Child Care Subsidy Secretary's Rules 2017

made under subsection 85GB(2) of the *A New Tax System (Family Assistance) Act 1999*.

Compilation No. 3

Compilation date:	20 March 2020
Includes amendments up to:	*Child Care Subsidy Secretary's Amendment (Building on the Child Care Package and Other Measures) Rules 2020* [F2020L00268]
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About this compilation

This compilation

This is a compilation of the *Child Care Subsidy Secretary's Rules 2017* that shows the text of the law as amended and in force on 20 March 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary

1 Name

These Rules are the *Child Care Subsidy Secretary's Rules 2017*.

3 Authority

These Rules are made under subsection 85GB(2) of the *A New Tax System (Family Assistance) Act 1999.*

4 Definitions

In these Rules:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

Education and Care Services National Law, in relation to an entity or service in a State or Territory except Western Australia, means the law of that name set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic), as adopted in that State or Territory, and in relation to an entity or service in Western Australia, means the *Education and Care Services National Law (WA) Act 2012*.

educator, in relation to a child care service in a State or Territory, means an educator within the meaning of the Education and Care Services National Law or, to the extent that the context permits reference to an individual who provides child care at an IHC service, an IHC educator.

Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

FDC educator, in relation to an FDC service in a State or Territory, means a family day care educator within the meaning of the Education and Care Services National Law.

FDC service, in a State or Territory, means a family day care service within the meaning of the Education and Care Services National Law.

Note: A term used in these Rules that is defined in the Family Assistance Act or the Family Assistance Administration Act has the same meaning as it has in the relevant Act (see subsection 3(2) of each of those Acts and paragraph 13(1)(b) of the *Legislation Act 2003*).

IHC educator means an individual employed, contracted or otherwise engaged by an approved provider for the purposes of providing child care by an IHC service.

IHC service is short for in home care service.

Part 2—Payment of child care subsidy and additional child care subsidy

5 Additional requirements for when a claim for CCS is effective

(1) For paragraph 67BE(g) of the Family Assistance Administration Act, all of the following requirements must be satisfied in relation to a claim made by an individual who has previously received an amount of CCS during an income year that has ended before the claim (a ***test income year***):

(a) for all of the test income years, the individual, and any partner of the individual during any of the test income years:

(i) has lodged their income tax return with the Commissioner of Taxation; or

(ii) is not required to lodge an income tax return;

(b) the individual, and any partner of the individual, during any of the test income years, did not owe a debt to the Commonwealth under section 71B, 71C or 71E of the Family Assistance Administration Act, unless, at the time of the claim, the debt:

(i) has been fully repaid; or

(ii) was written off or waived by the Secretary; or

(iii) is being repaid by instalments under an arrangement entered into under section 91 of the Family Assistance Administration Act.

(2) If the only reason an individual's claim is not effective under section 67BE of the Family Assistance Administration Act is that a requirement prescribed by subsection (1) of this section is not satisfied in relation to a partner of the individual who is no longer the individual's partner, the requirement does not apply to the individual's claim if the Secretary is satisfied it is appropriate in the circumstances.

Part 3—Approval of providers of child care services

Division 1—Application for approval

6 Information to be contained in an application for approval

For paragraph 194A(2)(b) of the Family Assistance Administration Act, an application for provider approval must include, where applicable, the following information about the applicant:

(a) full legal name and proposed trading name as an approved provider;

(b) an ABN, where it is required to hold one under the *A New Tax System (Australian Business Number) Act 1999*;

(c) any approval number issued under the Education and Care Services National Law, as it applies in a State or Territory, in relation to the applicant;

(d) street and postal addresses (in the case of a company registered with the Australian Securities and Investments Commission, the address must match the address of the registered office or principal place of business);

(e) representative name and contact details in respect of the application;

(f) documentation sufficient to prove the applicant's identity to the Secretary;

(g) where the provider is applying in their capacity as a trustee of a trust, a copy of the relevant trust deed;

(h) where the provider is registered with the Australian Charities and Not-for-profits Commission, details of its registration as publicly available on the Australian Charities and Not-for-profits Commission's website;

(i) the name and contact details for each person with management or control of the provider;

(j) details of how the applicant will comply with section 195D of the Family Assistance Administration Act from the time that section becomes applicable to the applicant;

