



## **Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021**

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I, Alan Tudge, Minister for Education and Youth, make the following rules.

Dated                    2 September 2021

Alan Tudge  
Minister for Education and Youth

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## 1 Name

This instrument is the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	23 August 2021.	23 August 2021.
2. Schedule 1, Part 1	23 August 2021.	23 August 2021.
3. Schedule 1, Part 2	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

- (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 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### Part 1—Amendments commencing on 23 August 2021

#### *Child Care Subsidy Minister’s Rules 2017*

##### **1 Section 4 (definition of *business continuity payment*)**

After “section 205A”, insert “or section 205C”.

##### **2 Section 4 (definition of *health agency*)**

Omit “has the meaning given by section 54A”, substitute “means a government agency with responsibility for human health.”

##### **3 Section 4**

Insert:

***in a COVID-19 hotspot:*** an approved child care service is in a COVID-19 hotspot on a day if it is in a location that is, for at least 12 hours of that day:

- (a) subject to a State or Territory public health order restricting the movement of persons for a period; and
- (b) within a COVID-19 hotspot as determined by the Commonwealth Chief Medical Officer for the purposes of Commonwealth support.

***in a restricted COVID-19 hotspot:*** an approved child care service is in a restricted COVID-19 hotspot on a day if:

- (a) it is in a COVID-19 hotspot on that day; and
- (b) either:
  - (i) the State or Territory public health order in relation to that COVID-19 hotspot provides that only certain children may attend child care or that children may only attend child care in certain circumstances; or
  - (ii) a State or Territory government agency advises, in advice published on the agency’s official website, that only certain children should attend child care, or that children should only attend child care in certain circumstances.

##### **4 Section 4 (definition of *Stay at Home Directions*)**

Repeal the definition

##### **5 Section 5AA**

Repeal the section.

##### **6 Section 5AAB**

Repeal the section.

##### **7 Section 5AB**

Repeal the section.

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**8 Paragraph 5B(2)(e)**

Repeal the paragraph.

**9 Paragraph 6(1)(f)**

Repeal the paragraph.

**10 Subsection 6(1A)**

Repeal the subsection, including the note.

**11 Paragraphs 8(1)(h) and (i)**

Repeal the paragraphs.

**12 Section 47AA**

Repeal the section.

**13 Section 47AB**

Repeal the section.

**14 Part 5, Division 1A**

Repeal the Division.

**15 Section 57AA**

Omit “for a period to which Division 2 does not apply”, substitute “made under section 205A of the Family Assistance Administration Act.”

**16 At the end of section 57AA**

Add:

Note: Part 4 of Schedule 3 sets out matters in relation to business continuity payments made under section 205C of the Family Assistance Administration Act in relation to the COVID-19 pandemic.

**17 Part 6, Division 2**

Repeal the Division.

**18 Schedule 3, Part 2, before clause 2.1**

Insert:

**2.1A Purpose**

- (1) This Part sets out, for the purposes of subsection 201B(1A) of the Family Assistance Administration Act, matters in relation to when a provider is not required to take reasonable steps under section 201B of that Act in relation to a session of care provided by a service to a child.

*Particular event or circumstance*

- (2) For the purposes of paragraph 201B(1A)(a) of the Family Assistance Administration Act and this Part, the particular event or circumstance is the COVID-19 pandemic.

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**19 Schedule 3, at the end of the heading to subclause 2.1**

Add “—general”.

**20 Schedule 3, subclause 2.1(1)**

Repeal the subclause.

**21 Schedule 3, subclause 2.1(2)**

Repeal the subclause, including the heading.

**22 Schedule 3, paragraph 2.1(4)(b)**

Omit the paragraph, substitute:

(b) subclause (4A) applies to the session of care; and

**23 Schedule 3, after subclause 2.1(4)**

Insert:

(4A) This subclause applies to a session of care if:

- (a) the service is not closed on the day the session of care was provided; or
- (b) the service is closed on the day the session of care was provided and one of the following applies to the service:
  - (i) the service predominantly provides care to Indigenous children;
  - (ii) if the service is not an outside school hours care service that provides only vacation care—the service has not been closed for a period of more than 14 continuous days since 23 August 2021.

**24 Schedule 3, subclause 2.1(6)**

Omit the subclause, substitute:

- (6) This subclause applies to a session of care provided by a service on a day the service is in a restricted COVID-19 hotspot.

**25 Schedule 3, subclause 2.1(7)**

Repeal the subclause.

**26 Schedule 3, after clause 2.1**

Insert:

**2.2 Exemption from enforcing payment of hourly session fees—services advised or required to close**

*Conditions*

- (1) For the purposes of paragraph 201B(1A)(c) of the Family Assistance Administration Act, the conditions are that:
  - (a) the child did not attend any part of the session of care; and
  - (b) the service is closed because a health agency has advised or required the service to close as a result of the COVID-19 pandemic; and
  - (c) if the service is a FDC service or an IHC service, the Secretary has not, since 2 July 2018, made a cancellation decision under section 195H or



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Division 4 of Part 8 of the Family Assistance Administration Act (other than a decision under section 197C) in relation to the service or the approved provider of the service.

