s 22

From: s 22 @dese.gov.au>
Sent: Friday, July 1, 2022 2:55 PM
To: s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>; s 22 @dese.gov.au>;
s 22 @dese.gov.au>
s 42

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Kind regards,

s 22

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Australian Government Department of Education
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From: s 22 @dese.gov.au>
Sent: Thursday, 30 June 2022 5:16 PM
To: s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>; s 22 @dese.gov.au>
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From: s 22 @education.gov.au>
Sent: Monday, August 8, 2022 2:16 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>; s 22 @education.gov.au>

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From: s 22 @education.gov.au>
Sent: Monday, 8 August 2022 2:14 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>; s 22 @education.gov.au>

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From: s 22 @education.gov.au>
Sent: Friday, 5 August 2022 4:37 PM

To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 22
s 22 @education.gov.au>
s 42

Hi s 22 ,

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Child Care Legal Team | Corporate and Child Care Legal Branch
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The Department of Education acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and cor
respects to them and their cultures, and Elders past, present and emerging.

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Sent: Friday, 5 August 2022 4:26 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 22
s 22 @education.gov.au>
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From: s 22 @education.gov.au>
Sent: Friday, 5 August 2022 12:17 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
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Thanks s 22

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The Department of Education acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and cor respects to them and their cultures, and Elders past, present and emerging.

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Sent: Friday, 5 August 2022 11:24 AM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 22
s 22 @education.gov.au>

s 42

Hi s 22
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| Subsidies - Implementation| Child Care Markets and Reform | Provider Analytics and Integrity Division | Early Childhood and Youth Group | Australian Government Department of Education

From: s 22 @servicesaustralia.gov.au>
Sent: Thursday, 4 August 2022 2:32 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 47E
s 47E @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>; s 22
s 22 @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>;
s 22 @servicesaustralia.gov.au>; s 22
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s 47C

Division 2—Eligibility for child care subsidy

85BA Eligibility for CCS

(1) An individual is eligible for CCS for a session of care provided by an approved child care service to a child if:

(a) at the time the session of care is provided:

(i) the child is an FTB child, or a regular care child, of the individual or the individual's partner; and

(ii) the child is 13 or under and does not attend secondary school, or the requirements covered by subsection (2) are satisfied; and

(iii) the child meets the immunisation requirements in section 6; and

(iv) the individual, or the individual's partner, meets the residency requirements in section 85BB; and

(b) the individual, or the individual's partner, has incurred a liability to pay for the session of care under a complying written arrangement; and

(c) the session of care:

(i) is provided in Australia; and

(ii) is not provided as part of the compulsory education program in the State or Territory where the care is provided; and

(iii) is not provided in circumstances prescribed by the Minister's rules; and

(d) Division 5 does not prevent the individual being eligible for CCS for the session of care; and

(e) if the session of care is provided by an approved child care service of a kind prescribed by the Minister's rules—the Secretary determines that the requirements prescribed by the Minister's rules in relation to that kind of service are met.

Note: ***Complying written arrangement*** is defined in subsection 200B(3) of the Family Assistance Administration Act.

(2) For the purposes of subparagraph (1)(a)(ii), the requirements covered by this subsection are that:

(a) the child is a member of a class prescribed by the Minister's rules; and

(b) the individual and the approved child care service satisfy any conditions prescribed by the Minister's rules in relation to the child.

(2A) To avoid doubt, circumstances prescribed by the Minister's rules for the purposes of subparagraph (1)(c)(iii) may include circumstances relating to an emergency or disaster.

Note: ***Emergency or disaster*** is defined in subsection 205C(2) of the Family Assistance Administration Act.

(3) A determination under paragraph (1)(e) is not a legislative instrument.

s 47C

s 47C

Cheers,

s 22

Phone s 22
Child Care Subsidy Programme | Families and Child Care Branch
FAMILIES, CHILDREN AND TARGETED SERVICES DIVISION
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From: s 22 @education.gov.au>
Sent: Wednesday, 3 August 2022 3:58 PM
To: s 22 @servicesaustralia.gov.au>; s 47E
s 47E @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>; s 22
s 22 @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>
Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
s 22 @education.gov.au>; s 22 @education.gov.au>;
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s 47C

s 47C

From: s 22 @servicesaustralia.gov.au>
Sent: Friday, 29 July 2022 12:33 PM
To: s 22 @education.gov.au>; s 47E
s 47E @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>; s 22
s 22 @servicesaustralia.gov.au>; s 22 @servicesaustralia.gov.au>

Cc: s 22 @education.gov.au>; s 22 @education.gov.au>;
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Cheers,

s 22

Phone s 22
Child Care Subsidy Programme | Families and Child Care Branch
FAMILIES, CHILDREN AND TARGETED SERVICES DIVISION

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From: s 22 @education.gov.au>
Sent: Thursday, August 18, 2022 11:10 AM
To: s 22 @education.gov.au>; s 22
s 22 @education.gov.au>; s 22 @education.gov.au>
s 42

From: s 22 @opc.gov.au>
Sent: Tuesday, 9 August 2022 3:40 PM
To: s 22 @education.gov.au>
Cc: s 22 @education.gov.au>; s 47E @dese.gov.au>; s 22 ,
s 22 @opc.gov.au>

