Child Care Subsidy Minister’s Amendment Rules (No. 1) 2018

I, SIMON BIRMINGHAM, Minister for Education and Training, make the following legislative instrument.

Dated 13 March 2018

SIMON BIRMINGHAM
Minister for Education and Training
Contents

Preliminary 2
1 Name of legislative instrument ................................................................. 2
2 Commencement ......................................................................................... 2
3 Authority ................................................................................................. 2
4 Definition ............................................................................................... 2
5 Amendment of Principal Rules ................................................................. 2

Schedule—Amendments to Principal Rules 3
Preliminary

1 Name of legislative instrument

This legislative instrument is the *Child Care Subsidy Minister’s Amendment Rules (No. 1) 2018*.

2 Commencement

(1) Each provision specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The whole of this instrument</td>
<td>Immediately after the commencement of section 8 of the <em>Child Care Subsidy Minister’s Rules 2017</em>.</td>
<td>2 July 2018</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

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

3 Authority

This instrument is made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999*.

4 Definition

In this instrument:

*Principal Rules* means the *Child Care Subsidy Minister’s Rules 2017*.

5 Amendment of Principal Rules

The Principal Rules are amended as set out by a provision contained in the Schedule of this instrument.
Schedule—Amendments to Principal Rules

1 After Division 1 of Part 2

Insert:

Division 1A—Prescribed classes of children for eligibility for CCS or ACCS

8A Purpose of prescribing classes of children in this Division

Classes of children are prescribed in this Division so that an individual may be able to be eligible for CCS or ACCS, or that an approved provider of an approved child care service may be able to be eligible for ACCS (child wellbeing), for a session of care in relation to such children, notwithstanding the restriction in subparagraphs 85BA(1)(a)(ii) and 85CA(2)(b)(ii) of the Family Assistance Act (which limits CCS and ACCS eligibility in relation to children who are 13 or under and who do not attend secondary school).

8B Children 13 years or under who are attending secondary school who do not have a prescribed disability or prescribed medical condition

For paragraphs 85BA(2)(a) and 85CA(3)(a) of the Family Assistance Act, the following class of children is prescribed:
(a) children who do not meet the medical or disability requirements set out in subsection 8C(2); and
(b) are 13 years or under and are attending secondary school; and
(c) who cannot reasonably be left alone; and
(d) are children for whom no one aged 18 years or older is able to provide suitable care outside of an approved child care service.

8C Children who have a prescribed disability or prescribed medical condition

(1) For paragraphs 85BA(2)(a) and 85CA(3)(a) of the Family Assistance Act, the following class of children is prescribed:
(a) children who:
   (i) are 14 years or older; or
   (ii) are 13 years or under and are attending secondary school; and
(b) who meet the medical or disability requirements set out in subsection (2); and
(c) who cannot reasonably be left alone; and
(d) are children for whom no one aged 18 years or older is able to provide suitable care outside of an approved child care service; and
(e) where the child is 16, 17 or 18 years old, the Secretary is satisfied that there are exceptional circumstances that justify CCS or ACCS eligibility.
(2) The disability or medical requirements as referred to in paragraph (1)(b) and paragraph 8B(a) are as follows:

(a) the child has been diagnosed with, or is undergoing an assessment for, one or more of the conditions listed in Schedule 1 by a medical practitioner; or

(b) the child has been diagnosed with, or is undergoing an assessment for, one or more of the conditions listed in Schedule 2 by a psychologist who:
   (i) is registered with a Board established under a law of a State or Territory that registers psychologists in that State or Territory; and
   (ii) has qualifications or experience in assessing impairment in children; or

(c) the child has been diagnosed with, or is undergoing assessment for, a condition that is referred to in Part 2 of Schedule 3 to the Disability Care Load Assessment (Child) Determination 2010 by a medical practitioner; or

(d) the child has become a participant in the National Disability Insurance Scheme launch under section 28 of the National Disability Insurance Scheme Act 2013; or

(e) the Secretary is otherwise satisfied that the child has, or is being assessed for, a disability and makes a determination to that effect.

8D Conditions in relation to the classes of children prescribed in sections 8B and 8C

For paragraphs 85BA(2)(b) and 85CA(3)(b) of the Family Assistance Act, the following conditions are prescribed, as applicable:

(a) in relation to all prescribed children—an individual, in respect of eligibility for CCS or ACCS, or an approved provider, in respect of eligibility for ACCS (child wellbeing), as applicable, must provide a statutory declaration to the Secretary in the form prescribed under the Statutory Declarations Act 1959 (Cth) that attests to the matters referred to in paragraphs 8B(c) and (d) and 8C(1)(c) and (d) (being that the child cannot be left alone and that there is no adult able to provide suitable care) and provides an explanation as to why those matters are the case;

(b) where the child meets the disability or medical requirements referred to in paragraphs 8C(2)(a), (b), (c) or (e), and where a diagnosis has been made in relation to a permanent condition—documentary evidence has been provided of the diagnosis to the satisfaction of the Secretary;