(k) all of the following in relation to each person with management or control of the provider:

(i) if the person is an individual—a National Personal Insolvency Index check using the Bankruptcy Register Search service provided by the Australian Financial Security Authority, carried out no more than 30 days before the person commenced to hold that position;

(ii) if the person is an individual—a copy of a national police check from a State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, carried out no more than 6 months before the person commenced to hold that position;

(iii) if the person is an individual—a current and historical personal name extract search of the records of the Australian Securities and Investments Commission, carried out no more than 30 days before the person commenced to hold that position;

(iv) if the person is a company—a current and historical company extract search of the records of the Australian Securities and Investments Commission, carried out no more than 30 days before the person commenced to hold that position;

(v) evidence that the person does not appear on the banned and disqualified register held by the Australian Securities and Investments Commission (in the form of a computer printout of the results of the search);

(l) a declaration regarding any circumstance of the kind referred to in subsections 46(4) and (5) of the *Child Care Subsidy Minister's Rules 2017*, including where no such circumstance exists;

(m) the identity of any company that owns or controls the applicant;

(n) for every service to be added to the provider's approval, all of the following details:

(i) the proposed name of the service—being, where a business name has been registered with the Australian Securities and Investments Commission in respect of the service, that name;

(ii) any approval number issued under the Education and Care Services National Law, as it applies in a State or Territory, in relation to an education and care service;

(iii) the type of service being applied for, as referred to in subclause 2(3) of Schedule 2 to the Family Assistance Act;

(iv) the physical address of the service where the service proposes to provide sessions of care;

(v) the name and contact details for each person responsible for the day-to-day operation of the service;

(vi) in relation to each person responsible for the day-to-day operation of the service, where the person is an individual—a national police check from a State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, carried out no more than 6 months before the date of the application;

(vii) where the application is made by a person proposing to operate an FDC service or an IHC service, a declaration that all proposed educators are fit and proper persons having regard to any prior actions involving fraud or dishonesty and their capacity to comply with the family assistance law;

(o) where the application is made in respect of an IHC service, evidence that there has been contact with an In Home Care Support Agency (within the meaning of section 49B of the *Child Care Subsidy Minister's Rules 2017*) for the purposes of providing the IHC service.

Division 2—Application to add or remove a service

7 Information to be contained in an application to add a service

For paragraph 196A(2)(b) of the Family Assistance Administration Act, an application to add a service to a provider's approval must contain all of the following (as applicable):

(a) the unique provider approval number given to the provider by the Secretary;

(b) the name and contact details for the provider's representative in respect of the application;

(c) for every service to be added to the provider's approval:

(i) the proposed name of the service—being, where a business name has been registered with the Australian Securities and Investments Commission in respect of the service, that name;

(ii) any approval number issued under the Education and Care Services National Law, as it applies in a State or Territory, in relation to an education and care service approval under that law;

(iii) the type of service being applied for, as referred to in subclause 2(3) of Schedule 2 to the Family Assistance Act;

(iv) the physical and postal address of the service where the service proposes to provide sessions of care;

(v) the name and contact details for each person responsible for the day-to-day operation of the service;

(vi) in relation to each person responsible for the day-to-day operation of the service, where the person is an individual—a national police check from a State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, carried out no more than 6 months before the date of the application;

(vii) where the application is made by a person proposing to operate an FDC service or an IHC service, a declaration that all proposed educators are fit and proper persons having regard to any prior actions involving fraud or dishonesty and their capacity to comply with the family assistance law;

(d) where the application is made in respect of an IHC service, evidence that there has been contact with an In Home Care Support Agency (within the meaning of section 49B of the *Child Care Subsidy Minister's Rules 2017*) for the purposes of providing the IHC service.

8 Information to be contained in an application to remove a service

For paragraph 196A(2)(b) of the Family Assistance Administration Act, an application to remove a service from a provider's approval must contain all of the following:

(a) the unique provider approval number given to the provider by the Secretary;

(b) the name and contact details for the provider's representative in respect of the application;

(c) for every service which the provider is seeking to have removed from the provider's approval, the following details:

(i) the unique service approval number given to the provider by the Secretary;

(ii) the reason for requesting the removal of the service;

(iii) the requested end date for the service approval;

(iv) where the provider is seeking to remove the service because it has sold the business performed by the service, details of the legal entity to whom the business was or is to be sold.