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Part 1, Document 3,
Attachment 1

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Part 1,
Document 3,
Attachment 2

s 42

s 22

OFFICIAL: Sensitive

From: s 22 @dese.gov.au>
Sent: Tuesday, September 7, 2021 8:01 PM
To: s 22 @dese.gov.au>; s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>
s 42

s 22

From: s 22 @dese.gov.au>
Sent: Tuesday, 7 September 2021 5:01 PM
To: s 22 @dese.gov.au>; s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>
s 42

s 42

From: s 22 @dese.gov.au>
Sent: Tuesday, 7 September 2021 10:12 AM
To: s 22 @dese.gov.au>; s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>
s 42

From: s 22 @dese.gov.au>
Sent: Tuesday, 7 September 2021 9:34 AM
To: s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>;
s 22 @dese.gov.au>
s 42

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From: s 22 @dese.gov.au>
Sent: Friday, 3 September 2021 11:36 AM
To: s 22 @dese.gov.au>; s 22 @dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>
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From: s 22 @dese.gov.au>
Sent: Wednesday, 6 October 2021 7:53 PM
To: BLUNCK,Tracey <Tracey.Blunck@dese.gov.au>
Cc: s 22 @dese.gov.au>; s 22 @dese.gov.au>;
s 22 @dese.gov.au>; s 22 @dese.gov.au>;
@dese.gov.au>; s 22 @dese.gov.au>
Subject: Seeking agreement - application of the 26 week rule

Hi Tracey,

AS flagged today, we are **seeking your agreement on two issues regarding the 26 week rule, listed below.**

Issues for your agreement:

1. We are seeking your agreement that the application of the 26 week rule, such that it follows the child, be included in the scope (and costs and IT build) for Phase 2. While this in accordance with the legislation, please

note there is risk this application is more generous will reduce policy integrity in rare family circumstances. The scenarios below provide a detailed overview of this issue, including justifying it's value of this approach from a policy perspective.

2. We are also seeking your agreement not to revisit the retrospective application of the 26 week rule. At this stage, retrospective application of the 26 week rule will not be built in the system (either in Phase 1 or Phase 2). We advise this is the best policy outcome because the 26 week rule is more stringent than the 14 week rule (as it removes eligibility entirely rather than just entitlement) and therefore should be applied in a way that is more generous to families. Noting also we are not bound by the legislation on this.

Background and scenarios

As we have discussed previously, the 26 week rule has to follow the child according to the legislation. However, this was not captured in the Business Requirements of Phase 1 and will now be included in the scope of Phase 2.

The purpose of sessions of care 'following the child' for the 26 week rule is to ensure families can receive maximum benefit from the higher subsidy, while maintaining policy integrity. This application of the rule allows parents/carers to continue to receive the higher subsidy for their second and younger children, even if/when care arrangements (and liability to pay child care fees) for the 'other child' temporarily fall onto another individual.

The following scenarios demonstrate both the benefits and risks (in rare circumstances) of this application of the 26 week rule.

Example 1: the 26 week rule 'following the child' leading to a beneficial outcome for families with non-standard care arrangements

- Mary is a single mother with two children aged 5 and under in childcare. Paris is 6 months old, and Tracey is 3 years old.
- Tracey spends periods of time with their Grandma (Mary's mother) to take the pressure off Parent A. Noting – various arrangements of this kind are likely to be more common amongst vulnerable cohort, particularly single parents.
- Grandma has been caring for Tracey from Monday to Friday over the last few months (Mary has Tracey on weekends, maintaining 'regular care' as defined under family assistance law), which has resulted in Tracey having no sessions of care with Mary for 26 weeks. However, because sessions of care 'follow the child', this will not influence Mary's higher subsidy entitlement for Paris's sessions of care.
- Tracey returns to Mary's care after 27 weeks, when her work arrangements permit her to again care for her two children. Mary's CCS eligibility in relation to Tracey will remain unchanged, and she will not need to reapply for CCS now that Tracey is back in her care.

Although this is a generous application of the rule, we suggest it will ensure families in non-standard circumstances (particularly vulnerable and disadvantaged families) can still benefit from the measure. In addition, we suggest the policy integrity of the measure will be maintained by other mechanisms set out in the Act. In the first instance, the core CCS eligibility criteria requiring that an individual has 'regular care' of the child will ensure CCS eligibility is cancelled for individuals who no longer care for children at all. Second, as seen in the below scenario, in extreme cases where parents have no intention of using child care for the 'other child' but still have 'regular care' of the child and therefore benefit from this wider application of the 26 week rule (as their CCS eligibility will not be cancelled on the grounds that they don't meet the core CCS eligibility criteria), it is open to the Secretary (delegated to Services Australia) to use their discretionary power under s67CC(2)(e) to cancel the individual's CCS eligibility.

Example 2: the 26 week rule 'following the child' leading to a reduction in policy integrity

- Two siblings, a 5 year old and a 3 year old, live with each of their parents (Parent A and Parent B) on alternating weeks (i.e., one week on, one week off with each parent), and attend child care while under the care of each parent. Custody arrangements then change such that Parent A now looks after the 5 year old every Monday to Friday and the 3 year old Sunday through Saturday (7 days) every second week. Parent B now looks after the 5 year old every Saturday and Sunday and the 3yr old Sunday through Saturday (7 days) every other week (alternating with Parent A).

