



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

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

Dated 7 November 2017

SIMON BIRMINGHAM  
Minister for Education and Training

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## Part 1—Preliminary

### Division 1—Preliminary

#### 1 Name

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

#### 2 Commencement

- (1) Each provision of these Rules 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. All provisions except section 41	Immediately after Schedule 1 to the <i>Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017</i> commences.	2 July 2018
2. Section 41	The day after these Rules are registered.	

Note: This table relates only to the provisions of these Rules as originally made.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 these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

#### 3 Authority

These Rules are made under the following:

- (a) subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999*;
- (b) subsection 194(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (as in force before 2 July 2018);
- (c) item 12 of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

#### 4 Definitions

In these Rules:

**at risk** has the meaning given by section 9 (Circumstances in which a child is taken to be at risk of serious abuse or neglect—child at risk of suffering harm).

## Section 4

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***attends school*** has the meaning given by section 16 (Determining hourly rate cap that applies for a session of care).

***business continuity payment*** has the meaning given by section 57 (Method of determining payment amount).

***commencement day*** means the same day as Schedule 1 to the Jobs for Families Act commences.

***customer reference number*** (or ***CRN***) means the unique identifier given to an individual by the Department administering the *Human Services (Centrelink) Act 1997* to identify the individual for the purposes of social security and family assistance payments.

***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*.

***Education and Care Services National Regulations***, in relation to an entity or service in a State or Territory except in Western Australia, means the *Education and Care Services National Regulations* (NSW), as adopted in that State or Territory, and in relation to an entity or service in Western Australia, means the regulations made under 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.

***eligible disability child*** has the meaning given by section 8.

***eligible ISP child*** has the meaning given by section 8.

***estimated number of children in care for the week*** has the meaning given by section 60 (Weekly amount where service has not previously received a fee reduction amount).

***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.

***harm*** has the meaning given by section 9 (Circumstances in which a child is taken to be at risk of serious abuse or neglect—child at risk of suffering harm).

***immediate family member*** has the meaning given by section 20.



***Jobs for Families Act*** means the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

***neglect*** has the meaning given by section 9 (Circumstances in which a child is taken to be at risk of serious abuse or neglect—child at risk of suffering harm).

***period of local emergency*** has the meaning given by section 6 (Reasons for additional absences).

***remote area child*** has the meaning given by section 8.

***registered training organisation*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

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*).

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## Division 2—Interpretative matters

### 5 Determining that an individual is taken to be an Australian resident

- (1) Under subsection 8(3) of the Family Assistance Act, for paragraph 8(1)(a) of that Act, the Secretary must have regard to the following matters in considering whether hardship would be caused to an individual if the individual were not treated as an Australian resident:
  - (a) whether the individual has, since arriving in Australia, experienced an event which was not reasonably foreseeable and which has substantially reduced her or his ability to pay child care fees; and
  - (b) if so:
    - (i) how long ago that event occurred; and
    - (ii) the continuing effect of the event in causing hardship if the individual were not treated as an Australian resident; and
    - (iii) whether it is in the best interests of the child to attend child care.
- (2) However, for paragraph (1)(a), the following events are not to be considered:
  - (a) currency fluctuations;
  - (b) an increase in fees charged by an approved child care service;
  - (c) a reduction in an individual's available income due to routine or unnecessary expenditure.

### 6 Reasons for additional absences

- (1) For paragraph 10(4)(e) of the Family Assistance Act, a child care service is taken to have provided a session of care to a child on a day in a financial year where the absence on that day is directly due to one of the following reasons:
  - (a) where:
    - (i) the child has not been immunised against a particular infectious disease; and
    - (ii) the absence occurs during an immunisation grace period in respect of the child (see subsection 67CD(9) of the Family Assistance Administration Act); and
    - (iii) the provider of the service holds a written statement given by a medical practitioner which certifies that exposure to the infectious disease would pose a health risk to the child;
  - (b) where:
    - (i) the provider of the service holds a copy of a court order (including a parenting order within the meaning of section 64B of the *Family Law Act 1975*), a registered parenting plan or a parenting plan in relation to the child; and
    - (ii) that order or plan requires the child to spend time with a person other than the individual in whose care the child usually is; and
    - (iii) the absence occurs because the child spends time with that other person;
  - (c) where the service is closed as a direct result of a period of local emergency;

- (d) where the child cannot attend as a direct result of a period of local emergency (for example, because they are unable to travel to the service), if:
  - (i) the period is still underway; or
  - (ii) the period ended not more than 28 days before the absence;
- (e) where the absence is due to the individual in whose care the child is, deciding the child should not attend the service for up to seven days immediately following the end of a period of local emergency.

(2) In these Rules:

***period of local emergency*** means a period in respect of which :

- (a) an event has occurred which:
  - (i) affects a widespread area; and
  - (ii) has a severe impact on the lives of a significant number of the inhabitants of the area; and
  - (iii) prevents, or may prevent, children from attending the service, or may make such attendance hazardous; or
- (b) a disaster declaration (however described) is made by a state emergency service, the police, or another Commonwealth, State or Territory agency and the disaster prevents, or may prevent, children from attending the service, or may make attendance hazardous.

## **7 Child care service payments**

For paragraph (b) of the definition of ***child care service payment*** in subsection 3(1) of the Family Assistance Administration Act, any payments made under a funding agreement associated with the following grant programs are prescribed:

- (a) the Community Child Care Fund (under item 110 in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*);
- (b) the Inclusion Support Programme (under item 109 in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*);
- (c) the Interim Home Based Carer Subsidy Pilot Programme (under item 108 in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*).

## **Part 2—Eligibility for child care subsidy and additional child care subsidy**

### **Division 1—Circumstances where no one is eligible for a session of care**

#### **8 Prescribed circumstances where no eligibility for a session of care**

- (1) For subparagraph 85BA(1)(c)(iii) of the Family Assistance Act, the following are circumstances in which a session of care is provided for which there is no eligibility for CCS:
  - (a) where the care is provided aboard a transportation vehicle (such as a bus), unless the transport is merely incidental to a session of care being provided (such as to take children on an outing);
  - (b) where the care is provided in a domestic living arrangement on residential premises where:
    - (i) the care is provided in the child's own home; or
    - (ii) an individual for whom the child is an FTB child or a regular care child (including a parent of the child) remains present at the location where the care is being provided, whilst the care is taking place;
  - (c) where the session of care is provided by an individual as referred to in section 195D of the Family Assistance Administration Act (individuals in relation to whom providers must notify the Secretary of working with children card details), in circumstances where the provider is in breach of the condition for continued approval in that provision by either:
    - (i) not holding a required working with children card; or
    - (ii) if the session of care is provided within the first 7 days after a required working with children card is issued—not providing details of the card within those 7 days; or
    - (iii) if the session of care is provided 7 or more days after a required working with children card is issued—not providing details of the card before the session of care;
  - (d) where the session of care is provided by an FDC service to a child who is an FTB child or regular care child of an FDC educator, or a partner of an FDC educator, and where the session occurs on a day that the FDC educator provides care at an FDC service, unless one of the circumstances in subsection (2) apply;
  - (e) where the session of care is provided to children who are in the relationships with an FDC educator of the service, or their partner, as set out in subsection (3), who provides the care at an FDC service;
  - (f) where, during any part of the session, the child is attending school, or engaged in a formal schooling program (including a home schooling or distance education program).
- (2) The circumstances for paragraph (1)(d) are:
  - (a) the child is an eligible disability child of the individual; or
  - (b) the child is an eligible ISP child of the individual; or

- (c) the child is a remote area child of the individual; or
  - (d) the FDC educator:
    - (i) is required to work for at least 2 hours on the care day in paid work which is not for an approved FDC service; and
    - (ii) has provided documentary evidence, in accordance with subsection (4), to the provider of the FDC service that the FDC educator is usually required to work at the time the session of care is provided; or
  - (e) the FDC educator:
    - (i) is enrolled in a program or course of education or training towards a recognised qualification (at Certificate III level or above) provided by a registered training organisation; and
    - (ii) is engaged in scheduled activities for the purposes of the program or course on the care day that overlap with the session of care; and
    - (iii) has provided documentary evidence, in accordance with subsection (4), to the provider of the FDC service that the FDC educator usually studies at the time the session of care is provided.
- (3) The relationships for paragraph (1)(e) are where the child is one (or more) of the following with respect to the FDC educator or the partner of the FDC educator:
- (a) FTB child;
  - (b) regular care child;
  - (c) foster care child;
  - (d) biological or adopted child;
  - (e) brother, sister, half-brother, half-sister, step-brother or step-sister;
  - (f) a child (not mentioned in paragraphs (a) to (e)) for whom the FDC educator or partner has legal responsibility, as described in paragraph 22(5)(a) or (b) of the Family Assistance Act.
- (4) Documentary evidence is provided in accordance with this subsection where:
- (a) it has been provided by the time that the provider is required to submit an attendance report under section 204B of the Family Assistance Administration Act for the first session of care to which the evidence relates; and
  - (b) the provider has met the requirements to keep a register, as set out in section 56 of these Rules, in relation to the evidence; and
  - (c) if the evidence relates to the requirement to work referred to in subparagraph 8(2)(d)(ii), the evidence is an employment contract or a payslip, showing usual hours of work (but where the contract or payslip does not show usual hours of work, a letter signed by the relevant employer is required stating usual hours of work); and
  - (d) if the evidence relates to the study referred to in subparagraph 8(2)(e)(iii), the evidence is a copy of an enrolment form detailing the times that the individual is usually required to study (but where the form does not provide such details, it must be supplemented with additional documentary evidence, such as an official course timetable).
- (5) In this section:
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## Section 8

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***eligible disability child*** of an individual means:

- (a) a child of the individual who has been diagnosed by a medical practitioner as suffering from one or more of the conditions listed in Schedule 1; or
  - (b) a child of the individual who has been diagnosed as suffering from 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;
- and where:
- (c) documentary evidence of the diagnosis has been provided to the provider of the service providing care to the child in accordance with subsection (4); and
  - (d) the diagnosis was obtained within a period of 24 months prior to the provision of the documentary evidence to the provider of the service, unless the diagnosis is, or is likely to be, permanent.

***eligible ISP child*** of an individual means a child of the individual in respect of whom an approved child care service that is an FDC service is receiving funding, under a funding agreement entered into under the auspices of the Commonwealth Inclusion Support Programme, of IDF Family Day Care Top Up (as referred to in the *Inclusion Support Programme Guidelines 2016-2017 to 2018-2019*), but only if:

- (a) the child is undergoing assessment for disability (including an ongoing or continuous assessment, as described in those Guidelines); and
- (b) documentary evidence has been provided to the provider of the service providing care to the child in accordance with subsection (3).

***engaged in scheduled activities*** means:

- (a) the individual is engaged in an activity on the care day that is part of a formal timetable of activities provided by the registered training organisation, and where participation in that activity can only reasonably occur at a set time on the care day; and
- (b) without limitation, could involve attending a lecture (in person, or online) or undertaking an exam, which is only scheduled at a set time on the day during which the session of care occurs;

however does not mean:

- (c) engaging in activities that are outside of the individual's formal timetable, such as where the individual is engaged in homework, group activity, viewing a pre-recorded lecture or assessment work; or
- (d) engaging in activity on a day that is not the day during which the session of care occurs and during a time that would not usually overlap or conflict with the session of care.

***remote area child*** of an individual means an FTB child or regular child of the individual, if:

- (a) the child resides in an area designated as 'remote Australia' or 'very remote Australia' in accordance with the *Australian Statistical Geography Standard (ASGC) Volume 5 – Remoteness Structure*, July 2011 (cat. no. 1270.0.55.005), as published by the Australian Bureau of Statistics; and

- (b) documentary evidence of the child's residence has been provided to the provider of the approved FDC service providing care to the child in accordance with subsection (4).

