of a law of the Commonwealth, a State or a Territory; or
  - ii. due to circumstances beyond the operator's control;as soon as possible after that decision.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

### 219M(2)

The notice must be given in the form, and in the manner or way, approved by the Secretary.

### 219M(3)

A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219M(4)- Obligation to give further information on request

An operator of an approved child care service contravenes this subsection if:

- (a) the operator notifies the Secretary under subsection (1) of the operator's decision to cease operating the service; and
- (b) the Secretary requests the operator, in writing, to give the Secretary specified information about the decision; and
- (c) the operator fails to comply with the request in accordance with subsection (6).



Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$54,400 for an individual and \$108,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219M(5)

A person commits an offence if the person contravenes subsection (4).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219M(6)

Information requested under subsection (4) must be given:

(a) in the form, and in the manner or way, approved by the Secretary; and

(b) within:

- i. if paragraph (1)(a) applies—7 days after the day on which the request was given;  
or
- ii. otherwise — the period specified in the request.

## Section 219N – Obligation to give reports to Secretary

### 219N - Overview

This section is about an approved child care service's electronic reporting obligations to the Secretary, concerning details of child care usage among other things. The use of software registered with the Secretary of the Department for Child Care Management System (CCMS) purposes is necessary to fulfil these obligations. The Secretary has approved the electronic manner of reporting.

Failure to meet these obligations is a criminal offence. A service that does not comply may be subject to a civil penalty and may also be sanctioned.

### 219N(1)

For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:

- (a) notified to the Secretary in accordance with sections 219A and 219AB; and
- (b) confirmed by the Secretary in accordance with section 219AE;

the service must give the Secretary a report in accordance with this section.

### 219N(2)

For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:

- (a) notified to the Secretary in accordance with sections 219AA and 219AB
- (b) confirmed by the Secretary in accordance with section 219AE
- (c) the service must give the Secretary a report in accordance with this section.

### 219N(3)

The report must be made in the form, and in the manner or way, approved by the Secretary.

## 219N(4)

The report must include:

- (a) any information required by the Secretary that is relevant to:
  - i. determining whether a fee reduction is applicable in relation to the care and, if so, the rate and amount of that fee reduction; or
  - ii. making a determination of entitlement, or no entitlement, in relation to the care under Division 4 of Part 3; and
- (aa) any information required by the Secretary that is relevant to:
  - i. determining whether an individual is eligible to receive child care rebate; or
  - ii. determining the amount in which child care rebate is applicable in respect of an individual and a child for care provided for the child by an approved child care service in a week, a quarter or an income year; or
  - iii. making a determination of entitlement in relation to the care under Division 4AA of Part 3; or
  - iv. determining any other matter in relation to the payment of child care rebate to an individual; and
- (b) any other information required by the Secretary.

## 219N(5)

Subject to subsection (5AA), the report must be given no later than:

- (a) if the week in which the session of care was provided fell wholly before the day on which the enrolment was confirmed—the period of 7 days after the day on which the enrolment was confirmed
- (b) otherwise - the end of the second week immediately following the week.

## 219N(5AA)

If:

- (a) a payment is made to the service under section 219RD in relation to a period (the **initial period**) notified to the service under subsection 219RD(4); and
- (b) the payment is made because of the service's failure to give a report under subsection (1) or (2) of this section within the period applicable under subsection (5) of this section;

the report must be given no later than:

- (c) seven days after the end of the initial period; or
- (d) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.

## 219N(5A)

An approved child care service contravenes this subsection if:

- (a) the service is required to give a report under subsection (1) or (2); and
- (b) the service does not give the report in accordance with this section.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

#### 219N(6)

An approved child care service commits an offence if:

- (a) the service is required to give a report under subsection (1) or (2); and
- (b) the service does not give the report in accordance with this section.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

#### 219N(7)

An approved child care service may:

- (a) substitute the report with an updated report at any time; or
- (b) if the report was given in circumstances where it was not required to be given—  
withdraw the report.

#### 219N(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.

## Section 219NA – Obligation to provide information to Secretary about number of child care places

### 219NA - Overview

This section is about the obligation on an approved child care service to provide information, if requested by the Secretary, about the number of its child care places.

A service that does not comply may be subject to a civil penalty and may also be sanctioned.

### 219NA(1)

The Secretary may give an approved child care service a written notice requiring the service to provide information required in order for the Secretary to determine whether to reduce the number of child care places allocated to the service.

### 219NA(2)

The notice must specify all of these:

- (a) the information required by the Secretary
- (b) the period, or each of the periods, in relation to which the information is required
- (c) when the information in relation to the period, or each of the periods, is required.