- Parent A continues to incur child care fees for both children, and receives CCS for the 5 year old and MCS for the 3 year old. Parent B incurs child care fees for the 3 year old but doesn't incur fees for the 5yr old as they look after the 5 year old on weekends when they do not use child care. Parent B will continue to receive MCS for the 3 year old even though they don't incur fees for the 5 year old child, because the 5 year old still attends sessions of care with Parent A (and sessions of care follow the 5 year old and are counted across all carers).
- Parent B still meets the 'regular care' core CCS eligibility criteria, and therefore cannot have their CCS eligibility cancelled for this reason. Although Parent B does not meet the core eligibility criteria of being liable to pay child care fees for the 5 year old, the system will not cancel CCS eligibility for this reason. Further, their CCS eligibility status will continue even if a child's enrolment is cancelled after 14 weeks of no attendance.
    - Note: this is because the way CCS eligibility status is applied in the CCSS is not dependent upon an individual having a Complying Written Arrangement (CWA) enrolment in place with a service provider and being liable to pay child care fees. This is only required for a payability determination i.e., when a service provider lodges a session report and the system pays CCS entitlement to the service provider. Services Australia has advised that this was an underpinning requirement for the original CCS build, which sought to enable parents to assist in families' planning of their child care needs and work arrangements, prior to using child care. This system design also means that CCS eligibility status is maintained even when they don't have an active enrolment for their child (e.g., if enrolment is cancelled due to 14 weeks of no attendance).
- Therefore, in this circumstance, Parent B will continue to receive MCS for the 3 year old for as long as the 5 year old is receiving sessions of care with Parent A (this could be until the child turns 6 years of age). However, in this case, it is open for the Secretary to use their discretionary power to cancel CCS eligibility if they are satisfied that Parent B has no intention of using child care for the 5 year old (if Services Australia became aware or was notified that the individual was not using child care (not liable for child care fees) for the eldest child).

Happy to chat!

Thanks,

s 22

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FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 1 – increase to child care subsidy rates)

Schedule 1 – increasing child care subsidy rates		
Schedule 1 will commence on 1 July 2023.		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Items 2, 4, 6, 8, 10	**Removing the definitions of the lower, second, third, fourth and upper income thresholds** There will now be separate thresholds for the majority of children (called "base rate" thresholds) and higher rate children (called "other rate" thresholds).	These are technical amendments to facilitate new terminology needed for the new child care rates.
Item 1, 3, 5, 7, 9	**Introducing new definition for:** • **fourth income (other rate) threshold** • **lower income (base rate) threshold** • **lower income (other rate) threshold** • **second income (other rate) threshold** • **third income (other rate) threshold** • **upper income (base rate) threshold** • **upper income (other rate) threshold.**	Each of these terms represents an income threshold where the taper changes. For the majority of children (base rate children), the applicable percentage for calculating CCS will be 90 until the lower income (base rate) threshold of $80,0000 is reached. It will then taper down by 1 percentage point per $500 income until the upper income (base rate) threshold of $530,000 is reached. For other rate children – generally, the second or further child under the age of 5 – the applicable percentage will start at 95%. It will taper down to until it reaches the second income (other rate) threshold, then continue straight until it reaches the third income (other rate) threshold, then taper down to the fourth income (other rate) threshold, then continue straight until the upper

		income (other rate) threshold, at which point it joins the base rate.
Item 11	**Introducing the new rate for base rate children** This introduces a table that sets out the applicable percentage for base rate children. The table states that the percentage will be 90% for families on incomes under $80,000, and 0% for families on incomes over $530,000.	This measure is intended to make the cost of child care cheaper for all families with an adjusted taxable income under $530,000. This means that more families will fall below the upper income threshold and will be entitled to receive CCS, whereas previously they may not have been entitled to CCS at all. In particular, families earning $80,000 or less will now get 90% of the CCS hourly rate. In other words, not only will more families be entitled to receive the highest percentage of the hourly CCS rate, but that percentage has also been raised, meaning that they will also be entitled to a higher rate of CCS.
Item 12	**Introduces the percentage for families between $80,000 and $530,000** This item introduces a formula that states that the percentage between $80,000 and $530,000 will taper down from 90% for each $5,000 over $80,000 the family earns.	This measure is intended to make the cost of child care cheaper for all families with an adjusted taxable income under $530,000. This amendment means that individuals earning between $80,000 and $530,000, the percentage of the hourly CCS rate they are entitled to will go down by 1 percent for every $5,000 above $80,000 they earn.
Item 13	**Removes a formula no longer needed**	The formula was previously used to calculate the percentage for the old CCS rates, but the new