(c) where the child meets the disability or medical requirements referred to in paragraphs 8C(2)(a), (b), (c) or (e), and where a diagnosis has been made in relation to a condition that is not permanent or where the child is still undergoing assessment—documentary evidence of the diagnosis or assessment has been provided to the Secretary that was obtained within a period of 24 months prior to its provision and is to the satisfaction of the Secretary;

(d) where the child meets the disability or medical requirements referred to in paragraph 8C(2)(d)—evidence that the child is a participant in the National Disability Insurance Scheme launch has been provided to the Secretary;

(e) where the child is one that the Secretary is otherwise satisfied as referred to in paragraph 8C(2)(e)—the Secretary has provided a notice to that effect to the individual or provider that is eligible for CCS or ACCS in relation to the child.
After section 15

Insert:

Division 5—Certain classes of children for whom no one is eligible for CCS or ACCS

15A Children in respect of whom no one is eligible—where multiple children being cared for by an in home care service in the same home

Where 1 to 5 children are in care

(1) For paragraph 85ED(1)(b) of the Family Assistance Act, no individual is eligible for CCS or ACCS for a session of care provided by an in home care service to a child where:
   (a) the child is one of no more than five children being cared for by the service at the same home during the same session of care; and
   (b) of those children, the child is not the only child who the individual or the approved provider of the in home care service has nominated in respect of the session of care for the purposes of the individual’s eligibility for CCS or ACCS.

Where 6 to 10 children are in care

(2) For paragraph 85ED(1)(b) of the Family Assistance Act, no individual is eligible for CCS or ACCS for a session of care provided by an in home care service to a child where:
   (a) the child is one of between six and ten children being cared for by the service at the same home during the same session of care; and
   (b) of those children, the child is not one of only two children who the individual or the approved provider of the in home care service has nominated in respect of the session of care for the purposes of the individual’s eligibility for CCS or ACCS.

Note: This provision is intended to ensure that the $25 hourly rate cap specified in section 15B for in home care services applies in respect of a maximum of one child among any group of up to five children (to a total of ten) being cared for during the same session of care in the same home in line with the examples set out below.

Example 1: The McEnroe family has four children in in-home care on one day, during the same period of time. Mrs McEnroe nominates her eldest son Ralph as the child referred to in paragraph 15A(1)(b) (as the one child who she wishes to be eligible for in relation to the relevant session of care). Mrs McEnroe is only eligible for CCS in relation to Ralph (not the other children in care) and the hourly rate cap that applies to fees charged by the approved provider is $25. Mrs McEnroe’s applicable percentage as worked out under clause 3 of the CCS calculator in Schedule 2 of the Family Assistance Act is 85% and so the total maximum hourly rate of CCS payable in relation to the relevant session of care is 85% of $25, which is $21.25 for each hour in the session.

Example 2: The Borg family has eight children in in-home care on one day, during the same period of time. The approved provider of the relevant in-home care service nominates Mr Borg’s eldest daughter Martina and his eldest son Patrick as the children referred to in paragraph 15A(2)(b) (as the two children who Mr Borg may be eligible for in relation to the relevant session of care). Mr Borg is only eligible for CCS in relation to Martina and Patrick (not the other children in care) and the hourly rate cap that applies to fees charged by the approved provider is $25 for Martina and $25 for Patrick. Mr Borg’s applicable percentage as worked out under clause 3 of the CCS calculator in...
Schedule 2 of the Family Assistance Act is 50% and so the total maximum hourly rate of CCS payable in relation to the relevant session of care is 50% of $25 for Martina and 50% of $25 for Patrick, which is $25 in total for each hour in the session.

3 Before section 16 and after the heading to Division 1 of Part 3
Insert:

15B In Home Care Services

(1) For item 4 of the table in subclause 2(3) of Schedule 2 to the Family Assistance Act, a type of service is: “an in home care service”.

(2) The CCS hourly rate cap for an in home care service is: “$25”.

Note: This provision, together with section 15A, is intended to ensure that the prescribed hourly rate cap for in home care services applies in respect of a maximum of only one child among any group of up to five children being cared for during the same session of care in the same home in line with the examples set out at the end of section 15A.
4 After Division 5

Insert:

Division 5A—Allocation of places to in home care services

49A Application of Division

This Division sets out allocation rules in relation to the allocation of places to in home care services for the purposes of section 198A of the Family Assistance Administration Act.

49B Matters to be taken into account in allocating places

(1) For paragraphs 198A(b) and (g) of the Family Assistance Administration Act, in working out the number of places to be allocated to an in home care service, or the number of allocated places to be reduced, the Secretary must take into account any recommendations provided by an In Home Care Support Agency.

(2) In this section, In Home Care Support Agency means an entity engaged and funded by the Department of Education and Training (or such other Department that is responsible for child care matters) to support the delivery of In Home Care through a networked brokerage model in each state and territory.

49C Maximum amount of places that can be allocated

For paragraph 198A(d) of the Family Assistance Administration Act, the maximum number of places that can be allocated to all in home care services is 3000.

Note: This maximum number applies as the maximum amount of places that can be allocated to all in home care services at any one point in time.