### 219NA(3)

The notice may specify either or both of these:

- (a) the form and manner in which the information is to be provided to the Secretary
- (b) the length of time for which the service must continue to comply with the notice.

### 219(NA)4

The service must provide the required information to the Secretary, in relation to the period, or each of the periods, specified in the notice, at the time specified in the notice and in the form and manner (if any) specified in the notice.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219NA(5)

The Secretary may give the service a written notice terminating the effect of the notice under subsection (1).

## Section 219NB – Obligation to provide further information to Secretary about enrolled children

### 219NB - Overview

This section is about the obligation on an approved child care service to comply with a request for more information about enrolled children.

Failure to comply with this obligation is a criminal offence. A service that does not comply may be subject to a civil penalty and may also be sanctioned.

### 219NB(1)

If the Secretary, by notice under section 57G, requires an approved child care service to provide further information to the Secretary (further information in relation to aspects of the care provided to children enrolled for care by the service), the service must comply with the notice.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219NB(2)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

## Section 219P – Obligations of operators of former approved child care services

### 219P - Overview

This section is about the responsibility of the operator of a *former* approved child care service to fulfil a range of obligations, as if they were still the operator of the service.

The obligations referred to in paragraphs (a) to (j) appear earlier in this document. The obligation referred to in paragraph (k), 'section 219QB', appears below.

A former operator that does not fulfil these obligations is guilty of a criminal offence and may also be subject to a civil penalty.

### 219P(1)

If the approval of a child care service is suspended or cancelled, the person who operated the child care service immediately before the service's approval was suspended or cancelled must fulfil the obligations under the following provisions in respect of sessions of care that occurred before the approval was suspended or cancelled as if it had not been:

- (a) section 219A
- (b) section 219AA
- (c) section 219AF
- (d) section 219B
- (e) section 219BA
- (f) section 219BB
- (g) section 219BC
- (h) section 219BD
- (i) section 219E
- (j) section 219N
- (k) section 219QB

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

### 219P(1A)

If the approval of a child care service is suspended or cancelled, the person who operated the child care service immediately before the service's approval was suspended or cancelled must fulfil the obligations under the following provisions in respect of care that occurred before the approval was suspended or cancelled as if it had not been:

- (a) section 219EA;
- (b) section 219QE.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

## 219P(2)

A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)



## Section 219QB – Remitting amounts that cannot be passed on

### 219QB - Overview

This section is about the obligation of an approved child care service to repay any amounts of fee reductions paid to it that could not be passed on. Failure to comply with this provision is a criminal offence. In addition, a service may be subject to a civil penalty and may also be sanctioned.

### 219QB(1)

If:

(a) either:

- i. an amount is paid to an approved child care service under section 219Q or subsection 219QA(2) in relation to a session of care provided by an approved child care service to a child in a week; or
- ii. such an amount would be paid, but for a set off under subsection 82(2) or section 219QA, section 219QD, section 219RC or section 219RE, or the imposition of a sanction under paragraph 200(1)(h); and

(b) it is not reasonably practicable for the service to pass on to the claimant or the service itself within the time required under subsection 219B(2) or 219BA(2) the fee reduction in respect of which the amount was or would have been paid;

the service must immediately remit to the Secretary an amount equal to the amount that could not be passed on

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$20,400 for an individual and \$40,800 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### 219QB(1A)

An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$10,200 for an individual and \$20,400 for a body corporate.)

### 219QB(2)

The amount must be remitted in the manner or way approved by the Secretary.

### 219QB(3)

The service must notify the Secretary of the remittal of the amount.

219QB(4)

The notice must:

- (a) be given in the form, and in the manner or way, approved by the Secretary; and
- (b) include any information required by the Secretary.

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

## Section 9 – Sessions of Care

### 9 - Overview

This section requires the Minister to determine what constitutes a session of care. The session of care rules determined by the Minister are set out in the *Child Care Benefit (Session of Care) Determination 2000* as amended from time to time (**see Attachment A**).

#### 9.1

The Minister must, by legislative instrument, determine what constitutes a **session of care** for the purposes of this Act.

#### 9.2

A determination under subsection (1) may also deal with how a session of care that starts on one day and ends on another day is to be treated for the purposes of this Act.

## Section 10 – Effect of absence from child from care of approved child care service other than an approved child care service

### 10 - Overview

This section is about the treatment of absences from care for CCB purposes and describes various rules. Subsection 10(2)(b) does not permit an absence to be attributed to a day before a child starts receiving care or a day after care permanently stops being provided. An instrument will be made to specify the circumstances in which care is taken to have permanently ceased being provided.