		CCS rates are simpler and only require one formula.
Item 14	**Defines lower income (base rate) threshold and upper income (base rate) threshold** This item provides that the lower income (base rate) threshold is $80,000. This item also provides that the upper income (base rate) threshold is $450,000 more than the lower income (base rate) threshold.	This means that all families on incomes less that $80,000 will have their CCS entitlement calculated at 90% of their fees (subject to the fee cap). However, this amount will be indexed over time under Schedule 4 to the Family Assistance Act. At commencement, this also means that families with incomes over $530,000 will not be entitled to any CCS. However, this will also increase over team as the $80,000 is indexed.
Item 16	**Amendment to the definition of "higher rate child"** This adds a criteria to the definition of higher rate child, so that a child is only a "higher rate child" if the relevant individual's adjusted taxable income is below the upper income (other rate) threshold.	This is needed because if the family earns over the old upper rate threshold (approximately $360,000), their CCS rates for second and further children will be the same as their CCS rate for their first child.
Items 15 and 17	**Introduces the percentage for higher rate children – second and further children under 5 years old** These items introduce the percentage for higher rate children. Subclause (2) provides that if the base rate is higher than the other rate, the base rate is	This amendment means that families who have several children in child care will receive a higher rate of child care subsidy. This is done by identifying a "higher rate child" of an individual who will attract more CCS than a "standard rate child". To determine who the higher rate child is, you will need to look at Clause 3B(1) of Schedule 2.

	applicable. This is needed because due to indexation, the tapers of the base rate and other rate may overlap. The policy intent is that if they do, the higher rate will be applicable. Subclauses (3) to (5) set out the applicable percentage according to the table in subclause (3) and the formula in subclauses (4) and (5). The percentage for higher rate children starts off at 95%, then starts to taper down under subclause (4), then stays straight at 80% for a while, then starts to taper down under subclause (5), then will stay straight at 50% for a while before joining the base rate. Subclause (6) defines the income thresholds. These are the same as currently in the legislation, to reflect the policy that the rates for higher rate children will remain unchanged up to approximately $360,000.	These amendments mean that if you earn approximately $360,000 or less, then the percentage of the hourly CCS rate you are entitled to receive will be 30% more than the old CCS rates. The maximum amount a person can receive for their higher rate child is 95%.
Item 18	**Makes a consequential change to the lower income activity test result** This substitutes the new "lower income (base rate) threshold" of $80,000 for the maximum income for which the lower income activity test result applies.	Currently, families on incomes of $72,466 can get the lower income activity test result of 24 under clause 13 of Schedule 2 to the Family Assistance Act. This means even if their activity level is very low, they can still access up to 24 hours of subsidised care per fortnight due to their low income. Following these changes, this activity test result will be available for families with incomes up to $80,000.

Items 19 to 20	**Ensures that the lower income thresholds are indexed** These amendments ensure that the lower income thresholds are indexed, in the same way as under the previous rates.	Amounts that are not indexed can erode over time due to inflation. For example, $100 in 2020 stretched further than $100 does in 2022. These amendments ensure that the lower income thresholds are indexed, so that as prices and wages rise over time, the thresholds for CCS rise commensurately, rather than eroding away with inflation.
Item 21	**The new lower income (base rate) threshold in 2023 will not be indexed in the 2023/24 financial year** This amendment prevents indexation occurring in July 2023.	Indexation occurs on the first day of the first CCS fortnight of the income year. This could mean that the new $80,000 threshold was introduced on 1 July 2023 and then indexed around a week later on 10 July 2023. This provision will ensure that $80,000 will be the threshold up to which individuals receive 90% CCS for the full 2023/24 financial year, before being indexed for the first time in July 2024.
Item 22	**Application provision ensuring the amendments start at the beginning of a CCS fortnight** While the Schedule commences on 1 July 2023, this means that the new rates will not apply until the beginning of the first CCS fortnight of the new year, which will be 10 July 2023.	This application provision is needed because it is not practicable for the department to change the rates midway through a CCS week. This would involve an entitlement decision for a week having different rates for some days in a week than others. Instead, the new rates will come in at the start of a CCS fortnight, which will make the transition much smoother.
Item 23	**Amends section 67CC(2)(d) so that the Secretary may cease an individual's eligibility determination if the child does not receive any**	The multiple child subsidy bill introduced the 26 week rule and the 13 week rule on the principle that sessions "follow the child". For example, if

	sessions of care for 26 weeks, for sessions of care that that individual was the claimant for This amendment will change the Secretary's power to end a determination of eligibility (meaning the individual must put in a new claim) when a child has not received any sessions for 26 weeks.	the child had two separated parents and each of them were CCS claimants, the rule would apply according to whether or not the child was receiving care, regardless of which parent had put in a claim for that session. However, this was going to be very expensive to implement. This provision reverses this, so that sessions follow the eligible individual. That is, the Secretary may cease a determination of eligibility if the child has not attended any sessions for 26 weeks for which that individual is the claimant. If the child is attending care under a different claim (e.g. the other separated parent), this is not relevant.
Item 24	**Application provision ensuring sessions previous to 1 July 2023 may be taken into account** The Secretary may rely on section 67CC as amended from the commencement of Schedule 1 part 2, the day after royal assent.	This means that the Secretary will be able to use this power, as amended, from the commencement of the provision on the day after royal assent. It doesn't matter if the 26 weeks without a session of care being attended started before commencement. This will ensure this amendment has the maximum effect and the Secretary does not have to wait before making decisions according to the "follow the individual" principle.
Item 25	**Repeals part 2 of Schedule 2 to the *Family Assistance Legislation Amendment (Child Care Subsidy) Act 2021***	Phase 2 is being removed as the benefits did not outweigh the implementation costs.