Note: Documentary evidence of a child's residence could include a copy of the individual's (in relation to whom the child is an FTB child or a regular care child) current driver's licence, or a recent utility bill sent to the address where the individual and child reside, or a statutory declaration.

Section 9

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**Division 2—When children are at risk of serious abuse or neglect for ACCS (child wellbeing)**

**9 Circumstances in which a child is taken to be at risk of serious abuse or neglect—child at risk of suffering harm**

- (1) For subsection 85CA(4) of the Family Assistance Act, a child is taken to be at risk of serious abuse or neglect if the child is at risk of suffering harm as a result of being subject to, or exposed to, one or more of the following events:
  - (a) serious physical, emotional or psychological abuse;
  - (b) sexual abuse;
  - (c) domestic or family violence;
  - (d) neglect.
- (2) For subsection (1), a child is **at risk** if:
  - (a) the child is currently experiencing one or more of the events set out in subsection (1); or
  - (b) the risk of the child experiencing one or more of the events in the future is real and apparent.
- (3) A child may be taken to be at risk of suffering harm in relation to an event mentioned in subsection (1) even if the event occurred before:
  - (a) a certificate in relation to the child was given under section 85CB of the Family Assistance Act; or
  - (b) an application in relation to the child was made under subsection 85CE(1) of that Act.
- (4) In this section:

**harm** means any detriment to the child's wellbeing.

**neglect** means a failure to be provided with the basic needs that are essential for the child's physical and emotional wellbeing.

**10 Circumstances in which a child is taken to be at risk of serious abuse or neglect—child in need of care etc. under State or Territory law**

For subsection 85CA(4) of the Family Assistance Act, a child is taken to be at risk of serious abuse or neglect if:

- (a) where the child is a resident of the Australian Capital Territory at the time the session of care is provided—the child is in need of care and protection under the *Children and Young People Act 2008 (ACT)*; or
- (b) where the child is a resident of New South Wales at the time the session of care is provided—the child is at risk of significant harm under the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*; or
- (c) where the child is a resident of the Northern Territory at the time the session of care is provided—the child is in need of care and protection under the *Care and Protection of Children Act (NT)*; or



- (d) where the child is a resident of Queensland at the time the session of care is provided—the child is in need of protection under the *Child Protection Act 1999 (Qld)*; or
- (e) where the child is a resident of South Australia at the time the session of care is provided—the child is at risk under the *Children's Protection Act 1993 (SA)*; or
- (f) where the child is a resident of Tasmania at the time the session of care is provided—the child is at risk under the *Children, Young Persons and Their Families Act 1997 (Tas)*; or
- (g) where the child is a resident of Victoria at the time the session of care is provided—the child is in need of protection under the *Children, Youth and Families Act 2005 (Vic)*; or
- (h) where the child is a resident of Western Australia at the time the session of care is provided—the child is in need of protection under the *Children and Community Services Act 2004 (WA)*.

## **11 Circumstances in which a child is not taken to be at risk of serious abuse or neglect**

- (1) Subject to subsection (2), a child is not taken to be at risk of serious abuse or neglect solely because:
  - (a) of the income of the individual or individuals with respect to whom the child is an FTB child or regular care child; or
  - (b) of the ethnic, cultural, religious or racial background of the child or the child's immediate family; or
  - (c) of the geographical location in which the child and the child's immediate family resides; or
  - (d) the child's place of residence is, statistically, an area of socio-economic disadvantage; or
  - (e) the child is likely to benefit from early childhood education and care programs; or
  - (f) the child has a disability; or
  - (g) the child is in a foster care or kinship care arrangement.
- (2) Where a circumstance listed in subsection (1) applies in relation to a child, that circumstance may only be considered:
  - (a) in conjunction with other circumstances or matters; and
  - (b) only to the extent that it is relevant to determining whether a child is taken to be at risk of serious abuse or neglect in accordance with section 9 or 10.

Section 12

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**Division 3—Temporary financial hardship**

**12 Circumstances in which an individual is taken to be experiencing temporary financial hardship**

- (1) For subsection 85CG(2) of the Family Assistance Act, an individual is taken to be experiencing temporary financial hardship if:
  - (a) the individual has had a substantial reduction in her or his ability to pay child care fees as a result of any of the circumstances described in subsection (2) of this section; and
  - (b) the circumstance described in subsection (2) occurred in relation to the individual on a day that is no earlier than 6 months before the day the application for ACCS (temporary financial hardship) was made.
- (2) For subsection (1), the circumstances are as follows:
  - (a) the death of a partner or child of the individual;
  - (b) a loss of employment of the individual, or a partner of the individual, other than due to resignation or retirement;
  - (c) a loss of income or business failure of the individual, or a partner of the individual, due to circumstances outside of the control of the individual or of the partner (such as serious illness);
  - (d) a loss of income of the individual, due to the death of a former partner, where the former partner was providing ongoing financial assistance in relation to the child under child support arrangements (unless entered into privately);
  - (e) the individual, or a partner of the individual, being adversely affected by a major disaster event;
  - (f) the destruction of, or severe damage to, the home of the individual, or of a partner of the individual;
  - (g) the individual having to leave home, and not being able to return because of an extreme circumstance (such as domestic violence);
  - (h) the individual still living at home after being subjected to domestic violence by a family member who has left or has been removed from the home.

## **Division 4—Transition to work**

### **13 Additional eligibility requirements for ACCS (transition to work)**

- (1) For paragraph 85CK(1)(c) of the Family Assistance Act, the prescribed requirements that must be met by an individual at the start of a CCS fortnight to which a session of care relates are:
  - (a) the requirements (the *activity requirements*) set out in subsection (2); and
  - (b) the requirements (the *income requirements*) set out in subsection (3); and
  - (c) where applicable, the requirements (the *job plan requirements*) set out in subsections (4) and (5); and
  - (d) where the individual is in receipt of special benefit, the requirement in subsection (17).
- (2) In order for an individual to meet the activity requirements, the individual must meet at least one of the following during the period provided by subsections (12) and (13):
  - (a) the requirements (the *study requirements*) set out in subsections (7) and (8);
  - (b) the requirements (the *job search requirements*) set out in subsection (10);
  - (c) the requirements (the *work/training requirements*) set out in subsection (11).

#### *Income requirements*

- (3) An individual meets the income requirements where the estimate of the individual's adjusted taxable income that would be used to determine the individual's entitlement to CCS for the week to which the session of care relates, including as determined by Division 4 of Part 3A of the Family Assistance Administration Act, is equal to or lower than the lower income threshold (as referred to in clause 3 of Schedule 2 to the Family Assistance Act).

Note: *Adjusted taxable income* is defined in Schedule 3 to the Family Assistance Act to include the income of any partner of the individual as set out in that Schedule.

#### *Job plan requirements*

- (4) The job plan requirements are applicable to individuals who are in receipt of a transition to work payment referred to in paragraph 85CK(3)(b) of the Family Assistance Act, as prescribed by paragraph 15(a), (b), (e), (f), (g) or (h) of these Rules.
- (5) An individual meets the job plan requirements if a job plan is in effect in relation to the individual at the start of the CCS fortnight in which the session of care is provided.

Note: Individuals in receipt of the transition to work payments referred to in paragraph 85CK(3)(a) of the Family Assistance Act (parenting payment, newstart allowance, disability support pension and youth allowance) must have an employment pathway plan or participation plan in effect, as referred to in subparagraph 85CK(1)(b)(ii) of that Act.

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(6) For this section, a job plan is:

- (a) an employment pathway plan within the meaning of the *Social Security Act 1991*, or a plan by that name entered into on a voluntary basis through the Department of Human Services; or

Note: An employment pathway plan is defined in section 23 of the *Social Security Act 1991* to include a Parenting Payment Employment Pathway Plan, a Youth Allowance Employment Pathway Plan, a Newstart Employment Pathway Plan, or a Special Benefit Employment Pathway Plan.

- (b) for an individual in receipt of a disability support pension—a participation plan entered into under section 94B of the *Social Security Act 1991*, or a plan by that name entered into on a voluntary basis by the individual with a service provider that is approved by an agency of the Commonwealth to provide employment services to such individuals.

### *Study requirements*

(7) An individual meets the study requirements in relation to an approved course of education or study if:

- (a) the course is of the following type or of the following level:
  - (i) a secondary course within the meaning of Schedule 1 to the *Student Assistance (Education Institutions and Courses) Determination 2009* (No. 2);
  - (ii) a preparatory course within the meaning of the *Student Assistance (Education Institutions and Courses) Determination 2009* (No. 2);
  - (iii) level 2 (Certificate II) through to level 8 (up to Graduate Diploma) of the Australian Qualifications Framework; and

Note: For **approved course of education or study**, see subsection 541B(5) of the *Social Security Act 1991* and subsection 3(1) of the Family Assistance Act.

- (b) the individual is making satisfactory progress in that course of education or study; and
- (c) where the course of education or study is of a kind described in subparagraph (a)(iii), the study occurs at a level that is above any level that the individual has already studied at within the last 10 years, unless:
  - (i) on a single occasion, the individual studied a course of education or study at a higher level than the level at which they are currently studying for a period of less than 6 weeks; or
  - (ii) the individual has, only once, begun studying at a level below a qualification already achieved, where the study will qualify the individual for an occupation listed on the Skills Shortage List maintained by the Department administered by the Minister administering the *Fair Work Act 2009* (which could in 2017 be viewed on that Department's website at <https://docs.employment.gov.au/documents/skill-shortage-list-australia>), and the study involves progression towards a qualification that the individual has not already studied towards; or
  - (iii) on 1 July 2018, the individual is in receipt of the payment known as Jobs Education and Training (JET) Child Care Fee Assistance that is paid by the Commonwealth in respect of a course of education or study and the individual was engaged in that course of education or study on that day.

- (8) The exception in subparagraph (7)(c)(iii) only applies to the individual for that course of education or study referred to in that subparagraph.
- (9) For this section, the *Australian Qualifications Framework* is the second edition of the publication of that name (which could in 2017 be viewed on the Australian Qualifications Framework Council website at <http://www.aqf.edu.au/>).

*Job search requirements*

- (10) An individual meets the job search requirements where the individual is actively looking for work and can provide evidence to the Secretary that he or she is looking for work.

*Work/training requirements*

- (11) An individual meets the work/training requirements where he or she is participating in any of the following activities:
- (a) paid work;
  - (b) actively setting up a business;
  - (c) unpaid work (including a work experience placement or an internship);
  - (d) a vocational training or other program which, in the opinion of the Secretary, has a reasonable likelihood of improving the individual's employment prospects.

