Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019

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Social Policy Section

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Date introduced: 18 September 2019
House: House of Representatives
Portfolio: Education

Commencement: Part 1 of Schedule 1 on the first Child Care Subsidy fortnight to occur after Royal Assent; Part 2 of Schedule 1 on 13 January 2020; Part 3 of Schedule 1 on 13 July 2020; and Schedule 2 on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at November 2019.
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The Bills Digest at a glance

The Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019 (the Bill) will amend family assistance law to address issues that have arisen since the introduction of the Child Care Subsidy (CCS) on 2 July 2018 and to make a number of clarifying and technical amendments. The Bill proposes to:

• remove the 50 per cent limit on the number of children a child care provider can self-certify as eligible for Additional Child Care Subsidy (ACCS) (child wellbeing)
• allow the Minister for Education to prescribe circumstances in which a third party may contribute to the costs of an individual’s child care fees without this contribution affecting their CCS or ACCS rate
• allow the Minister for Education to prescribe circumstances in which the CCS and ACCS can still be paid where a child is absent at the start or end of an enrolment
• better incorporate In Home Care into the A New Tax System (Family Assistance) Act 1999 and A New Tax System (Family Assistance) (Administration) Act 1999 by including payment rates for In Home Care and allowing the Minister to specify eligibility criteria and care requirements that must be met for access to subsidised In Home Care places
• clarify that decisions made as a result of a Secretary initiated review must first be subject to an internal review before an application can be made to the Administrative Appeals Tribunal
• require Tax File Number and bank account details at the time a claim for CCS is made
• immediately suspend or cancel access to child care subsidies where a provider has been suspended or cancelled by a state or territory child care regulator and
• make various administrative and technical amendments to clarify the policy intent or address unintended consequences.

Peak bodies and large child care providers are broadly supportive of the proposed measures with the exception of the changes to the claim requirements relating to Tax File Numbers and bank account details.

In their Additional Comments to the Senate Education and Employment Legislation Committee report on the Bill, Australian Labor Party Senators also raised concerns with the changes to claim requirements and recommended the proposed amendments be removed from the Bill.

The measure to require Tax File Numbers and bank account details at the time of claim would appear to primarily benefit the Department of Human Services in its administration of the CCS. It will restrict access to CCS for some families who do not have the appropriate documents at the time they make a claim, or those who have only recently applied for a Tax File Number.

Most of the remaining measures in the Bill will improve the administration of the CCS and increase access to child care services for families. A number of the measures are dependent on conditions set out in delegated legislation, the Minister’s Rules. Specific details of the conditions to be included in the Minister’s Rules have not been made public. Other measures fix design issues that have become apparent since the roll-out of the CCS, and errors in the legislation governing child care fee assistance.
Purpose of the Bill

The purpose of the Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019 (the Bill) is to amend the *A New Tax System (Family Assistance) Act 1999* (the FA Act) and the *A New Tax System (Family Assistance) (Administration) Act 1999* (the FA Admin Act) to address issues that have arisen since the introduction of the Child Care Subsidy (CCS) on 2 July 2018 and to make a number of clarifying and technical amendments. The Bill proposes to:

• remove the 50 per cent limit on the number of children a child care provider can self-certify as eligible for Additional Child Care Subsidy (ACCS) (child wellbeing)

• allow the Minister for Education to prescribe circumstances in which a third party may contribute to the costs of an individual’s child care fees without this contribution affecting their CCS or ACCS rate

• allow the Minister for Education to prescribe circumstances in which the CCS and ACCS can still be paid where a child is absent at the start or end of an enrolment

• better incorporate In Home Care into the FA Act and FA Admin Act by including payment rates for In Home Care and allowing the Minister to specify eligibility criteria and care requirements that must be met for access to subsidised In Home Care places

• clarify that decisions made as a result of a Secretary initiated review must first be subject to an internal review before an application can be made to the Administrative Appeals Tribunal

• require Tax File Number and bank account details at the time a claim for CCS is made

• immediately suspend or cancel access to child care subsidies where a provider has been suspended or cancelled by a state or territory child care regulator and

• make various administrative and technical amendments to clarify the policy intent or address unintended consequences.

Structure of the Bill and Bills Digest

The Bill contains two schedules. Schedule 2 contains the amendments relating to approval requirements for providers and services and other compliance-related changes and Schedule 1 contains the remaining amendments.

The Bills Digest provides an overview of the child care subsidy system in the ‘Background’ section and provides analysis of the main amendments in the ‘Key issues and provisions’ section.

Background

*Australian Government funding for childcare*

The Australian Government provides child care fee assistance to families and direct assistance to services to improve equity of access to child care services, encourage and support the participation of women in the workforce and improve the quality of early childhood education and care (ECEC) in order to assist with children’s development.

*Pre-July 2018 fee assistance: Child Care Benefit and Child Care Rebate*

Prior to July 2018, the two main forms of fee assistance were the Child Care Benefit and Child Care Rebate. These payments were paid to families using approved child care services (services which

met certain eligibility requirements such as compliance with state and territory regulatory requirements under the National Quality Framework).² Child Care Benefit was means tested and rates were based on family income, hours of care used, type of care used, and whether parents met the work, training or study test.³ Child Care Benefit could be paid via a family’s child care provider as a fee reduction, or as a lump sum paid to the family at the end of the financial year.