Division 3—Suspension of approval

8A Information to be contained in a request for suspension

For the purposes of paragraph 197AA(2)(d) of the Family Assistance Administration Act, a request to suspend the approval of an approved provider, or the approval of an approved provider in respect of one or more services, must contain the following information:

(a) the full legal name and trading name of the provider;

(b) the unique provider approval number given to the provider by the Secretary;

(c) for each service for which the provider requests a suspension—the unique service approval number given to the provider by the Secretary;

(d) the reasons why the provider is requesting a suspension;

(e) the name and contact details for the provider's representative in respect of the request.

Part 4—Provider requirements

Division 1—Complying written arrangements

9 Requirements for complying written arrangements

For subsection 200B(3) of the Family Assistance Administration Act, an arrangement is a ***complying written arrangement*** where it expressly sets out, in writing, all of the following:

(a) the names and contact details of the parties to the arrangement;

(b) the date the arrangement was entered into;

(c) the name and date of birth of the child to whom sessions of care are proposed to be provided;

(d) whether care will be provided on a routine basis under the arrangement, and if so:

(i) details about the days on which sessions of care will usually be provided; and

(ii) usual start and end times for these sessions of care;

(e) whether care may be provided on a casual or flexible basis under the arrangement (either in addition to, or instead of, being provided on a routine basis);

(f) details about fees proposed to be charged to the individual for the sessions of care provided under the arrangement, which can be detailed by reference to other material (such as a fee schedule or information available on a website maintained by the provider) that the parties expressly understand may vary from time to time.

Note 1: Paragraph 85BA(1)(b) of the Family Assistance Act provides that an individual is eligible for CCS where, among other requirements, the individual has incurred a liability to pay for a session of care under a complying written arrangement. Such an arrangement must both comply with the requirements set out above and be stated in terms that clearly establish a liability to pay for sessions of care in order for an individual to be eligible for CCS for a session of care.

Note 2: An arrangement can be in hardcopy or electronic form.

Division 2—Requirement to give individuals statements of entitlement

Note: Subsection 201D(3) of the Family Assistance Administration Act provides that (in addition to the requirements prescribed by section 10) a statement of entitlement must include the following:

(i) the start and end dates of the statement period;

(ii) the hourly session fee for each session of care provided by the service to the child in the statement period;

(iii) the total of the fee reduction amounts for the fee reduction decisions for the individual of which the provider was given notice for the weeks in the statement period.

10 Additional information to be provided in statement of entitlement

For subparagraph 201D(3)(a)(iv) of the Family Assistance Administration Act, an approved child care provider must provide the following information in a statement given under subsection 201D(2) of that Act for any sessions of care provided to a child by the service during a statement period:

(a) a breakdown, for each fee reduction decision, of amounts for each session of care and whether the decision related to a payment of CCS or ACCS;

(b) the date of issue of the statement;

(c) the name of the provider and any business name of the service registered with the Australian Securities and Investments Commission;

(d) the ABN (if any) of the provider and, if the relevant service trades under a different ABN, that ABN;

(e) any unique identifier assigned to the service and the provider by the Department;

(f) the name of the individual to whom the statement is issued;

(g) the name of the child to whom any sessions of care were provided during the statement period;

(h) any unique identifier assigned by the Department to the enrolment of the child for care by the service;

(i) daily and weekly totals of the number of hours of care provided during the statement period, including start and end times for each session of care;

(ia) daily and weekly totals of the number of hours of the child's physical attendance during the statement period, including start and end times of the child's physical attendance;

(j) for the statement period and cumulatively for the financial year until the date of issue of the statement—the sum of:

(i) the number of days on which the service is taken to have provided a session of care to the child under subsection 10(2) of the Family Assistance Act; and

(ii) the number of days on which the service is taken to have provided a session of care to the child under subsection 10(3) of the Family Assistance Act;

(k) daily and weekly totals of the amount of all fees charged by the provider for care provided during the statement period, including details about any discounting or refund applied in order to pass on fee reductions;

(l) the number of hours of care during the statement period for which the fees were reduced or for which the individual otherwise received the benefit of a fee reduction amount (as referred to in section 201A of the Family Assistance Administration Act);

(m) if care was provided by a service that was not a centre-based day care service or an outside school hours care service during the statement period:

(i) the name of each educator who provided care during the statement period and which sessions of care the educator provided; and

(ii) any unique identifier assigned to each educator by the Department.