*Period*

- (2) For the purposes of paragraph 201B(1A)(b) of the Family Assistance Administration Act, the period is the period:
- (a) beginning on the day the child care service closes as a result of the advice or requirement referred to in paragraph (1)(b); and
  - (b) ending on the earlier of:
    - (i) the last day in the period that the health agency advises or requires the child care service to be closed; and
    - (ii) 31 December 2021.

## **27 At the end of Schedule 3**

Add:

## **Part 3—Allowable absences for services in COVID-19 hotspots**

### **3.1 Allowable absences for services in COVID-19 hotspots**

- (1) This clause sets out, for the purposes of subparagraph 10(2)(c)(ii) and subsection 10(2AA) of the Family Assistance Act, conditions relating to a particular event or circumstance to be met in order for a child care service to be taken to have provided a session of care to a child on a day.
- (2) The particular event or circumstance is the COVID-19 pandemic.

*Condition*

- (3) It is a condition that on the day, the child care service is in a COVID-19 hotspot and has been or will be in that particular COVID-19 hotspot for a period of more than 7 continuous days.

## **Part 4—Business continuity payments**

### **Division 1—COVID-19 emergency business continuity payments**

#### **4.1 Purpose**

- (1) This Division sets out matters in relation to business continuity payments under section 205C of the Family Assistance Administration Act to approved providers whose services have been adversely affected by the COVID-19 pandemic.

*Emergency or disaster*

- (2) For the purposes of paragraph 205C(2)(a) of the Family Assistance Administration Act, the COVID-19 pandemic is prescribed.

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## 4.2 Definitions

In this Division:

**BCP fortnight** means:

- (a) in relation to an outside school hours care service that provides only vacation care—a period of 14 days that begins on or after the beginning of the COVID-19 viability support payment period, and each subsequent period of 14 days (if any), during which the service usually provides vacation care (including vacation care for part of the period); and
- (b) in relation to any other kind of service:
  - (i) the period of 14 days beginning on the start day in relation to the service; and
  - (ii) each subsequent period of 14 days.

**COVID-19 viability support payment** means a business continuity payment under section 205C of the Family Assistance Administration Act that is payable in accordance with this Division.

**COVID-19 viability support payment period** means the period prescribed in clause 4.4.

**reference hourly fee** for a session of care is the lower of:

- (a) the hourly session fee for the session; and
- (b) the CCS hourly rate cap for the session.

Note: The **CCS hourly rate cap** for a session of care is set out in the table at subitem 2(3) of Schedule 2 to the Family Assistance Act.

**start day**, in relation to a service, means the latest of the following days:

- (a) the first day of the COVID-19 viability support payment period;
- (b) if paragraph 4.5(3)(a) applies to the service—the first day the service was in the restricted COVID-19 hotspot;
- (c) if paragraph 4.5(3)(b) applies to the service—the day that is 28 days after the first day the service was in the COVID-19 hotspot.

## 4.3 Reference fortnight

- (1) In this Division, the **reference fortnight** of a service is:
  - (a) in relation to an outside school hours care service that provides only vacation care—the period of 14 days beginning on the first Monday of the most recent school holidays for public schools in the State or Territory in which the service is located, where the service was not in a COVID-19 hotspot for any part of those school holidays; and
  - (b) in relation to any other kind of service located in Victoria—the period of 14 days beginning on 10 May 2021; and
  - (c) in relation to any other kind of service—the period of 14 days beginning on 17 May 2021.
- (2) However, if:
  - (a) the service did not provide any sessions of care during the 14 day-period mentioned in subclause (1); or

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- (b) the Secretary is satisfied that the operation of the service in the 14 day-period mentioned in subsection (1) is not reasonably representative of the usual operation of the service over a fortnight;

the Secretary may determine another period of 14 days beginning on a Monday (including a period beginning in the COVID-19 viability support payment period) as the reference fortnight of the service.

#### 4.4 COVID-19 viability support payment period

For the purposes of paragraph 205C(1)(d) of the Family Assistance Administration Act, the period beginning on 23 August 2021 and ending on 30 November 2021 is prescribed.

#### 4.5 Eligibility criteria

- (1) For the purposes of paragraph 205C(1)(c) of the Family Assistance Administration Act, a provider is eligible for a COVID-19 viability support payment in relation to a service for a BCP fortnight if the provider and the service meet the criteria in subclauses (2) to (6).

Note: A business continuity payment made to a provider for which the provider is not eligible is a debt to the Commonwealth: see subsection 71H(1A) of the Family Assistance Administration Act.