*Time limits*

- (12) Subject to subsections (15) and (16), the period during which an individual is eligible for ACCS (transition to work) under subsection 85CK(1) of the Assistance Act is limited to the period set out in the table below, unless subsections (13) and (14) apply:

Item	Where the individual is meeting the following requirements:	The individual is only eligible during the following period:
1	The study requirements	<p>(a) where the course is at level 2 (Certificate II) to 6 (Advanced Diploma, Associate Degree) (inclusive) and level 8 (Bachelor Honours Degree, Graduate Certificate, Graduate Diploma) of the Australian Qualifications Framework—104 weeks for each course studied on a full-time basis or 208 weeks for each course studied on a part-time basis; or</p> <p>(b) where the course is at level 7 (Bachelor Degree) of the Australian Qualifications Framework—156 weeks for each course studied on a full-time basis or 312 weeks for each course studied on a part-time basis; or</p> <p>(c) where the course is a secondary course within the meaning of Schedule 1 of the</p>

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Item	Where the individual is meeting the following requirements:	The individual is only eligible during the following period:
		<i>Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2) or a preparatory course within the meaning of that Determination, 104 weeks for full-time study, or 208 weeks for part-time study</i>
2	The job search requirements	26 weeks
3	The work/training requirements set out in paragraphs (11)(a), (b) or (c)	26 weeks
4	The work/training requirement relating to training set out in paragraph (11)(d)	52 weeks full-time or 104 weeks part-time
5	The work/training requirement relating to employment prospects set out in paragraph (11)(d)	52 weeks

(13) This subsection applies if, on 1 July 2018:

- (a) the individual was engaged in a course of education or study for the purposes of meeting the study requirements; and
- (b) the individual was in receipt of the payment, known as Jobs Education and Training (JET) Child Care Fee Assistance that is paid by the Commonwealth.

(14) Where subsection (13) applies to an individual, the maximum period during which the individual is eligible for ACCS (transition to work) is worked out as follows:

the applicable number of weeks set out in the right hand column of item 1 of the table in subsection (12) *minus* the number of weeks the individual has already engaged in the study requirements referred to in that item.

(15) The period referred to in item 1 of the table in subsection (12) relates to each new course of education or study that the individual studies.

Example: Lyndal completes a Certificate II level qualification and, once completed, begins a Bachelor Degree—when she begins study towards the Bachelor Degree, she has a new period of 156 weeks (full-time) during which she can remain eligible for ACCS (transition to work).

(16) The periods referred to in items 2 to 5 of the table in subsection (12) apply to an individual only once in their lifetime, so that the period accrues as an aggregate for each activity.

Example: Michelle trains for 52 weeks, full-time, as described in item 4 of that table—following that period she is unable to remain eligible for ACCS (transition to work) where she continues to train beyond those 52 weeks. However, she could be eligible if she subsequently begins a course of education or study referred to in item 1, or if she begins another activity referred to in items 2, 3 or 5.

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*Additional requirement for recipients of special benefit*

- (17) Where the individual is in receipt of special benefit under the *Social Security Act 1991*, in addition to meeting the other eligibility requirements for ACCS (transition to work), the individual is only eligible where the individual would qualify for parenting payment or newstart allowance but for a requirement relating to residency that applies in relation to that payment or allowance under that Act.

**14 Additional eligibility requirements for individuals who ceased receiving transition to work payment fewer than 12 weeks ago**

For paragraph 85CK(2)(c) of the Family Assistance Act, the requirements are that:

- (a) the individual was eligible for ACCS (transition to work) under subsection 85CK(1) for one or more sessions of care in the CCS fortnight preceding the CCS fortnight in which the session of care was provided; and
- (b) the individual was engaged in paid work in the CCS fortnight in which the session of care was provided and the individual is able to provide evidence of that engagement; and
- (c) the individual did not stop receiving a transition to work payment solely because he or she became a member of a couple (including a member of a new couple) resulting in the person no longer being qualified for, or meeting the income or assets test requirements to be paid, the payment.

**15 Transition to work payments**

For paragraph 85CK(3)(b) of the Family Assistance Act, the payments are as follows:

- (a) carer payment under the *Social Security Act 1991*;
- (b) special benefit under the *Social Security Act 1991*;
- (c) austudy payment under the *Social Security Act 1991*;
- (d) a payment made under the ABSTUDY Scheme to the extent that it provides means tested allowances;
- (e) farm household allowance under the *Farm Household Support Act 2014*;
- (f) parenting payment under the *Social Security Act 1991*, as paid to individuals who are not subject to participation requirements under section 500A of that Act;

Note: Paragraphs 500(1)(c) and (ca) of the *Social Security Act 1991* set out when an individual is subject to participation requirements to qualify for the parenting payment.

- (g) disability support pension under the *Social Security Act 1991*, as paid to individuals who are not subject to the participation requirements under section 94A of that Act;

Note: Paragraph 94(1)(da) of the *Social Security Act 1991* sets out when an individual is subject to participation requirements to qualify for the disability support pension.

- (h) youth allowance under the *Social Security Act 1991*, as paid to individuals who are not required, under Subdivision E of Division 1 of Part 2.11 of that Act, to have an employment pathway plan in effect.

**Part 2** Eligibility for child care subsidy and additional child care subsidy

**Division 4** Transition to work

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Note: Section 544A of the *Social Security Act 1991* sets out when an individual is not required to have a youth allowance employment pathway plan in effect.



## **Part 3—Amount of child care subsidy and additional child care subsidy**

### **Division 1—Hourly rate of child care subsidy**

#### **16 Determining hourly rate cap that applies for a session of care**

- (1) For subclause 2(4) of Schedule 2 to the Family Assistance Act, the type of service that applies to a session of care is the same type of service that is:
  - (a) specified in the notice of approval that the Secretary gives to a provider under subsection 194B(4) of the Family Assistance Administration Act; or
  - (b) determined by the Secretary under subitem 9(2) of Schedule 4 to the Jobs for Families Act.
- (2) Despite subsection (1), a session of care provided by a service specified or determined as a centre-based day care service is taken to be provided by an outside school hours care service for the purposes of determining the applicable CCS hourly rate cap where the session is provided to a child who attends school.
- (3) Despite subsection (1), a session of care provided by a service specified or determined as an outside school hours care service is taken to be provided by a centre-based day care service for the purposes of determining the applicable CCS hourly rate cap where the session is provided to a child who does not yet attend school.
- (4) For these Rules, a child ***attends school*** on a day that is or follows the first day of scheduled physical attendance, and where any of the following apply:
  - (a) the child has turned 6;
  - (b) the child attends the year of school before grade 1;
  - (c) the child attends primary or secondary school;
  - (d) the child is subject to home schooling as recognised in the State or Territory in which the child resides;
  - (e) the child would be attending school as referred to in paragraph (b) or (c), except that the child is absent from school, or is on holidays.

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**Division 2—Circumstances for election**

**17 Election of allocation of claimant's fortnightly entitlement between services attended by the child**

For subclause 4(3) of Schedule 2 to the Family Assistance Act, an individual may give the Secretary a written election in relation to a child for a CCS fortnight if:

- (a) the child is enrolled at more than one child care service during the fortnight; and
- (b) the individual's activity test result in relation to the child is greater than zero.

## **Division 3—Recognised activities**

### **Subdivision A—General**

#### **18 Application—unlawful purposes**

- (1) This Division does not apply in relation to paid or unpaid work or other activity, if undertaken:
  - (a) for an unlawful purpose; or
  - (b) for an employer, business or other person or organisation that has an unlawful purpose.
- (2) Without limiting subsection (1), ***work or other activity*** includes the following:
  - (a) work experience or an internship;
  - (b) employment or contract work;
  - (c) voluntary work;
  - (d) self-employed activity;
  - (e) setting up a business.

### **Subdivision B—Additional activities**

#### **19 Unpaid work experience**

- (1) For the purposes of paragraph 12(2)(d) of Schedule 2 to the Family Assistance Act, an individual engages in ***recognised activity*** during a CCS fortnight if he or she engages in either of the following activities during the fortnight:
  - (a) unpaid work experience;
  - (b) an unpaid internship.
- (2) However, the individual does not engage in ***recognised activity*** under subsection (1) of this section if the activity is engaged in during the course of an activity mentioned in paragraph 12(2)(b) or (c) of that Schedule.

Note: Paragraph 12(2)(b) of that Schedule covers training courses for improving work skills or employment prospects. Paragraph 12(2)(c) of that Schedule covers an approved course of education or study.

#### **20 Unpaid work in a family business**

- (1) For the purposes of paragraph 12(2)(d) of Schedule 2 to the Family Assistance Act, an individual engages in ***recognised activity*** if he or she engages in unpaid work for a family business owned by a member of the individual's immediate family.
- (2) Each of the following is a member of the individual's ***immediate family***:
  - (a) a parent of the individual;
  - (b) a partner of a parent of the individual;
  - (c) a partner of the individual;

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- (d) a sibling of the individual, including any person (other than the individual) who is a child of a parent of the individual;
  - (e) a child of the individual;
  - (f) a partner of a child of the individual;
  - (g) another particular member of the individual's family determined by the Secretary to be a member of the individual's immediate family for the purposes of this section.
- (3) Without limiting who is a child of another person, each of the following is a **child** of the other person:
- (a) an adopted child, or step-child, of the other person, within the meaning of the *Social Security Act 1991*;
  - (b) a foster-child or ward of the other person, including someone who was the ward of the other person when the ward was under 18 years of age;
  - (c) someone who is a child of the other person within the meaning of the *Family Law Act 1975*.
- (4) Without limiting who is a parent, if someone is, within the meaning of this section, a child of another person, the other person is a **parent** of the child.

## 21 Voluntary work

- (1) For the purposes of paragraph 12(2)(d) of Schedule 2 to the Family Assistance Act, an individual engages in **recognised activity** during a CCS fortnight if he or she engages in any of the following activities during the fortnight:
- (a) voluntary work which could reasonably be expected to improve the individual's work skills or employment prospects, or both;
  - (b) voluntary work for a charitable, welfare or community organisation;
  - (c) voluntary work for a school, preschool or a centre-based day care service, if the work directly supports the learning and development of the children at the school, preschool or service.

Example: For paragraph (c), an example is reading to children or providing support for other learning or development activities.

- (2) For the purposes of paragraph 12(4)(b) of that Schedule, if the individual, in a CCS fortnight, does not engage in any recognised activity except the activity prescribed under this section, the maximum number of hours that are to be counted towards the prescribed activity in that fortnight is 16 hours.

## 22 Actively looking for work

- (1) For the purposes of paragraph 12(2)(d) of Schedule 2 to the Family Assistance Act, an individual engages in **recognised activity** during a CCS fortnight if he or she is actively looking for work.
- (2) An individual is **actively looking for work** if the individual engages in one or more of the following activities during the fortnight:
- (a) looking for job vacancies;
  - (b) preparing résumés and job applications;
  - (c) contacting potential employers;
  - (d) preparing for, and attending, job interviews.

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Note: The individual need not be unemployed to be actively looking for work. Her or his overall activity test result may also take into account hours engaged in other activities (such as paid work) mentioned in subclause 12(2) of Schedule 2 to the Family Assistance Act, including other activities prescribed under this Division.

- (3) For the purposes of paragraph 12(4)(b) of that Schedule, if the individual, in a CCS fortnight, does not engage in any recognised activity except the activity prescribed under this section, the maximum number of hours that are to be counted towards the prescribed activity in that fortnight is 16 hours.

## 23 Actively setting up a business

- (1) For the purposes of paragraph 12(2)(d) of Schedule 2 to the Family Assistance Act, an individual engages in **recognised activity** during a CCS fortnight if, during the fortnight, the individual engages in the activity of actively setting up a business that has not yet started to operate, including engaging in one or more of the following activities in relation to the proposed business:
- (a) obtaining finance, advice and support;
  - (b) attending and organising events, including meetings, networks and seminars;
  - (c) developing business, marketing or other plans.
- (2) However, an individual only engages in **recognised activity** under subsection (1) in relation to a CCS fortnight if, during the period of 12 months immediately before the CCS fortnight, determinations have been made under subsection 67CD(2) of the Family Assistance Administration Act that the individual is entitled to a payment of CCS worked out on the basis of the application of subsection (1) of this section in relation to fewer than 13 CCS fortnights:
- (a) whether or not occurring consecutively; and
  - (b) whenever occurring during that period; and
  - (c) in relation to that proposed business, or any other.