	This will remove what was known as "phase 2" of the multiple child subsidy measure. Phase 2 would have implemented the 13 week rule, meaning that families would only receive the higher CCS rate if an older child had attended a session in the last 14 weeks.	

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 2 – improving transparency)

Schedule 2 – profit reporting by large child care providers		
Schedule 2 will commence on 1 July 2023.		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Items 1, 2	**Removing the definition of "large centre-based day care provider" and inserting a new definition for "large child care provider"** The family assistance law previously included a regime to ensure the financial viability for large centre-based day care provider. The new transparency scheme will build on this but expand it to apply to large providers regardless of the kind of service they operate.	These are technical amendments to facilitate new terminology needed for the transparency measure.
Items 3, 4	**Amending the definition of "large child care provider"** The family assistance law previously included a regime to ensure the financial viability for large centre-based day care provider. The new transparency scheme will build on this but expand it to apply to large providers regardless of the kind of service they operate.	This measure is intended to capture all large child care providers regardless of whether they operate centre-based care services, outside school hours care services, family day care services, etc. This definition ensures that a provider will be captured by the transparency regime if they operate 25 or more approved child care service, including if they do so together with a related provider, or if they plan to do so in future.
Items 5 to 9, 12	**Consequential amendments to reflect change in terminology**	These are technical amendments to facilitate new terminology needed for the transparency measure.

	These amendments replace the term "large centre-based care provider" from the old legislation to the new term "large child care provider", to reflect that the measure covers all large providers, regardless of service type.	
Item 10	**Introduces an obligation for large child care providers to report financial information** This item introduces a new provision requiring large child care providers to give the Secretary a report for a financial year, setting out certain financial information.	This measure is intended to increase transparency in the child care sector by requiring all large providers to report certain financial information to the Secretary. That information can then be published online (see below). The information will be given in a form and manner approved by the Secretary, and include the financial information to be prescribed by the Minister's Rules. If the provider fails to do so, they will be liable to a civil penalty of 60 penalty units. They will also be in breach of a condition of continued approval, and could be subject to a sanction such as cancellation or suspension.
Item 11	**Consequential change for the new reporting obligation** This item expands the application of section 203C, which allows the Secretary to require a provider to be audited, so that this audit power may be exercised on the basis of information collected under the new provision.	This is a technical amendment to reflect the new financial reporting obligation.
Item 13	**Introduces a definition for ABN**	New section 162B will permit the Secretary to publish certain information about a provider,

		including the provider's ABN. This is a technical amendment to provide a definition for "ABN".
Item 14	**Introduces a power to public information about approved provider** This item introduces a new provision that will allow the Secretary to publish, by electronic means, certain information about the provider. Subsection (2) clarifies that this is not a breach of the Privacy Act. Subsection (3) sets out the constitutional basis for this provision.	This measure is intended to provider greater transparency regarding the child care sector by allowing the Secretary to publish information online about an approved provider. The information that may be published about any provider includes the name of the provider, the approved provider's ABN, the name of each child care service, the fees charged by the service, and any increases in fees. The Secretary may also publish financial information reported to the Secretary under new section 203BA.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 10 – First Nations activity test result)

Schedule 3 – Activity test for Aboriginal or Torres Strait Islander children		
Schedule 3 commences on 1 July 2023		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Item 1	**Inserts definitions for certain term into the definitions section of the Assistance Act** The terms that are defined are: • Aboriginal or Torres Strait Islander child • Aboriginal or Torres Strait Islander child result • Aboriginal or Torres Strait Islander person	This schedule introduces a new activity test result, that applies to children who are Aboriginal or Torres Strait Islander children. This amendment ensures the new concepts that are used for eligibility for the test are defined and that their definitions are easy to locate
Item 2	**Inserts the Aboriginal or Torres Strait Islander child result into the table of activity test results** The Aboriginal or Torres Strait Islander child result is being added into the first and third columns	There are a number of activity test results. Under clause 11 of schedule 2, the individual is entitled to the highest result that applies to them. Adding the Aboriginal or Torres Strait Islander child result into the table will ensure that individuals can access this result, if it applies to them and there is no greater activity test result that applies to them. This means they can access at least 36 hours per fortnight of subsidised care. If their Aboriginal or Torres Strait Islander child result is 36 but another result of 60 applies to them, they will get access to 60 hours of subsidised child care per fortnight.

Item 3	**Introduces the Aboriginal or Torres Strait Islander child result** New clause 15A sets out the Aboriginal or Torres Strait Islander child result of 36, and when it applies. Subclause (2) provides that it applies of the individual is eligible for CCS for the child, the child is an Aboriginal or Torres Strait Islander child and the Secretary has been notified of this. Subclause (3) defines "Aboriginal or Torres Strait Islander child" and subclause (4) defines "Aboriginal or Torres Strait Islander person."	This provision will give people access to at least 36 hours per fortnight of subsidised care for Aboriginal or Torres Strait Islander children for whom they are eligible for CCS. There are three ways a child may be an Aboriginal or Torres Strait Islander child. The first is where the child meets the three part test of descent, identification and community acceptance. This three part test has been used in many government programs, including the Australian Education Act. The second is where the child is biologically related to an Aboriginal or Torres Strait Islander person, whether or not the child is in the care of an Aboriginal or Torres Strait Islander person. This enables the inclusion of children who may be too young to have formed a sense of cultural identity. The third is where the child is a member of a class prescribed by the Minister's Rules. This is to provide some flexibility to expand the definition in case it is identified as being too narrow. An Aboriginal or Torres Strait Islander person is a person who meets the three part test.
Item 4	**Inserts a new subsection into section 67FB to provide that there is no obligation to notify the Commonwealth of whether a child is an Aboriginal or Torres Strait Islander child.**	This will ensure that individuals who choose not to notify the Commonwealth that their child is an Aboriginal or Torres Strait Islander cannot be punished for this choice. Notification of Aboriginal or Torres Strait Islander status is optional, although, without notification,