- (2) The provider must make an application, in the form and manner determined by the Secretary, for a COVID-19 viability support payment.
- (3) On a day in the BCP fortnight, the service must be in a COVID-19 hotspot and:
- (a) if the COVID-19 hotspot is a restricted COVID-19 hotspot—the period of time the service has been or will be in that restricted COVID-19 hotspot is more than 7 continuous days; or
  - (b) otherwise—the period of time the service has been or will be in that COVID-19 hotspot is more than 28 continuous days.
- (4) On each day in the BCP fortnight:
- (a) the service must not be closed; or
  - (b) if the service is closed—one of the following applies to the service:
    - (i) a health agency has advised or required the service to close as a result of the COVID-19 pandemic;
    - (ii) the service predominantly provides care to Indigenous children;
    - (iii) if the service is not an outside school hours service that provides only vacation care—the service has not been closed for a period of more than 14 continuous days since the beginning of the previous BCP fortnight for which the provider was paid a COVID-19 viability support payment in relation to the service.
- (5) The number of sessions of care provided by the service and attended by children during the BCP fortnight is reasonably likely to be less than 50 per cent of the number of sessions of care provided by the service during the reference fortnight for the service.

Note: The sessions of care provided by the service during the reference fortnight include the sessions of care that the child attended any part of and those that are taken to have been provided under subsections 10(2) or 10(3) of the Family Assistance Act.

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However, the sessions of care provided by the service and attended by children only include sessions of care that a child attended any part of under paragraph 10(1)(a) of the Family Assistance Act.

- (6) If the service is a FDC service or an IHC service, the Secretary must not have, since 2 July 2018, made a cancellation decision under section 195H or Division 4 of Part 8 of the Family Assistance Administration Act (other than a decision under section 197C) in relation to the service or the provider.

#### **4.6 Method of determining payment**

- (1) For the purposes of paragraph 205C(1)(e) of the Family Assistance Administration Act, this clause prescribes the method of determining the amount of a COVID-19 viability support payment for a provider in relation to a service for a BCP fortnight.
- (2) If the service is an outside school hours care service (including an outside school hours care service that provides vacation care only), the amount of a COVID-19 viability support payment in relation to the service for the BCP fortnight is 40 per cent of the sum of reference hourly fees for all sessions of care provided by the service during the reference fortnight of the service.
- (3) If the service is not an outside school hours care service, the amount of the a COVID-19 viability support payment in relation to the service for the BCP fortnight is 25 per cent of the sum of reference hourly fees for all sessions of care provided by the service during the reference fortnight of the service.

## **Part 2—Amendments commencing on the day after registration**

### ***Child Care Subsidy Minister’s Rules 2017***

#### **28 Schedule 3, after subclause 4.5(5)**

Insert:

- (5A) During the BCP fortnight, the provider must comply with clauses 4.7 and 4.8.

#### **29 Schedule 3, at the end of Part 4**

Add:

#### **4.7 Provider in receipt of COVID-19 viability support payments to notify Secretary of certain matters**

- (1) This clause applies to a provider that has received a COVID-19 viability support payment.
- (2) For subsection 204F(1) of the Family Assistance Administration Act, the provider must give the Secretary written notice of the matters prescribed in the table below, by the time prescribed in the table.

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<b>Item</b>	<b>Matter to be notified</b>	<b>When notification needs to be provided</b>
1	Change in any information provided by the	Within 7 days of the end of the BCP

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<b>Item</b>	<b>Matter to be notified</b>	<b>When notification needs to be provided</b>
	provider in its application for COVID-19 viability support payments.	fortnight in which the change occurs.
2	The provider has ceased or will cease to meet one or more eligibility criteria in clause 4.5 for a BCP fortnight, or any change in circumstance that may affect eligibility for a BCP fortnight under clause 4.5.	Within 7 days of the end of the BCP fortnight.
3	That the number of sessions of care provided by the service and attended by children for a BCP fortnight is greater than 50 per cent of the number of sessions of care provided by the service during the reference fortnight.	Within 7 days of the end of the BCP fortnight.

#### **4.8 Conditions of continued approval for providers receiving COVID-19 viability support payments**

- (1) For section 195E of the Family Assistance Administration Act, this clause sets out conditions of continued approval of a provider that has received a COVID-19 viability support payment in relation to a service for a BCP fortnight.
- (2) If, in accordance with subsection 201B(1A) of the Family Assistance Administration Act and Part 1 or Part 2 of this Schedule, the provider is not required to take reasonable steps to enforce hourly session fees in relation to sessions of care provided by a service during the BCP fortnight, the provider must not enforce payment of the hourly session fees.
- (3) The provider must not, during a BCP fortnight commencing on or after 6 September 2021, receive any Commonwealth government COVID-19 pandemic-related business support payments in relation to the service, other than COVID-19 viability support payments.
- (4) The provider must not intentionally reduce the number of employees employed at the service, or the number of FDC educators engaged by the service, at any time during the BCP fortnight below the average staffing levels at the service in the 14 day period ending before the start day for the service.
- (5) The provider must not charge an hourly session fee for a session of care provided by the service during the BCP fortnight that is greater than the hourly session fee than it would have charged for that session of care in the 14 day period ending before the start day for the service.