## Subdivision C—Associated activities

## 24 Preparing for paid work

- (1) This section applies to an individual who starts engaging in a recognised activity consisting of paid work, or starts to engage in such an activity for an increased number of hours, for the purposes of paragraph 12(2)(a) of Schedule 2 to the Family Assistance Act during a CCS fortnight (the **start fortnight**).
- (2) For the purposes of paragraph 12(3)(b) of that Schedule, the individual is taken also to engage in recognised activity of the same kind, or for that increased number of hours, during the period:
- (a) starting on the first day of the CCS fortnight immediately before the start fortnight; and
  - (b) ending at the end of the start fortnight.
- (3) For the purposes of paragraph 12(4)(a) of that Schedule, the number of hours of recognised activity engaged in by the individual to which subsection (2) of this

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section applies, during the period covered by that subsection, is taken to be the same number of hours as the number of hours of paid work, or the increased number of hours of paid work, that the individual is to start to engage in.

### 25 Leave from paid work

- (1) This section applies if:
  - (a) an individual engages in a recognised activity consisting of paid work for the purposes of paragraph 12(2)(a) of Schedule 2 to the Family Assistance Act; and
  - (b) during a CCS fortnight, the individual takes paid or unpaid leave from that work; and
  - (c) in the case of an individual taking unpaid leave:
    - (i) the leave is for a continuous period of 6 months or less; or
    - (ii) the leave is parental leave (or of the nature of parental leave); and
  - (d) as at the time immediately before the individual takes the leave, he or she was normally engaged in recognised activity for 8 or more hours each fortnight.
- (2) For the purposes of paragraph 12(3)(b) of that Schedule, the individual is taken also to engage in recognised activity of the same kind for the purposes of paragraph 12(2)(a) of that Schedule during the period of paid or unpaid leave.
- (3) For the purposes of paragraph 12(4)(a) of that Schedule, the number of hours of recognised activity engaged in by the individual to which subsection (2) of this section applies during a period of paid or unpaid leave is taken to be the same number of hours as the number of hours of paid work normally engaged in by the individual during a period of the same length.
- (4) ***Paid or unpaid leave***, for an individual, means:
  - (a) if the individual engages in paid work as an employee, or under a contract—paid or unpaid leave granted under the terms or conditions of the individual's employment or contract; or
  - (b) in any other case—paid or unpaid leave taken by the individual that, if the individual were an employee, would be of the nature of any of the following:
    - (i) annual leave;
    - (ii) long service leave;
    - (iii) leave for illness or injury;
    - (iv) carer's leave for family or household members, or for household emergencies;
    - (v) leave (***parental leave***) for the birth of a child to the individual or the individual's partner, or for the adoption of a child by the individual or the individual's partner, including such leave taken in preparation for birth or adoption and to care for a child after birth or adoption.

### 26 Training course—self-directed study

- (1) This section applies if, during a CCS fortnight:

- (a) an individual engages in a recognised activity consisting of a training course for the purposes of paragraph 12(2)(b) of Schedule 2 to the Family Assistance Act; and
- (b) the individual engages in additional self-directed study in relation to the course, outside the scheduled hours of the course.

Note: The individual may also be taken to engage in the recognised activity mentioned in paragraph (a) during a break in the course: see section 27.

- (2) For the purposes of paragraph 12(3)(a) of that Schedule, the individual is taken also to engage in recognised activity of the same kind for the purposes of paragraph 12(2)(b) of that Schedule while being engaged in that additional self-directed study.

## **27 Training course—break in course**

- (1) This section applies if:
  - (a) an individual engages in a recognised activity consisting of a training course for the purposes of paragraph 12(2)(b) of Schedule 2 to the Family Assistance Act; and
  - (b) a scheduled semester or vacation break during the training course includes a CCS fortnight, or any part of a CCS fortnight.
- (2) For the purposes of paragraph 12(3)(b) of that Schedule, the individual is taken also to engage in recognised activity of the same kind for the purposes of paragraph 12(2)(b) of that Schedule during the period of the scheduled semester or vacation break that occurs during the CCS fortnight.
- (3) However, an individual is not taken under subsection (2) also to engage in recognised activity in relation to a break that:
  - (a) occurs at the start or end of a course mentioned in paragraph (1)(a); or
  - (b) arises because the individual defers starting or continuing such a course.
- (4) For the purposes of paragraph 12(4)(a) of that Schedule, the number of hours of recognised activity engaged in by the individual to which subsection (2) of this section applies during a scheduled semester or vacation break is taken to be the same number of hours as the number of hours of that training course normally scheduled during a period of the same length.

## **28 Approved course of education or study—self-directed study**

- (1) This section applies if, during a CCS fortnight:
  - (a) an individual engages in a recognised activity consisting of an approved course of education or study for the purposes of paragraph 12(2)(c) of Schedule 2 to the Family Assistance Act; and
  - (b) the individual engages in additional self-directed study in relation to the course, outside the scheduled hours of the course.

Note: The individual may also be taken to engage in the recognised activity mentioned in paragraph (a) during a break in the course: see section 29.

- (2) For the purposes of paragraph 12(3)(a) of that Schedule, the individual is taken also to engage in recognised activity of the same kind for the purposes of

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paragraph 12(2)(b) of that Schedule while being engaged in that additional self-directed study.

**29 Approved course of education or study—break in course**

- (1) This section applies if:
  - (a) an individual engages in a recognised activity consisting of an approved course of education or study for the purposes of paragraph 12(2)(c) of Schedule 2 to the Family Assistance Act; and
  - (b) a scheduled semester or vacation break during the course includes a CCS fortnight, or any part of a CCS fortnight.
- (2) For the purposes of paragraph 12(3)(b) of that Schedule, the individual is taken also to engage in recognised activity of the same kind for the purposes of paragraph 12(2)(c) of that Schedule during the period of the scheduled semester or vacation break that occurs during the CCS fortnight.
- (3) However, an individual is not taken under subsection (2) also to engage in recognised activity in relation to a break that:
  - (a) occurs at the start or end of a course mentioned in paragraph (1)(a); or
  - (b) arises because the individual defers starting or continuing such a course.
- (4) For the purposes of paragraph 12(4)(a) of that Schedule, the number of hours of recognised activity engaged in by the individual to which subsection (3) of this section applies during a scheduled semester or vacation break is taken to be the same number of hours as the number of hours of that course normally scheduled during a period of the same length.

**Subdivision D—Hours during which activities are engaged in**

**30 Individual engages in paid work over variable hours**

- (1) This section applies if:
  - (a) an individual engages in recognised activity during a CCS fortnight consisting of paid work for the purposes of paragraph 12(2)(a) of Schedule 2 to the Family Assistance Act; and
  - (b) the individual's total number of hours of paid work (under one or more work arrangements) varies unpredictably from fortnight to fortnight.
- (2) For the purposes of paragraph 12(4)(a) of that Schedule, the total number of hours of that recognised activity (under one or more work arrangements) engaged in by the individual in any particular CCS fortnight during which this section applies is taken to be the largest number of such hours engaged in by the individual during any CCS fortnight over any continuous period of 6 CCS fortnights, as reasonably estimated by the individual, during which the individual engages in recognised activity to which this section applies.

Example 1: Suzie is eligible for CCS. She works at a supermarket. She works shifts that vary unpredictably from CCS fortnight to CCS fortnight. She reasonably estimates that her hours of work per CCS fortnight, over a period of 6 CCS fortnights, can vary from 15 hours per CCS fortnight to a maximum of 45 hours per CCS fortnight.



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Under this section, she is taken to engage in the recognised activity of paid work for the estimated maximum of 45 hours in each CCS fortnight while she continues to work on the same basis, until the circumstances of her work change significantly.

Example 2: Patrick is eligible for CCS. He has 3 casual jobs for different employers. His total number of hours of work for all of these jobs, taken together, varies unpredictably from CCS fortnight to CCS fortnight. He reasonably estimates that his total hours of work per fortnight, over a period of 6 CCS fortnights, can vary from 8 hours per CCS fortnight to a maximum of 50 hours per CCS fortnight.

Under this section, he is taken to engage in the recognised activity of paid work for the estimated maximum of 50 hours in each CCS fortnight while he continues to work on the same basis, until the circumstances of his work change significantly.

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### **Division 4—Minister's rules result**

#### **31 Scope**

This Division prescribes rules for the purposes of clause 14 of Schedule 2 to the Family Assistance Act.

#### **32 Individuals with disabilities or impairments**

There is a Minister's rules result of 100 for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual is a disabled person, and as a result of the individual's disability or impairment, the individual:

- (a) is unable to engage in recognised activity to any significant degree; or
- (b) would be unable to adequately care for the child if the child did not attend sessions of care at a child care service.

Note: For the meaning of *disabled person*, see subsection 3(1) of the Family Assistance Act.

#### **33 Individual temporarily outside Australia**

There is a Minister's rules result of 100 for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual is temporarily absent from Australia.

Note: Section 85EE of the Family Assistance Act sets out the maximum period of CCS (or ACCS) eligibility for an individual who is absent from Australia.

#### **34 Individual in gaol or psychiatric confinement**

There is a Minister's rules result of 100 for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual is in gaol (within the meaning of the *Social Security Act 1991*), or in psychiatric confinement that starts because he or she has been charged with an offence.

#### **35 Individual or an individual's partner is a grandparent or great-grandparent**

There is a Minister's rules result of 100 for an individual, or the partner of an individual, for a CCS fortnight, in relation to any child, if the individual would, on the first day of the fortnight, but for paragraph 85CJ(1)(d) of the Family Assistance Act, be eligible for ACCS (grandparent) for the child.

Note: Paragraph 85CJ(1)(d) of the Family Assistance Act provides as an eligibility condition for ACCS (grandparent) that an individual, or the individual's partner, must be receiving a social security or veterans' pension or benefit of a specified kind.

#### **36 Individual receiving a carer payment**

There is a Minister's rules result of 100 for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual receives a carer payment under the *Social Security Act 1991*.

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### 37 Individual providing constant care

- (1) There is a Minister's rules result of 100 for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual would, but for an income test or asset test requirement, qualify for a carer payment under the *Social Security Act 1991*.
- (2) An **income test or asset test requirement** is a requirement under Part 2.5 of the *Social Security Act 1991* that, in order to qualify for a carer payment, a person must pass the income test or the assets test under that Act.

### 38 Individual receiving a carer allowance

- (1) There is a Minister's rules result under this section for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual receives a carer allowance under the *Social Security Act 1991*.
- (2) The Minister's rules result for the individual for the fortnight, in relation to any child, is the higher of the following:
  - (a) 72;
  - (b) the recognised activity result that would apply for the fortnight if the individual engaged in recognised activity for the number of hours worked out as follows:

Hours of caring activity + Hours of recognised activity

where:

**hours of caring activity**, in relation to caring activity consisting of the provision of care and attention on a daily basis to a care receiver (or care receivers) for the purpose of qualifying for the carer allowance, means the actual number of hours in the fortnight the individual engages in such caring activity.

**hours of recognised activity** is the number of hours the individual engages in recognised activities that would (apart from this section) count towards the individual's recognised activity result for the fortnight.

- (3) This section does not apply to an individual in relation to a CCS fortnight if section 36 or 37 applies to the individual in relation to the fortnight.