		the Aboriginal or Torres Strait Islander activity test result cannot be applied in respect of a child.
Items 5 to 7	**Insert a new provision into section 105C(1)(b) to deal with reviewing entitlement following notification** This new provision means that if an individual has been receiving CCS for an Aboriginal or Torres Strait Islander child, and notifies the Secretary that the child is an Aboriginal or Torres Strait Islander child on a particular day, that individual can receive backpay for at most 4 weeks.	This is consistent with other provisions across the FAL about backpay, including other parts of section 105C, and section 67CC(4) on backdating claims. The general principle is that if an individual is late to notify the department of a matter that would increase their entitlement, they may only receive backpay for at most 4 weeks prior to that notification. This creates an incentive to notify in a timely manner, and an appropriate limit on how much backpay the Commonwealth may be liable to pay.
Item 8	**Inserts an application provision** The application provision provides that the amendments will apply in relation to sessions of care provided in a CCS fortnight that starts in the income year in which this item commences or in a later income year.	This has the effect that individuals will start to receive the benefit of the new Aboriginal or Torres Strait Islander child result on 10 July 2023. This is because entitlements are generally calculated on a fortnightly basis, and it is not practical to change the level of entitlement partway through a CCS fortnight.
Item 9	**Introduces a new power to make transitional rules** This will allow the Minister to make rules dealing with the transition to the new Aboriginal or Torres Strait Islander test.	The transitional rules may be used, for example, to deal with the case where existing administrative data could be drawn upon to apply the new activity test result in respect of some individuals, removing the need for a separate Secretary notification from these individuals.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 8 – integrity measures)

Schedule 4 – Dealing with serious non-compliance		
Items 1 to 4 will commence the day this Act receives Royal Assent. Items 5 to 9 will commence on 1 July 2023		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Items 1 to 3	**Moving the requirement to have arrangements in place to comply with the family assistance law into the eligibility rules** Currently, providers must be fit and proper persons in order to continue as approved providers. One of the considerations as to whether they are fit and proper persons is whether they have arrangements in place to ensure that they have arrangements in place to ensure that they and their staff and contractors comply with the family assistance law. This requirement will now be moved into the provider eligibility rules and the service eligibility rules.	Compliance with the family assistance law is essential for providers. As part of the fit and proper person test, this was just a single consideration among many which were relevant to determining whether the provider is a fit and proper person. This amendment will promote the importance of having arrangements in place to ensure compliance, by making it a rule in its own right, rather than just being part of the eligibility rules. If the provider does not have suitable arrangements in place, they will be in breach of the eligibility rules, regardless of other fit and proper person considerations. The intent is not to change the obligation, but merely to give it a higher status by making it an eligibility rule in its own right.
Items 4	**Application provision to determine when the new change takes effect**	This is a technical amendment to clarify when the change in legislation takes effect for decisions that are underway at the time of commencement.

Items 5 to 7	**Introduces a new requirement to collect gap fees by electronic funds transfer** Section 201B(1) currently requires a provider to take all reasonable steps to ensure that individuals pay the provider the gap fee. Item 6 will introduce the words "using an electronic funds transfer system" so that, by default, gap fees must be collected electronically. Item 7 provides that the Secretary may determine exceptions in exceptional circumstances. This may be applicable where the technology is unavailable, or where the requirement to collect gap fees electronically would otherwise have an adverse impact on the customers of the provider. In addition, item 7 allows the Secretary to decide that a particular individual is not to be required to be pay an amount using an electronic funds transfer system in circumstances prescribed by the Minister's Rules.	This measure is intended to achieve a greater level of payment integrity by ensuring that there will be reliable electronic records of all gap fee payments. There is a high level of correlation between services that do not collect gap fees, and services that falsely report care. If parents are not obliged to pay for care, it makes it easier for services to report care that isn't occurring to get payments of CCS they are not entitled to. This measure will address this by ensuring the department can request reliable information of electronic gap fee payments. However, the department acknowledges that in some rare instances electronic gap fee payment is not feasible or appropriate. Therefore, there is a power for the Secretary to create exceptions.
Items 8 and 9	**Moves the requirements for a session report into the Secretary's Rules** Currently, a session report must contain the information required by the Secretary. This is done partly through software, and partly through the Child Care Provider Handbook. However, these are just administrative documents, which can make it difficult to prove what was required	This measure is intended to make it easier to prove non-compliance where session reports do not contain all the information that is required. The Secretary's Rules will be an authoritative source for what information is required to be included in a session report, and it will be easier to track what was required at a certain point of

	at a particular point in time in the past, particularly in litigation.	time by using past compilations on legislation.gov.au. This will also create better clarity for providers about what their obligations are.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 3 – educator discount)