This section should be read together with the *Child Care Benefit (Absences from Care – Permitted Circumstances) Determination 2000* (see **Attachment A**) and the *Child Care Benefit (Sessions of Care) Determination 2000* (see **Attachment A**).

#### 10.1 - Absence from part of a session

For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service (other than an approved occasional care service) the service is taken to have provided that part of the session of care to the child.

#### 10.2 – Initial 42 days of absence

For the purposes of this Act, if:

- (a) a child is absent from all of one or more sessions of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service) on a day (even if the child is not absent from some or all of another session or sessions of care provided by the service or another service on the day); and
- (b) the day does not fall:
  - i. before the day the service has started providing care for the child; or
  - ii. after the day the service has permanently ceased providing care for the child; and
- (c) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child; and
- (d) before the day, not more than 41 days have elapsed in the same financial year on which a session of care is taken to have been provided under this subsection to the child; the service is taken to have provided the session of care to the child.

#### 10.2A

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).

#### 10.2B

The Minister may, by legislative instrument, specify circumstances for the purposes of subsection (2A).

## 10.2C

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.

## 10.3 – Additional absence days permitted

For the purposes of this Act, if:

- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service); and
- (b) more than 42 days have elapsed in the same financial year on which a session of care is taken to have been provided under subsection (2) to the child; and
- (c) one of the following applies:
  - i. the absence is due to the illness of the child, the individual in whose care the child is, that individual's partner, or another individual with whom the child lives, and a medical certificate covering that illness is obtained from a medical practitioner and given to the service;
  - ii. the absence is due to the child's attendance at a pre-school;
  - iii. the absence is due to alternative care arrangements being made for the child because the child does not have to be at school on a pupil-free day;
  - iv. the absence occurs in circumstances specified in a determination under section 11 as permitted circumstances for the purpose of this subparagraph; and
- (d) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child;

the service is taken to have provided the session of care to the child;

## Section 10A - Effect of absence of child from care of approved child care service that is an approved occasional care service

### 10A - Overview

This section is about the operation of absences from care for CCB purposes for approved occasional care services.

This section should be read together with the Child Care Benefit (Absences from Care – Permitted Circumstances) Determination 2000 (**see Attachment A**) and the Child Care Benefit (Sessions of Care) Determination 2000 as amended from time to time (**see Attachment A**).

#### 10.1 - Absence from part of a session

For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service that is an approved occasional care service, the service is taken to have provided that part of the session of care to the child.

#### 10.2 – Absences from all of a session

For the purposes of this Act, if:

- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service that is an approved occasional care service; and
- (b) the absence occurs in circumstances specified in a determination under section 11 as permitted circumstances for the purpose of this paragraph;

the service is taken to have provided the session of care to the child.

## Attachment A – Key Instruments

[Child Care Benefit \(Eligibility of Child Care Services for Approval and Continued Approval\) Determination 2000](#)

**[www.comlaw.gov.au/Series/F2006B01541](http://www.comlaw.gov.au/Series/F2006B01541)**

[A New Tax System \(Family Assistance\) \(Administration\) \(Child Care Benefit – Statements\) Rules 2009 \(No.1\)](#)

**[www.comlaw.gov.au/Series/F2009L00812](http://www.comlaw.gov.au/Series/F2009L00812)**

[Child Care Benefit \(Absence from Care – Permitted Circumstances\) Determination 2000](#)

**[www.comlaw.gov.au/Series/F2007B00431](http://www.comlaw.gov.au/Series/F2007B00431)**

[Child Care Benefit \(Session of Care\) Determination 2000](#)

**[www.comlaw.gov.au/Series/F2007B00429](http://www.comlaw.gov.au/Series/F2007B00429)**

[A New Tax System \(Family Assistance\) \(Administration\) \(Child care benefit – when enrolment ceases \(number of weeks\)\) Specification](#)

**[www.comlaw.gov.au/Series/F2007L04262](http://www.comlaw.gov.au/Series/F2007L04262)**

[A New Tax System \(Family Assistance\) \(Administration\) \(Child Care Benefit – Record Keeping\) Rules 2006](#)

**[www.comlaw.gov.au/Series/F2006L02036](http://www.comlaw.gov.au/Series/F2006L02036)**

[A New Tax System \(Child Care Benefit – Eligible Hours of Care \(Determination\) 2006](#)

**[www.comlaw.gov.au/Series/F2006L02028](http://www.comlaw.gov.au/Series/F2006L02028)**