### 39 Individual receiving a newstart allowance, youth allowance, parenting payment or special benefit

- (1) There is a Minister's rules result under this section for an individual for a CCS fortnight, in relation to any child, if, on the first day of the fortnight, the individual receives one of the benefits under the *Social Security Act 1991* covered by subsection (2).
- (2) The benefits covered by this subsection are each of the following, if receipt of the benefit is subject to participation requirements requiring the individual to engage in particular activities (**qualifying activities**) during the fortnight, or would be so subject if the individual were not exempt from those requirements under that Act:

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- (a) a parenting payment;
  - (b) a youth allowance;
  - (c) a newstart allowance;
  - (d) a special benefit (subject to subsection (3)).
- (3) There is a Minister's rules result under this section for an individual who receives a special benefit only if the individual would qualify for one of the other benefits covered by subsection (2) but for a requirement relating to residence that applies in relation to the other benefit under the *Social Security Act 1991*.
- (4) The Minister's rules result for the individual for the fortnight, in relation to any child, is the higher of the following:
- (a) 36;
  - (b) the recognised activity result that would apply for the fortnight if the individual engaged in recognised activity for the number of hours worked out as follows:

Hours of qualifying activity + Hours of recognised activity

where:

**hours of qualifying activity** is the actual number of hours the individual engages in qualifying activities for the receipt of the relevant benefit during the fortnight.

**hours of recognised activity**, in relation to activities other than qualifying activities, if the other activities are recognised activities, is the number of hours the individual engages in those recognised activities that would (apart from this section) count towards the individual's recognised activity result for the fortnight.

Note: Some activities may be both qualifying activities and recognised activities (for example, looking for paid work, for an individual receiving a newstart allowance). Hours engaged in those activities are covered by the definition of **hours of qualified activity**.

- (5) Despite subsection (4), the Minister's rules result for the individual for the fortnight, in relation to any child, is 100 if:
- (a) the individual is exempt under the *Social Security Act 1991* from the requirement to engage in **qualifying activities**; and
  - (b) the exemption is not because the individual is a home educator or a distance educator, or because of the number of children for whom the individual is the principal carer or main supporter.

Note: For exemptions on the grounds mentioned in this paragraph, see sections 502D (parenting payment), 542FA (youth allowance), 602C (newstart allowance) and 731DB (special benefit) of the *Social Security Act 1991*.

## 40 Child attending early educational program at a centre-based day care service

There is a Minister's rules result of 36 for an individual for a CCS fortnight, in relation to a particular child, if, at any time during the CCS fortnight, the child attends an early educational program (such as a preschool or kindergarten program), in the year that is 2 years before grade 1 of school, offered at a centre-based day care service.

## **Part 4—Approval of provider of child care services**

### **Division 1—Application for approval**

#### **41 Cut-off date for applications for approval under the family assistance law before the commencement day**

- (1) For subsection 194(5) of the Family Assistance Administration Act (as in force before the commencement day), an application for approval of a child care service for the purposes of the family assistance law as in force before that day is taken not to have been made if the application is made on or after 1 April 2018.

Note: The commencement day is 2 July 2018 (the day Schedule 1 to the Jobs for Families Act commences).

- (2) However, subsection (1) does not apply in relation to a particular application if the Secretary:
- (a) considers that exceptional circumstances exist in relation to the application that justify treating it as being made; and
  - (b) so determines in writing.

#### **42 Who may apply for approval**

For paragraph 194A(1)(d) of the Family Assistance Administration Act, the following entities and bodies are prescribed:

- (a) an eligible association or a prescribed entity within the meaning of the Education and Care Services National Law and the Education and Care Services National Regulations;
- (b) an unincorporated body or entity that has a governing body as referred to in section 230B of the Family Assistance Administration Act (application of family assistance law to providers that are unincorporated).

## Division 2—Provider eligibility rules

### 43 Additional rules for provider eligibility

- (1) For paragraph 194C(f) of the Family Assistance Administration Act, this section prescribes criteria in relation to a provider of a child care service.
- (2) The provider must ensure that each of the following checks is carried out for each person who has management or control of the provider (other than a person who is responsible for the day-to-day operation of the service), and be able to provide a written record of each check upon any request:
  - (a) a national police check from the State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, no more than 6 months before the date of the application;
  - (b) a check in relation to the issue of a working with children card within the meaning of section 195D of the Family Assistance Administration Act;
  - (c) a National Personal Insolvency Index check performed using the Bankruptcy Register Search service provided by the Australian Financial Security Authority (AFSA);
  - (d) a Current and Historical personal name extract search of the records of the Australian Securities and Investments Commission (ASIC).

Note: See section 194F of the Family Assistance Administration Act for the meaning of *person with management or control* of the provider.

- (3) The provider must ensure that each of the following checks is carried out for each person with responsibility for the day-to-day operation of the service, and be able to provide a written record of each check upon any request:
  - (a) a national police check from the State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, no more than 6 months before the date of the application;
  - (b) a check in relation to the issue of a working with children card within the meaning of section 195D of the Family Assistance Administration Act.
- (4) The provider must ensure that each of the following checks is carried out for each person who is an FDC educator for an FDC service, and be able to provide a written record of each check upon any request:
  - (a) a national police check from the State or Territory police service, or an agency accredited by the Australian Criminal Intelligence Commission, no more than 6 months before the date of the application;
  - (b) a check in relation to the issue of a working with children card within the meaning of section 195D of the Family Assistance Administration Act.

Note: For definition of *educator*, see subsection 5(1) of the Education and Care Services National Law.

**Division 3—Service eligibility rules****44 Additional prescribed matters for service eligibility**

- (1) For subparagraph 194D(f)(vi) of the Family Assistance Administration Act, the Secretary must have regard to the following matters in relation to each FDC educator who provides, or is to provide, care for the service:
  - (a) any act of the educator involving fraud or dishonesty;
  - (b) the arrangements the educator has:
    - (i) to ensure the educator complies with the family assistance law; and
    - (ii) to ensure anyone the educator is responsible for managing complies with the family assistance law.
- (2) Subsection (1) does not apply in relation to an FDC educator who is covered by any of the following provisions of the Family Assistance Administration Act:
  - (a) paragraph 194C(b), (c) or (d) (providers and persons who have or will have management and control of a child care service);
  - (b) paragraph 194D(c) or (d) (persons who have or will have day-to-day control of a child care service).

Note: The criteria described in subsection (1) already apply to an FDC educator mentioned in subsection (2) as matters to be considered in determining whether he or she is a fit and proper person under section 194E of the Family Assistance Administration Act (see paragraphs 194E(1)(f) and (g)), along with additional criteria mentioned in that section.

**45 Additional criteria for service eligibility rules**

- (1) For paragraph 194D(g) of the Family Assistance Administration Act, this section sets out additional criteria for satisfying the service eligibility rules.

*Centre-based day care services*

- (2) Where the provider applies for approval in respect of a centre-based day care service:
  - (a) the service must be:
    - (i) approved as a centre-based service under the Education and Care Services National Law; or
    - (ii) licensed or registered to operate as an occasional care service under State or Territory law; or
    - (iii) covered by section 50 of these Rules (certain providers not required to meet State/Territory requirements); and
  - (b) the service must not, in the opinion of the Secretary, operate primarily as an outside school hours care service (for example, by providing care to a majority of children who attend school).

*Outside school hours care services*

- (3) Where the provider applies for approval in respect of an outside school hours care service:

**Part 4** Approval of provider of child care services

**Division 3** Service eligibility rules

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- (a) the service must be approved as a centre-based service under the Education and Care Services National Law, or be covered by section 50 of these Rules; and
- (b) in the opinion of the Secretary, primarily provide care outside normal school hours to children who attend school.

*Family day care services*

- (4) Where the provider applies for approval in respect of a family day care service, the service must be approved as an FDC service under the Education and Care Services National Law, or be covered by section 50 of these Rules.



## Division 4—Fit and proper person considerations

### 46 Additional matters to take into account

- (1) For paragraph 194E(1)(k) of the Family Assistance Administration Act, this section prescribes matters to which the Secretary must have regard in determining whether a person (the *provider or person with management or control*) is a fit and proper person.
- (2) The Secretary must have regard to the experience and expertise of the provider or person with management or control in the provision of child care services.
- (3) The Secretary must have regard to the understanding that can be demonstrated by the provider or person with management or control, of the obligations that would apply under the family assistance law, and the level of commitment to complying with those obligations.
- (4) The Secretary must have regard to whether all the following circumstances exist:
  - (a) an educator who provides, or is to provide, care at the service (whether or not the person is employed by the provider of the service) has obtained a qualification in respect of providing child care from a registered training organisation;
  - (b) the provider or person with management or control has an interest in that registered training organisation, by virtue of which the provider or person owns, operates, controls or carries out the registered training organisation;
  - (c) it reasonably appears that the qualification:
    - (i) would not have been obtained without that interest of the provider or person with management or control, and as a result, the educator has not obtained the qualification solely on her or his own merit; or
    - (ii) the qualification has otherwise been obtained in circumstances that might reasonably be perceived as a conflict of interest.
- (5) The Secretary must have regard to whether the provider or person with management or control has an interest in a business, by virtue of which the provider or person owns, operates, controls or carries out the business, if it reasonably appears that:
  - (a) the nature of the interest is such that the provider's or person's ability to comply with obligations under the family assistance law is reduced; or
  - (b) the nature of the interest is such that approval of the service will provide a benefit to the business; or
  - (c) the circumstances are otherwise such that there might reasonably be perceived to be a conflict of interest.

Note: See section 194F of the Family Assistance Administration Act for who is a *person with management or control* of a provider.

## **Division 5—Conditions for continued approval**

### **47 Provision of care by an FDC educator to relatives**

For section 195E of the Family Assistance Administration Act, it is a condition for continued approval in relation to an FDC service that the provider ensures that less than 50% of the children to whom any FDC educator is providing care within any CCS fortnight at the service are related to the FDC educator as:

- (a) a niece or nephew; or
- (b) a cousin; or
- (c) a grandchild (including a great-grandchild).

### **48 Approved child care services must continue to be operated by approved provider and as the same service type**

For section 195E of the Family Assistance Administration Act, it is a condition for continued approval that the approved child care service continues to be:

- (a) operated by the approved provider that:
  - (i) applied for approval in respect of the service under section 194A of the Family Assistance Administration Act; or
  - (ii) was taken to be the approved provider in respect of the service under paragraph 9(1)(a) of Schedule 4 to the Jobs for Families Act; and
- (b) operated as the same type of service that is:
  - (i) specified in the notice of approval given by the Secretary under subsection 194B(4) of the Family Assistance Administration Act; or
  - (ii) determined by the Secretary under subitem 9(2) of Schedule 4 to the Jobs for Families Act.

### **49 Additional conditions for continued approval for child care services to which section 50 applies**

- (1) For section 195E of the Family Assistance Administration Act, this section sets out conditions of continued approval for a provider in respect of a child care service to which section 50 of these Rules (certain providers not required to meet State/Territory requirements) applies.

#### *Commitment to high quality child care*

- (2) The provider must, in the opinion of the Secretary, be equipped to provide high quality child care at the service appropriate to the needs of families and the community having regard to the provider's ability and commitment to:
  - (a) provide a tailored, individual education program based on each child's knowledge, ideas, culture, abilities and interests; and
  - (b) develop a program that acknowledges and strengthens the cultural identity of children to whom care is provided at the service; and
  - (c) ensure children are adequately supervised at all times; and
  - (d) ensure reasonable precautions are taken to protect children from harm or injury and any hazard likely to cause harm or injury; and

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- (e) ensure that at least one staff member who holds a current approved first aid qualification is on duty and present at the service at all times that care is being provided by the service; and
  - (f) do anything else the Secretary considers necessary or appropriate for the provision of high quality child care at the service.