Schedule 5 – Child care discount for early childhood workforce		
This schedule will commence on 1 January 2023 or the day after registration, whichever comes first		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Item 1	**Amend the calculation of CCS such that the educator discount is not considered in calculating the rate of CCS** This means that CCS will be calculated according to the pre-discount fee payable.	This ensures that if a permissible educator discount is applied, it will not reduce the amount of CCS the educator is entitled to receive.
Item 2	**Insert a new note at the end of subclause 2(2)** The note serves as a cross-reference to subsection 47(2) of the *Fringe Benefits Tax Assessment Act 1986*.	It is intended that employers should not be required to pay fringe benefits tax for giving their educators a permissible educator discount. While fringe benefits tax is dealt with under the *Fringe Benefits Tax Assessment Act 1986* and this Act does not amend this in any way, the legislation has been designed so that the permissible educator discount should not result in fringe benefits tax liability.
Item 3	**Introduces a definition for permissible educator discount into the definitions section**	This will make it easier to locate the definition of terms, for people trying to use the legislation.
Item 4	**Introduces a note to clarify that providers are not obliged to enforce payment of the permissible educator discount**	In general, providers must take all reasonable steps to ensure that individuals pay them the "gap fee". This note will clarify that they are not required to recover the permissible educator discount as part of that gap fee.

Item 5	**New section dealing with the permissible educator discount** The new section provides that a provider may allow an individual a discount if the individual or their partner works as an educator at one of the provider's services, and the service is not a family day care or in home care service.	This is the substantive provision introducing the permissible educator discount. Under this measure, approved providers will be permitted to give discounts on their child care fees for their educators without that discount reducing the amount of CCS the staff may benefit from. This measure has been implemented on a short-term basis through Minister's Rules made under subsection 201B(1A) of the Family Assistance Administration Act but is now being introduced as a permanent measure. The objective of this measure is to reduce staff shortages in the ECEC sector by attracting and retaining existing educators, particularly those with young children. The discount is at most 95% of the "pre-discount fee" (also known as the gap fee). If the provider gives the discount, the amount is not recoverable.
Item 6	**Application provision to determine when the new change takes effect** The application provision provides that the amendments apply to sessions of care in a week that starts on or after the commencement of this item.	This means that the measure will take effect from the Monday following commencement. As sessions are reported, and CCS paid, on a weekly basis, it is impractical for this measure to take effect midway through a week.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 4 – clarifying gap fee waiver provision)

Schedule 6 – Discount on fee for session of care in prescribed circumstances		
This schedule will commence on 1 January 2023 or the day after registration, whichever comes first		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Item 1	**Repeal subsection 201B(1A)** Subsection 201B(1A) previously allowed the Minister to make rules to provide an exemption from the obligation to enforce the gap fee in prescribed events and circumstances	The old measure only allowed exemptions from the obligation the *enforce* gap fees. The individual, in principle, still remained liable to pay the gap fees. This measure is being replaced by a new measure that will allow the provider to actually discount the fees (including to the level where the gap fee is nil), providing for relief fee relief.
Item 2	**Insert a new provision to allow for discounts in prescribed events of circumstances** New section 201BB provides that the provider may allow a discount on the gap fee that is attributable to one or more sessions of care provided in the week if the Minister's rules prescribe an event or circumstance, and any other conditions prescribed by the Minister's rules are met.	It is intended that the kinds of events and circumstances that may be prescribed include emergencies such as floods, fires and pandemics, which make it impracticable for children to attend care but could threaten service viability. In the prescribed events and circumstances, the provider may allow a discount, which may be the whole of the gap fee (or less, at the provider's discretion). This will allow fee relief to be passed onto families during emergencies while not blocking an important revenue stream for services at a time when their financial viability is at risk.

Items 3 to 5	**Amends sections 201C to prevent CCS maximisation strategies** Section 201C ensures that the fees that providers claim CCS for are consistent with the providers' general fee policy. That is, it prevents them from specifically increasing fees during periods when individuals do not need to pay gap fees, or only need to pay much lower gap fees.	This is an important measure to protect against dishonest strategies that could be used to increase CCS revenue by fabricating fees. Broadly, section 201C ensures that the fees child care providers charge when individuals are not paying gap fees or are paying lower gap fees – for example, during prescribed events and circumstances, where the individual is entitled to ACCS, or where there is a permissible educator discount. Providers are not permitted to inflate their fees and charge these individuals more than they would usually charge.
Item 6	**Amends section 201C to also refer to new subsection (1C)**	This is a technical amendment to ensure that all of the new provisions in section 201C are enforceable through means of the existing offence provision in subsection (2) and the civil penalty provision in subsection (3).
Item 7	**Application provision to determine when the new change takes effect** The application provision provides that the amendments apply to sessions of care in a week that starts on or after the commencement of this item.	This means that the measure will take effect from the Monday following commencement. As sessions are reported, and CCS paid, on a weekly basis, it is impractical for this measure to take effect midway through a week.
Item 8	**Inserts a reference to new section 201BB into subclause 2(2) of Schedule 2**	Clause 2 of Schedule 2 to the Assistance Act deals with the calculation of CCS. CCS is generally calculated as a percentage of the amount that the individual is liable to pay for the session (subject to the hourly rate cap).