Division 3—Requirement to make records

11 Requirement for provider to make a written record of information or an event not otherwise recorded in writing

For subparagraph 202A(1)(b)(iv) of the Family Assistance Administration Act, an approved provider must, in relation to the following matters, make a written record of information or an event of which it becomes aware, if the provider would not otherwise have a written record:

(a) the giving of notice to an appropriate State/Territory support agency under section 204K of the Family Assistance Administration Act;

(b) where an FDC educator provides care at premises other than the educator's residence—the address and contact number of the premises;

(ba) where an IHC educator provides care at premises other than the residential premises referred to at subsection 15B(5) of the *Child Care Subsidy Minister's Rules 2017* due to exceptional circumstances—the address and contact number of the premises;

(c) copies of the evidence and information provided about persons with management or control of a provider and persons responsible for the day-to-day operation of a service required to be provided with an application for approval as referred to in paragraph 6(k) and subparagraph 6(n)(vi) of these Rules;

(d) any evidence or information produced in order to comply with subsections 43(3) and (4) of the *Child Care Subsidy Minister's Rules 2017* (about police checks and working with children checks) and to support any statements made about police checks and working with children checks in an application for approval;

(e) where a provider receives a payment prescribed by the *Child Care Subsidy Minister's Rules 2017* for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act—information about the payment.

Division 4—Requirement to keep records

12 Requirement to keep certain records

For paragraph 202B(1)(d) of the Family Assistance Administration Act, an approved provider must keep records in relation to the following matters:

(a) copies of the evidence and information provided about persons with management or control of a provider and persons responsible for the day-to-day operation of a service provided with an application for approval as referred to in paragraph 6(k) and subparagraph 6(n)(vi) of these Rules;

(b) any evidence or information produced in order to comply with subsections 43(3) and (4) of the *Child Care Subsidy Minister's Rules 2017* (about police checks and working with children checks) and to support any statements made about police checks and working with children checks in an application for approval;

(c) records created in order to comply with any requirements imposed under section 204G of the Family Assistance Administration Act (requirements prescribed by Minister's rules in relation to children who are members of a prescribed class);

(d) any complaints made to the provider, or to any of the services of the provider, relating to compliance with the family assistance law;

(e) record of attendance for each child to whom care is provided (regardless of eligibility for CCS and/or ACCS), including records of any absences from care;

(f) any statements or other documents prepared or obtained by the service for the purpose of demonstrating that the criteria set out in subsection 10(3) of the Family Assistance Act are met (in relation to absences in excess of 42 days in a financial year);

(g) copies of invoices and receipts issued to individuals in relation to the payment of child care fees for care provided by the service;

(h) copies of any statements issued under section 201D of the Family Assistance Administration Act;

(i) copies of any statements issued under section 201E of the Family Assistance Administration Act;

(ia) information about payments prescribed by the *Child Care Subsidy Minister's Rules 2017* for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that have been received by the approved provider;

(j) any other documentation required to be made to comply with a condition for continued approval set out in the *Child Care Subsidy Minister's Rules 2017*.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Child Care Subsidy Secretary's Rules 2017	13 November 2017 (see F2017L01463)	2 July 2018	
Child Care Subsidy Secretary's Amendment Rules (No. 1) 2018	22 June 2018 (see F2018L00834)	2 July 2018	—
Child Care Subsidy Secretary's Amendment (Building on the Child Care Package and Other Measures) Rules 2020	19 March 2020 (see F2020L00268)	Sch 1 (item 11): 13 March 2020 (s 2(1) item 3) Remainder: 20 March 2020 (s 2(1) items 1, 2)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2……..	am F2018L00834
	rep LA 48D
s 4……..	am F2018L00834; F2020L00268
Part 3	
Division 1	
s 6	am F2018L00834; F2020L00268
Division 2	
s 7 .....……	am F2018L00834; F2020L00268
Division 3	
Division 3	ad F2020L00268
s 8A	ad F2020L00268
Part 4	
Division 2	
s 10……...	am F2018L00834
Division 3	
s 11	am F2018L00834; F2020L00268
Division 4	
s 12	am F2020L00268