*Serious incidents*

- (3) The provider must implement appropriate arrangements to manage serious incidents (see subsection (4)), including (without limitation) notifying the Secretary in writing within 24 hours after:
  - (a) a serious incident occurs; or
  - (b) a circumstance occurs that could have resulted in the occurrence of a serious incident.
- (4) The following incidents are *serious incidents*:
  - (a) the death of a child while being cared for by the service or as a result of an incident that occurred while being cared for by the service;
  - (b) any incident involving injury, harm, trauma to, or illness of, a child while being cared for by the service for which:
    - (i) the attention of a medical practitioner was sought, or ought reasonably to have been sought; or
    - (ii) the child attended, or ought reasonably to have attended, a hospital;
  - (c) any incident for which the attendance of emergency services at premises where care is usually provided is sought, or ought reasonably to have been sought;
  - (d) a child being cared for:
    - (i) is missing; or
    - (ii) appears to have been taken or removed from the premises where the service provides the care in a manner that would contravene the Education and Care Services National Regulations, regardless of whether the regulations apply; or
    - (iii) is accidentally locked in or locked out of the premises where the care is being provided or any part of those premises.

*Work health and safety*

- (5) The provider must do the following things as part of managing workplace health and safety in relation to the service:
  - (a) if required under the WHS laws to report to the Regulator a notifiable incident arising out of the provision of care by the service, the provider must also:
    - (i) immediately, or as soon as possible afterwards, give written notice of the incident to the Secretary, together with a copy of any written notice given to the Regulator; and
    - (ii) give the Secretary, within 14 days after the incident occurred, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;

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- (b) give the Secretary written notice with full details of the following:
    - (i) any suspected contravention of the WHS laws relating to the provision of care by the service within 24 hours after becoming aware of the suspected contravention;
    - (ii) any cessation or direction to cease work under the WHS laws relating to the service due to unsafe work, immediately, or as soon as possible, after the provider is informed of any such cessation or direction;
    - (iii) any workplace entry under the WHS laws by a WHS Entry Permit Holder, or an Inspector, to any premises of the service where care is being provided, within 24 hours of becoming aware of any such workplace entry;
    - (iv) any proceedings against the provider, or any decision or request by the Regulator given to the provider, under the WHS laws, within 24 hours of becoming aware of any such proceedings, decision or request;
  - (c) provide the Secretary with copies of all notices and correspondence issued to the provider by any person under the WHS laws, within 24 hours after receiving any such notice or correspondence.
- (6) The **WHS laws** are the following:
- (a) the *Work Health and Safety Act 2011*;
  - (b) any regulations or other instruments made under that Act;
  - (c) any corresponding WHS laws within the meaning of that Act.
- (7) A term used in subsection (5) has the same meaning as in the WHS laws.

*Insurance*

- (8) The provider must, at all times, have in place the following insurance policies:
- (a) workers compensation insurance in relation to the service as required by law; and
  - (b) a current policy of insurance providing adequate cover for the service against public liability with a minimum cover of \$10,000,000.

*Quality Improvement Plan*

- (9) A provider is required to have, within 6 months after the approval of the service, a written Quality Improvement Plan that:
- (a) is available to view by the Secretary on request; and
  - (b) assesses the service's strengths and weaknesses against each of the 7 key quality areas of the *National Quality Standard of the National Quality Framework* (which in 2017 could be viewed at <http://acecqa.gov.au/national-quality-framework/the-national-quality-standard>).
- (10) A provider is required to review annually the Quality Improvement Plan referred to in subsection (9) by reassessing the service's strengths and weaknesses against each of the 7 key quality areas referred to in paragraph (9)(b), indicating progress and areas for improvement.

## **Division 6—Certain child care services not required to meet State/Territory requirements**

### **50 Certain providers not required to meet State/Territory requirements**

For section 199F of the Family Assistance Administration Act, a provider is specified in relation to a child care service if:

- (a) on 30 June 2018, the provider was in receipt of funding for that service under the Budget Based Funded program administered by the Department; and
- (b) the service was not approved for the purposes of the family assistance law.

Note: At the time these Rules were made, paragraph 5(2)(k) of the Education and Care Services National Regulations exempted a service described in this section from being required to comply with the Education and Care Services National Law.

### **51 Certain providers not subject to minimum operating period**

For paragraph 199F(b) of the Family Assistance Administration Act, section 195C of that Act (about a minimum operating period) is prescribed.

Note: Paragraph 199F(b) states that a provider of a child care service specified under the Minister's rules made for section 199F are not required to satisfy or comply with a provision prescribed in the Minister's rules. Section 50 of these Rules specifies the providers that are not required to comply with the minimum operating period referred to in section 195C.

## **Division 7— Consequences of breach of conditions for continued approval**

### **52 Matters the Secretary must take into account in exercising the power to impose a sanction on an approved provider**

- (1) This section prescribes matters for subsection 195H(2) of the Family Assistance Administration Act to be taken into account by the Secretary in relation to the exercise of a power to impose a sanction under subsection 195H(1) of that Act for having not complied, or not complying, with a condition (or conditions) of the provider's continued approval.
- (2) This section does not limit the matters the Secretary may take into account for that purpose.

#### *Whether to impose a sanction*

- (3) In deciding whether to impose a sanction on the provider, the Secretary must take into account whether the provider's non-compliance:
  - (a) appears to be an isolated incident or forms part of a history of apparent contraventions engaged in by the provider; or
  - (b) has resulted in overpayments of CCS and ACCS, or is likely to result in such overpayments; or
  - (c) involves a failure to reasonably cooperate with a person exercising powers under the family assistance law; or
  - (d) involves the deliberate or reckless giving of inaccurate, false or misleading information to the Secretary, including in a report under subsection 204B(1) of the Family Assistance Administration Act; or
  - (e) is associated with a debt to the Commonwealth (whether or not discharged) under Division 2 of Part 4 of the Family Assistance Administration Act; or
  - (f) is minor or serious in nature; or
  - (g) is associated with any other relevant aggravating or mitigating factors in relation to the non-compliance.

#### *Which sanction to impose*

- (4) The Secretary must take into account the following matters in considering which sanction to impose:
  - (a) whether it would be more appropriate to exercise the power to suspend the provider's approval under paragraph 195H(1)(a) of the Family Assistance Administration Act rather than to impose a different sanction, having regard to the following matters:
    - (i) whether the provider's non-compliance is of a systemic and ongoing nature (taking into account that systemic and ongoing contraventions may be more appropriately dealt with through cancellation rather than suspension);
    - (ii) whether the provider's non-compliance has resulted in significant debts of CCS and ACCS, or is likely to result in overpayments of CCS or ACCS if the approval is not suspended (taking into account

- that the higher the debts or overpayments, the more appropriate it is to cancel rather than suspend);
- (iii) any other relevant matters;
  - (b) whether it would be more appropriate to cancel the provider's approval under paragraph 195H(1)(b) of that Act rather than to impose a different sanction, having regard to the following matters:
    - (i) whether the non-compliance has resulted in significant and multiple overpayments of CCS and ACCS, or is likely to result in such overpayments if the approval is not cancelled;
    - (ii) whether the non-compliance indicates a deliberate or reckless disregard for the obligation to comply with the condition, or a lack of ability to understand that obligation;
    - (iii) whether the non-compliance demonstrates that the provider is no longer a fit and proper person to provide a child care service for the purposes of section 194E of the Family Assistance Administration Act;
    - (iv) whether the non-compliance constitutes an unacceptable risk to the safety, health or wellbeing of children being cared for in one or more child care services for which the provider is approved;
    - (v) any other relevant matters.

### **53 Matters the Secretary must have regard to in specifying the day of effect of a revocation of a suspension**

- (1) This section prescribes matters for subsection 195H(6) of the Family Assistance Administration Act to be taken into account by the Secretary in specifying the day of effect of the revocation of a suspension of a provider's approval (under subsection (1) of that section) for non-compliance with a condition (or conditions) of the provider's continued approval.
- (2) This section does not limit the matters the Secretary may take into account for that purpose.
- (3) The Secretary must take into account the following matters:
  - (a) whether the provider is now complying (to the extent it is possible to do so whilst suspended) with all conditions for continued approval, and if so, whether it is appropriate to specify that the revocation of suspension is to take effect immediately;
  - (b) if relevant, the date on which the provider remedied the non-compliance, and if so, whether it is appropriate to specify that date as the day of effect;
  - (c) if the provider is not yet able to comply with all conditions for continued approval, whether the provider has demonstrated the ability to do so by a specified date in the future, and if so, whether it is appropriate to specify that date as the day of effect;
  - (d) if the Secretary is satisfied that the suspension should never have taken place, whether it is appropriate for the revocation to take effect from the day of suspension.

## Division 8—Backdating of approvals etc.

### 54 Modifications dealing with backdated approval

- (1) Under subsection 199G(1) of the Family Assistance Administration Act, the Family Assistance Act and the Family Assistance Administration Act are modified as set out in this section in relation to a period (the *period of backdated approval*):
  - (a) beginning on the day specified in a notice of approval in respect of a child care service (as mentioned in paragraph 199G(1)(a) or (b) of that Act), or a notice of the revocation of the suspension of such an approval (as mentioned in paragraph 199G(1)(d) of that Act); and
  - (b) ending on the day the Secretary gave such a notice.

#### *Family Assistance Act*

- (2) Paragraph 85CB(2)(c) of the Family Assistance Act is modified so that a certificate of risk of serious abuse or neglect given in accordance with section 85CB of that Act can be specified to take effect earlier than 28 days before the day the certificate is given, but no earlier than the first day of the period of backdated approval.
- (3) Paragraph 85CH(6)(a) of the Family Assistance Act is modified so that a determination of temporary financial hardship made under section 85CH of that Act can be specified to take effect earlier than 28 days before the day the application was made, or the determination was made, but no earlier than the first day of the period of backdated approval.

#### *Family Assistance Administration Act*

- (4) Paragraph 204B(2)(d) of the Family Assistance Administration Act is modified so that the period of time in which the approved provider must submit a report in accordance with section 204B of that Act (that is, in respect of each week in which a session of care is provided to a child during the period of backdated approval) is extended to no longer than 14 days after the period of backdated approval.
- (5) Subsection 204K(1) of the Family Assistance Administration Act is modified so that the period of time in which the approved provider must notify an appropriate State/Territory body in accordance with that section is extended to no longer than 6 weeks after the period of backdated approval.



## Part 5—Provider requirements

### Division 1—Requirement to notify Secretary of certain matters

#### 55 Matters that must be notified to the Secretary

For subsection 204F(1) of the Family Assistance Administration Act, an approved provider must give the Secretary written notice of the matters prescribed in the table below, by the time prescribed in the table.