		This ensures that where there is a prescribed circumstances discount, CCS is calculated on the liability the person would have had if no discount were applied.
Items 9 and 10	**Insert a new note to section 201B(1)** The note clarifies that a prescribed circumstance discount is not recoverable by the provider	Section 201B requires providers to take all reasonable steps to ensure the individual pays the provider the gap fee. This ensures that providers do not have to enforce payment of the discounted amount.
Item 7	**Application provision to determine when the new change takes effect** The application provision provides that the amendments apply to sessions of care in a week that starts on or after the commencement of this item.	This means that the measure will take effect from the Monday following commencement. As sessions are reported, and CCS paid, on a weekly basis, it is impractical for this measure to take effect midway through a week.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 5 – allowable absences)

Schedule 7 – Additional absences in exceptional circumstances		
This schedule will commence the day after the Bill receives royal assent		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Item 1	**Amend 10(1)(b) to refer to new subsection (5)** This means that a session will be taken to have been provided in the circumstances in existing (2), existing (3), and new (5).	This is a technical amendment to ensure that the new circumstance in subsection (5) (below) also results in an allowable absence
Item 2	**Inserts a new circumstance where an absence is an "allowable absence"** New subsection (5) provides that if a session is not an allowable absence under subsection (2) or (3) only because it occurred before the first attendance or after the last attendance, and the Secretary is satisfied that there are exceptional circumstances, the Secretary may determine that the session is an allowable absence.	Previously, no CCS was payable for absences before the child's first attendance or after the child's last attendance. This amendment will provide the Secretary with discretion to pay CCS for an absence in exceptional circumstances only. An exceptional circumstance would be unusual or 'out of the ordinary'. An example of when exceptional circumstances would exist is where an individual is forced to relocate at short notice to escape family violence and was unable to provide notice to their former child care service for an extended period. In this scenario, the individual may have already paid gap fees for absences after their child's last attendance day and the Secretary would have discretion to consider whether CCS should remain payable for those absences. An exceptional circumstance would not apply where non-compliance was involved.

Item 3	**Application provision to determine when the new change takes effect** The application provision provides that the amendments apply to sessions of care in a week that starts on or after the commencement of this item.	This means that the measure will take effect from the Monday following commencement. As sessions are reported, and CCS paid, on a weekly basis, it is impractical for this measure to take effect midway through a week.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PLAN FOR CHEAPER CHILD CARE) BILL 2022 – Lay person explanation of amendments (measure 6 – extension for passing on gap fees)

Schedule 8 – Extending period for passing on fee reduction amounts		
This schedule will commence the day after the Bill receives royal assent		
Item in Schedule	**Effect of item**	**Reason for/importance of amendment**
Item 1	**Consequential amendment to section 67EB** Section 67EB provides that the provider owes a debt if it receives a fee reduction amount and fails to pass it on.	In limited circumstances, the Secretary will have the power to direct that a provider has a longer period to pass on the fee reduction amount. This ensures that if the Secretary has made a direction, the amount does not become a debt until after the end of the extended period. It would be illogical for the amount to become a debt while the provider was still permitted time to pass the amount on.
Item 2	**Consequential amendment to section 71D** Section 71D is a simplified outline of Part 3A Division 5, which deals with payment of CCS.	This amendment is made to reflect that if the Secretary has directed an extended period, no debt will arise until the end of the extended period.
Item 3	Inserts a new power allowing the Secretary to direct a longer period to pass on fee reduction amounts The Secretary may give more than one such direction.	This will allow the Secretary to extend the 14 day deadline by a period the Secretary considers appropriate, if there may be an adverse impact on the individual. It is envisioned that this amendment may be used in rare circumstances, such as where a provider has been paid an amount for a child's absence before the service is unexpectedly closed for an extended period due to extensive water damage from a burst pipe. It may take

		longer than 14 days to determine whether child enrolments will continue and, therefore, whether a family's CCS entitlement will be retrospectively altered. If the provider were to pass amount on within 14 days and the individual spent the amount, this could cause hardship for the individual later on when the individual was given a debt notice for the overpaid portion, particularly for an individual on a low income. This provision will allow the Secretary to put a pause on amounts being passed on until the impact on the service and individual is clear, before the individual becomes financially affected. The provider would still have the discretion to pass on the amounts within 14 days if it considered this appropriate.
Item 4	**Technical amendment to correct a drafting error by changing "remittal" to "remittance"**	This will ensure that section 201A uses the term "remittance" consistently, rather than interchanging between "remittance" and "remittal".
Items 5 and 6	**Consequential amendment to the timing of giving a notice** If a provider remits an amount, they must give the Secretary notice of the remittance	If the provider has an extended period to either pass on the fee amount or remit it, it is not necessary for them to give notice of the remittance until the end of the extended period. This amendment achieves this effect
Item 7	**Application provision to determine when the amendments take effect**	Any directions made by the Secretary will apply to fee reduction decisions made on or after commencement of this item. This means that the Secretary cannot give an extension for fee reduction amounts that were paid before the Schedule commenced.