Item	Matter to be notified	When notification needs to be provided
1	<p>Fees</p> <p>1.1 Information on the fees for care for each approved child care service of the provider as notified to individuals who may enrol their child for care at the service (whether expressed in a contract for services, however described, through any fee charging policies, or as published by the service through marketing, advertising or any other promotional material or means) (<b>fee information</b>). The fee to be notified to the Secretary is:</p> <p>(a) where fees are advertised on a daily or sessional basis, the fees that apply daily or to sessions of care, as applicable; or</p> <p>(b) the total hourly fee advertised by the provider for care provided by the service,</p> <p>expressed before any fee reduction amounts (as set out in section 67EB of the Family Assistance Administration Act) or other rebates and discounts are applied, which may otherwise reduce the total fee.</p> <p>1.2 Where the fee information is provided on a daily or sessional basis (under paragraph 1.1(a)), the number of hours in each session of care to which the fee relates.</p> <p>1.3 Any change to the fee information.</p>	<p>1.1.1 If the provider is taken to be approved in respect of the service under item 9 of Schedule 4 to the Jobs for Families Act—within 14 days after the commencement day.</p> <p>1.1.2 If the provider is approved in respect of the service under Part 8 of the Family Assistance Administration Act—within 14 days after the day on which the provider is given the notice of approval under subsection 194B(4) of the that Act.</p> <p>1.2 Within 14 days after the change.</p>
2	<p>Operating hours</p> <p>2.1 Information on the hours and days on which each approved child care service of the provider operates, with opening and closing times notified in 24 hour format (<b>operating hours information</b>).</p> <p>2.2 Any change to the operating hours information.</p>	<p>2.1.1 If the provider is taken to be approved in respect of the service under item 9 of Schedule 4 to the Jobs for Families Act—within 14 days after the commencement day.</p> <p>2.1.2 If the provider is approved in respect of the service under Part 8 of the Family Assistance Administration Act—within 14</p>

**Part 5** Provider requirements

**Division 1** Requirement to notify Secretary of certain matters

**Section 55**

<b>Item</b>	<b>Matter to be notified</b>	<b>When notification needs to be provided</b>
		days after the day on which the provider is given the notice of approval under subsection 194B(4) of that Act. 2.2 Within 14 days after the change.
3	Whether the provider has any vacancies available to fill in respect of each of its approved child care services in relation to the following week.  A <i>vacancy</i> is: (a) for a centre-based day care service or an FDC service—an ongoing full day or session vacancy as applicable; and (b) for an outside school hours care service—an ongoing full session vacancy.	By 8:00 pm each Friday.
4	Ceasing to operate an approved child care service, if the provider is not required to give notice under section 204A of the Family Assistance Administration Act.	Within 24 hours after ceasing to operate the service.
5	Change of physical or postal address of the provider.	No later than 30 days before the change, or, if the change was not foreseeable at that time, as soon as practicable.
6	Change of physical or postal address of the premises from which any of the provider's approved child care service operates.	No later than 30 days before the change or, if the change was not foreseeable at that time, as soon as practicable.
7	Change to the name of the provider, including evidence of name change.	Within 14 days after the change.
8	Change to the name of any of the provider's approved child care services, including evidence of name change.	Within 14 days after the change.
9	Change of any of the following contact details of the provider, or of any of the provider's approved child care services: (a) an email address; (b) a website; (c) a telephone number; (d) a fax number.	Within 14 days after the change.
10	Information about any new person: (a) with management or control of the provider (including any person who becomes responsible for the day-to-day operation of any of the provider's approved child care services); or (b) who becomes an FDC educator in relation to any such service.  The information must include: (a) the name and contact details of the new	Within 7 days after the new person becomes a person with management or control of the provider, or an FDC educator.

Item	Matter to be notified	When notification needs to be provided
	<p>person; and</p> <p>(b) a declaration that the provider has undertaken all checks required by section 43 as it applies in relation to the new person, together with details of the new person's working with children card, if applicable.</p>	
11	<p>Change of the name of or contact details for any of the following persons:</p> <p>(a) a person with management or control of the provider (including any person who is responsible for the day-to-day operation of any of the provider's approved child care services);</p> <p>(b) an FDC educator in relation to any such service.</p>	Within 7 days after the provider becomes aware of the change.
12	<p>The provider becomes aware, because of a check undertaken in relation to a person as mentioned in section 43, that the person:</p> <p>(a) has a conviction or finding of guilt (a <b>serious conviction or finding of guilt</b>) for any of the following offences under a law of Australia or of a foreign country:</p> <p>(i) an indictable offence punishable by a maximum of 2 years imprisonment or 40 penalty units;</p> <p>(ii) an offence involving violence, or a sexual offence;</p> <p>(iii) an offence involving fraud, stealing or dishonesty; or</p> <p>(b) is an undischarged bankrupt; or</p> <p>(c) was a director or secretary of a corporation when the corporation went into administration, receivership or liquidation, or at any time during the 12 months beforehand.</p> <p>Note: A criminal history check is required under section 43 for any person with management or control of the provider, any person with responsibility for the day-to-day operation of a service, or an FDC educator in relation to any of the provider's approved child care services. The checks under that section which may disclose bankruptcy or administration, receivership or liquidation only apply to a person with management or control of the provider other than a person responsible for the day-to-day operation of any of the provider's approved child care services.</p>	Within 7 days after the provider receives a record of the check.
13	An event or circumstance in relation to a	Within 7 days after the provider becomes

**Part 5** Provider requirements

**Division 1** Requirement to notify Secretary of certain matters

**Section 55**

<b>Item</b>	<b>Matter to be notified</b>	<b>When notification needs to be provided</b>
	person with management or control of the provider (including a person responsible for the day-to-day operation of any of the provider's approved child care services) that reasonably indicates that the person is not likely to be a fit and proper person to be involved in the administration of CCS and ACCS.	aware of the event or circumstance.
14	A person stops having management or control of the provider (including when a person stops having day-to-day responsibility for the operation of any of the provider's approved child care services). The provider must also notify the Secretary of when, and the reason why, the person stopped having management or control of the provider.	Within 7 days after the person stops having management or control of the provider.
15	An educator obtains a qualification in circumstances outlined in subsection 46(4) of these Rules.	Within 7 days after the provider becomes aware of the matter.
16	A provider or a person with management or control of the provider, obtains an interest, or is likely to obtain an interest, in a business, in circumstances outlined in subsection 46(5) of these Rules.  Note: Subsection 46(5) refers to circumstances where an interest in a business may affect the provider or person's ability to comply with the family assistance law, where the approval may benefit the business or where a conflict of interest might reasonably be perceived to exist.	Within 7 days of the provider becoming aware of the matter.
17	Change in the status of a working with children card for each individual who is required to have such a card under section 195D of the Family Assistance Administration Act.  Note: The status of the card may change if the card is amended, suspended or revoked.	Within 24 hours after the provider becomes aware of the change of status.
18	The provider enters into administration, receivership, liquidation or bankruptcy. The provider must also notify the Secretary of the details of this event.	Within 24 hours after the event.
19	Unexpected closure of any of the provider's approved child care services due to unforeseen circumstances.	Within 24 hours after the closure.
20	A serious conviction or finding of guilt (see item 12) of: (a) a person with management or control of the provider (including a person who	Within 24 hours after the provider becomes aware of the charging, conviction or finding of guilt.

<b>Item</b>	<b>Matter to be notified</b>	<b>When notification needs to be provided</b>
	becomes responsible for the day-to-day operation of any of the provider's approved child care services); or (b) an FDC educator, or another educator, in relation to any such service.	

Section 56

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**Division 2—Requirements in relation to children of a prescribed class of sessions of care for which there is no eligibility for CCS**

**56 Requirements in relation to care given at FDC services to children of FDC educators**

- (1) The section sets out requirements for paragraph 204G(1)(a) of the Family Assistance Administration Act in relation to a provider that provides a session of care in circumstances:
  - (a) in which paragraph 8(1)(d) of these Rules apply; or
  - (b) in which paragraph 8(1)(d) of these Rules may apply, but in which the provider considers that it does not apply because of circumstances applying under subsection 8(2) of these Rules.
- (2) The provider must keep a register, in a form and manner approved by the Secretary, that sets out the following:
  - (a) the name of the individual who would otherwise be eligible for CCS in relation to the session of care;
  - (b) the name of the FDC educator (whether this is the individual described in paragraph (a) or the partner of that individual) and their child care personnel ID;
  - (c) the relevant child and her or his CRN;
  - (d) any unique identifier assigned by the Department to the enrolment of the child for care by the service;
  - (e) identifying details (such as a name or unique identifier) of the approved child care service at which the session of care was provided;
  - (f) if the provider considers that the prescribed circumstances in subsection 8(2) apply, whether this is because:
    - (i) the child is an eligible disability child; or
    - (ii) the child is an eligible ISP child; or
    - (iii) the child is a remote area child; or
    - (iv) paragraph 8(2)(d) applies to the relevant FDC educator (because the FDC educator works or studies).
- (3) The register must be updated:
  - (a) within 14 days after the end of the week in which each applicable session of care is provided (unless paragraph (b) applies); or
  - (b) if the week is in a period, or a series of consecutive periods, to which a payment under section 205A of the Family Assistance Administration Act relates—within 14 days after the end of the period, or the last such period; or
  - (c) if an enrolment notice is given under subsection 200A(2) of the Family Assistance Administration Act in relation to a child to whom subsection (2) of this section applies—by the day the enrolment notice is required to be given under that subsection of that Act.

## Part 6—Business continuity payments

### 57 Circumstances in which a business continuity payment may be made

For paragraph 205A(1)(c) of the Family Assistance Administration Act, if a provider fails to give a report under subsection 204B(1) of that Act by the time required under that section, a payment under section 205A of that Act (a **business continuity payment**) may only be made if the Secretary is satisfied that the failure is directly due to circumstances which:

- (a) are beyond the control of the approved service; and
- (b) prevent the service from giving the report by the required time.

Note: The time required for a report is set out in paragraph 204B(2)(d) of the Family Assistance Administration Act.

### 58 Method of determining payment amount

- (1) For paragraph 205A(2)(a) of the Family Assistance Administration Act, the amount of a business continuity payment is the sum of the weekly payments as worked out under section 59 or 60 of these Rules (as applicable) for each week in the period specified in the notice given to the approved provider under subsection 205A(4) of that Act.

*Rounding up or down*

- (2) If the amount of a business continuity payment under subsection (1) is not a multiple of \$100, the amount is to be rounded to the nearest multiple of \$100 (rounding up an amount that is a multiple of \$50 but not \$100).

### 59 Weekly amount where service has previously received a fee reduction amount

- (1) Where an approved service has, during a period (the **test period**), previously been paid one or more fee reduction amounts under section 67EB of the Family Assistance Administration Act, the amount of the business continuity payment for the weeks to which it relates (the **business continuity period**) is the average of the fee reduction amounts received by the service for sessions of care provided in a week during the test period.
- (2) In determining the test period for subsection (1), the Secretary must choose a similar period to the business continuity period, having regard, without limitation, to:
  - (a) whether or not the periods intersected with school holidays; and
  - (b) the likely number of children in care; and
  - (c) the time of year.

Note: For the definition of **fee reduction amount**, see section 67EB of the Family Assistance Administration Act.

Section 60

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**60 Weekly amount where service has not previously received a fee reduction amount**

- (1) Where an approved service has not previously received any fee reduction amounts, the weekly amount is calculated using the following formula:

$$\frac{\text{The CCS hourly rate cap for the service} \times \text{The estimated number of children in care for the week} \times 50}{2}$$

- (2) In subsection (1):

***estimated number of children in care for the week*** means the number of children for which the Secretary estimates the service has provided a session of care during a week in which the business continuity payment is to be made, determined by reference to any information held by the Secretary, including (without limitation) information in enrolment notices given under section 200A of the Family Assistance Administration Act.

Note: ***CCS hourly rate cap*** has the meaning given by subclause 2(3) of Schedule 2 to the Family Assistance Act.



## **Part 7—Transitional rules for the Jobs for Families Act**

### **Division 1—Preliminary**

#### **61 Nature of transitional rules**

This Part is made for item 12 of Schedule 4 to the Jobs for Families Act.

Section 62

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## Division 2—Continuity of certain matters

### 62 Continuity of absences

- (1) Paragraph 10(2)(b) of the Family Assistance Act (as in force on or after the commencement day) is modified so that:
  - (a) the reference to an enrolment in subparagraph 10(2)(b)(i) of that Act includes a reference to an enrolment at a child care service that occurred before the commencement day for which the relevant approved provider was taken to be approved under item 9 of Schedule 4 to the Jobs for Families Act; and
  - (b) the reference in subparagraph 10(2)(b)(ii) of that Act to the day that the child first attended a session of care includes attendance that occurred before the commencement day in relation to the enrolment referred to in paragraph (a) of this subsection.
- (2) However, after the commencement day, a session of care is only taken to have been provided by a child care service to a child under subsection 10(2) of the Family Assistance Act because of subsection (1) of this section, despite the child's absence during that session, where:
  - (a) before the absence, the child physically attended a session of care at that child care service on or after 18 June 2018; and
  - (b) after the absence, the child returns to physically attend a session of care at that child care service before 16 July 2018.
- (3) Paragraph 10(2)(c) of the Family Assistance Act (as in force on or after the commencement day) is modified so that an absence day that occurs on 1 July 2018 may be counted towards the 41 days referred to in that paragraph.
- (4) To avoid doubt, if:
  - (a) a child is absent from a session of care provided by an approved child care service on a day before the commencement day; and
  - (b) the child returns to physically attend a session of care provided by the same service for the first time after the commencement day;subparagraph 10(2)(b)(iii) of the Family Assistance Act (which ensures absences cannot occur for days after a service permanently ceases to provide care), as continued in force on and after the commencement day by item 8 of Schedule 4 to the Jobs for Families Act, is taken to refer to the service as approved for CCS purposes in relation to eligibility for child care benefit for sessions of care that occurred before the commencement day.

## **Division 3—Limitations and other matters**

### **63 Limitation on amendments to attendance reports**

Section 219N of the Family Assistance Administration Act, as continued in force on and after the commencement day by item 10 of Schedule 4 to the Jobs for Families Act, has effect in respect of sessions of care that occurred before the commencement day with the following modifications:

- (a) a report may only be substituted under subsection 219N(7) of the Family Assistance Administration Act within 28 days after the commencement day;
- (b) the Secretary may, under subsection 219N(7) of that Act, substitute a report submitted by an approved child care service with a report (the ***substituted report***) containing information that the Secretary considers to be more accurate than information in the report submitted by the service, but only where the Secretary has given the service 14 days to consider the substituted report and provide any submissions in respect of its accuracy.

### **64 Certain operators of existing approved child care services not deemed to be approved providers under the family assistance law**

Notwithstanding item 9 of Schedule 4 to the Jobs for Families Act, an operator of an approved child care service within the meaning of the Family Assistance Administration Act as in force immediately before the commencement day, is not taken to be an approved provider or approved in respect of a service (under paragraph (1)(a) of that item) on and after commencement day if:

- (a) the operator was approved in respect of an application made on or after 1 April 2018, under the family assistance law as in force before the commencement day, for which the Secretary had made a determination that exceptional circumstances existed justifying the making of the application under subsection 41(2) of these Rules; or
- (b) the operator made an application before 1 April 2018, under the family assistance law as in force before the commencement day, and was approved in respect of that application on or after 1 April 2018.

### **65 Special rate of child care benefit for periods prior to commencement day**

Subdivision C of Division 4 of Part 4 of the Family Assistance Act, as continued in force by item 10 of Schedule 4 to the Jobs for Families Act, has effect on and after the commencement day with the following modifications:

- (a) a certificate under subsection 76(1) or (2) of the Family Assistance Act, and an application under section 81 of that Act, can only be given or made, on or after the commencement day, in respect of sessions of care that were provided before the commencement day if they are given or made within 28 days after the commencement day, and relate to sessions of care that occurred no earlier than 28 days before the commencement day;

**Section 66**

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- (b) an application under section 81 of the Family Assistance Act that is not received by the Secretary within 28 days after the commencement day is taken not to have been made;
- (c) a certificate under subsections 76(1) or (2) of that Act that was given before the commencement day in relation to a period that begins after the commencement day is taken to have not been given at all.

**66 Limitations on determinations of temporary financial hardship**

- (1) Where, in respect of a period (the *first period*) ending before the commencement day, the special rate of child care benefit is payable because of a certificate given under subparagraph 76(1)(b)(ii) of the Family Assistance Act, a determination of temporary financial hardship under section 85CH of that Act (as amended by the Jobs for Families Act) must include the first period in calculating the 13 weeks referred to in subsection 85CH(7) of the Family Assistance Act as so amended.
- (2) Subsection (1) only applies if the event that gave rise to the hardship in respect of the first period is the same event on the basis of which the determination of temporary financial hardship under section 85CH of that Act as so amended is made.

**67 Debts arising from overpayments made before the commencement day**

- (1) In addition to the effect of item 8 of Schedule 4 to the Jobs for Families Act in respect of a debt arising from overpayments made before the commencement day, a debt arising (and as owed by either an operator or an individual) in relation to overpayments of child care benefit or child care rebate may also be recovered as if the debt was a debt of CCS or ACCS.
- (2) Without limiting subsection (1), a debt of child care benefit or child care rebate arising after the commencement day, or that is still unpaid on the commencement day, may be recovered by reducing payments of CCS or ACCS (and if so, the debt is taken to have been repaid to the extent of the reduction).
- (3) Sections 71E and 71F of the Family Assistance Administration Act (as amended by the Jobs for Families Act) apply in relation to a debt of child care benefit or child care rebate that arises after the commencement day, or that is still unpaid on the commencement day, as if references in those sections to CCS or ACCS were references to child care benefit or child care rebate, and references to a provider were references to the relevant operator.

**68 Lump sum payments in respect of sessions of care before the commencement day**

On and after the commencement day, a claim for payment of child care benefit for a past period of care provided by an approved child care service, must not be made after 30 June 2019.

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## Schedule 1—Diagnosed conditions

- (a) Moderate to severe multiple disability or moderate to severe physical disability (including neurological disability) where the child is, or is likely to be, dependent for mobility indoors and outdoors from 3 years of age onwards.
- (b) Severe multiple or physical disability (including uncontrolled seizures), requiring constant care and attention where the child is less than 6 months of age.
- (c) Moderate, severe or profound intellectual disability where IQ is less than 55. This includes a child with a known syndrome.
- (d) Autism Spectrum Disorder when diagnosed by a psychiatrist or developmental paediatrician experienced in the assessment of Pervasive Developmental Disorders using the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).
- (e) Autistic Disorder or Asperger's Disorder (not including Pervasive Developmental Disorder not otherwise specified) when diagnosed by a psychiatrist or developmental paediatrician experienced in the assessment of Pervasive Development Disorders using the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).
- (f) Childhood Disintegrative Disorder diagnosed by a psychiatrist using DSM-IV.
- (g) Major depression of childhood diagnosed by a psychiatrist using DSM-IV or DSM-5.
- (h) Childhood schizophrenia diagnosed by a psychiatrist using DSM-IV or DSM-5.
- (i) Bilateral blindness where:
  - (i) visual acuity is less than or equal to 6/60 with corrected vision; or
  - (ii) visual fields are reduced to a measured arc of less than 10 degrees.
- (j) A 45 decibels or more hearing loss in the better ear, based on a 4 frequency pure tone average (using 500, 1,000, 2,000 and 4,000Hz).
- (k) Deaf-blindness diagnosed by a specialist multidisciplinary team, including a professional audiological and ophthalmological evaluation.
- (l) Epilepsy (uncontrolled while on medication).
- (m) Cystic Fibrosis.
- (n) Down syndrome.
- (o) Fragile X syndrome.
- (p) Diabetes Mellitus Type 1.
- (q) Phenylketonuria (PKU).
- (r) Other inborn errors of metabolism (not specified elsewhere) that are treated by medically prescribed diet to prevent neurological disability and/or severe organ damage.  
 Example: Organic acidaemias, urea cycle defects, galactosaemia and some fatty acid or oxidation defects.
- (s) Moderate to severe Osteogenesis Imperfecta with 2 or more fractures per year and/or significant pain that significantly limits activities of daily living.

- (t) Chromosomal or syndromic conditions (not specified elsewhere) where there is moderate or severe intellectual disability and/or multiple, major and permanent physical abnormalities as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist.

Example: Children with a moderate or severe intellectual disability and/or multiple, major and permanent physical abnormalities who have been diagnosed with Cri du chat syndrome, Rett syndrome, Angelman syndrome, Prader-Willi syndrome, Edwards syndrome (Trisomy 18), Williams syndrome, Patau syndrome (Trisomy 13), Coffin-Lowry syndrome, Congenital rubella syndrome, Cornelia de Lange syndrome, Kabuki Make-up syndrome, Larsen syndrome, Opitz G syndrome, Pallister-Killian syndrome, Seckel syndrome, Smith-Magenis syndrome, CHARGE association.

Note: This category may apply to children diagnosed with other non-listed chromosomal or syndromic conditions who have a moderate or severe level of intellectual disability and/or multiple, major and permanent physical abnormalities.

- (u) Neurometabolic degenerative conditions where there is moderate or severe intellectual and/or moderate or severe physical disability as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist:

- (i) Lysosomal storage disorders.

Example: Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with metachromatic Leukodystrophy, Tay Sachs disease, Krabbe disease, Pompe's disease, Mucopolysaccharidoses (Hurler syndrome (MPS 1)), Hunter syndrome (MPS 2), San Filippo syndrome (MPS 3), Morquio syndrome (MPS IVA), Maroteaux-Lamy syndrome (MPS VI).

- (v) Neurometabolic conditions.

Example: Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with Lesch Nyhan syndrome, Menkes disease, Zellweger syndrome and related peroxisomal disorders, some mitochondrial respiratory chain disorders.

Note: This category may apply to children diagnosed with other non-listed neurometabolic degenerative conditions who have a moderate or severe level of intellectual and/or physical disability.

- (w) Neurodegenerative disorders where there is moderate or severe intellectual and/or moderate or severe physical disability as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist.

Example: Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with Ataxia Telangiectasia, unclassified Leukodystrophies.

Note: This category may apply to children diagnosed with other non-listed neurodegenerative conditions who have a moderate or severe level of intellectual and/or physical disability.

- (x) The following dermatological conditions:

- (i) Epidermolysis Bullosa Dystrophica;
- (ii) Hypohidrotic ectodermal dysplasia (synonym: anhidrotic ectodermal dysplasia);
- (iii) Hay Wells syndrome (synonym: ankylobepharon, ectodermal dysplasia and clefting (AEC) syndrome);
- (iv) Lamellar ichthyosis;
- (v) Harlequin ichthyosis;
- (vi) Sjorgren Larsson syndrome;
- (vii) Netherton syndrome;
- (viii) Severe congenital ichthyosiform erythroderma;
- (ix) Generalised bullous ichthyosis (synonym: bullous ichthyosiform erythroderma; epidermolytic hyperkeratosis).

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- (y) Any of the following neuromuscular conditions:
- (i) Duchenne (or Becker) muscular dystrophy;
  - (ii) Autosomal recessive muscular dystrophy;
  - (iii) Spinal muscular atrophy conditions, for example, Werdnig-Hoffman;
  - (iv) Friedrich's Ataxia.

## Schedule 2—Diagnosed conditions

- (a) Autism Spectrum Disorder when diagnosed by a registered psychologist experienced in the assessment of Pervasive Developmental Disorders using the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5).
- (b) Autistic Disorder or Asperger's Disorder (not including Pervasive Developmental Disorder not otherwise specified) when diagnosed by a registered psychologist experienced in the assessment of Pervasive Development Disorders using the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).
- (c) Moderate, severe or profound intellectual disability where IQ is less than 55. This includes a child with a known syndrome.