Child Care Rebate was not means tested and covered 50 per cent of out-of-pocket costs (after deducting Child Care Benefit) up to a maximum amount per child per financial year. Child Care Rebate could also be paid via providers as a fee reduction or directly to families (either fortnightly or as an annual lump sum).⁴

**Post-July 2018 fee assistance: Child Care Subsidy**

From 2 July 2018, these two payments were merged into a new payment known as the Child Care Subsidy (CCS).⁵ The CCS is means tested with rates of payment based on family income, hours of care used, type of care used, and parents’ level of work, training or study. A maximum hourly amount payable via the subsidy is set by the Government with families receiving a percentage of this rate based on the factors listed above. The payment is paid directly to providers to be delivered to families in the form of a fee reduction.

The CCS can be paid for Long Day Care, Outside School Hours Care, Family Day Care and In Home Care but different rates of assistance are offered depending on the kind(s) of care used.⁶ Child care services must meet certain conditions to be approved to pass on the CCS; this includes any regulatory requirements set by state and territory authorities under the National Quality Framework.

Additional Child Care Subsidy is a top-up payment available to families in special circumstances (see section below).⁷

**Direct support to providers**

The Australian Government also provides direct support to child care services to assist with the establishment and running costs of services in areas where they may otherwise be unviable, for delivering services to children with disability or other special needs, and to assist with professional development.⁸

These supports are provided under the Department of Education’s Community Child Care Fund program. The fund consists of different grant categories—open competitive grants, restricted non-competitive grants (for specified services, primarily those previously funded under the Budget Based Funded program which provided assistance to Indigenous, regional and remote services), the Connected Beginnings Program and special circumstances grants (for services that have experienced a natural disaster or other unexpected event).⁹

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2. Australian Children’s Education and Care Quality Authority (ACECQA), 'What is the NQF', ACECQA website.
3. Department of Social Services (DSS), ‘1.2.4 Child Care Benefit (CCB) – Description’, Family assistance guide, DSS website, last reviewed 2 January 2018.
4. DSS, ‘1.2.7 Child Care Rebate (CCR) – Description’, Family assistance guide, DSS website, last reviewed 2 January 2018.
9. Ibid.
**Expenditure on child care**

In 2019–20, the Australian Government will spend an estimated $8.6 billion on fee assistance payments and direct support to child care providers.\(^\text{10}\) Table 1 sets out the data from the Department of Education’s Portfolio Budget Statements (the Support for the Child Care System program includes the Community Child Care Fund and the Additional Child Care Subsidy).

**Table 1: estimated Australian Government expenditure on child care programs, $’000**

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child Care Subsidy</strong></td>
<td>7,725,241</td>
<td>8,266,710</td>
<td>8,642,355</td>
<td>9,108,223</td>
<td>9,645,995</td>
</tr>
<tr>
<td><strong>Support for the child care system</strong></td>
<td>329,054</td>
<td>341,775</td>
<td>335,959</td>
<td>342,231</td>
<td>350,125</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>8,054,295</td>
<td>8,608,485</td>
<td>8,978,314</td>
<td>9,450,454</td>
<td>9,996,120</td>
</tr>
</tbody>
</table>


**Number of children and families accessing child care**

As at March 2019, there were around 1.4 million children using child care services approved to receive the CCS.\(^\text{11}\) Around 58.8 per cent of children attended centre-based services (Long Day Care and Occasional Care services), 36.7 per cent attended Outside School Hours Services and 9.5 per cent attended Family Day Care services.\(^\text{12}\)

There were around 920,010 families making use of approved child care and 13,008 approved child care services.\(^\text{13}\)

**Detailed information on the Child Care Subsidy**

**Child Care Subsidy**

**CCS eligibility**

For a person to be eligible for the CCS, their child must:

- be a ‘[Family Tax Benefit child](#)’ or ‘[regular care child](#)’—this essentially means that the child must an Australian resident and in the adult’s care for at least 14 per cent of the time
- be 13 or under and not attending secondary school and
- meet immunisation requirements.\(^\text{16}\)

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12. Ibid.
13. Ibid.
The claimant, and/or their partner, must:

- meet residency requirements and
- be liable to pay for the child care provided by an approved provider.  

Some exemptions from these requirements can apply in special circumstances. For example, the Department of Human Services can waive the residency requirements in certain circumstances.

**Activity test**

The activity test determines how many hours of child care a claimant can receive CCS for. This depends on how much time a single parent or both partners in a couple/two-parent family undertake recognised activities: these include paid work, study, training or volunteering. For couple/two-parent families, the maximum number of hours of subsidised care a person can receive is calculated using the person with the lowest level of activity. See Table 2 for a breakdown.

**Table 2: Child Care Subsidy Activity test**

<table>
<thead>
<tr>
<th>Hours of recognised activity (per fortnight)</th>
<th>Maximum number of hours of CCS (per fortnight)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 hours to 16 hours</td>
<td>36 hours</td>
</tr>
<tr>
<td>More than 16 hours to 48 hours</td>
<td>72 hours</td>
</tr>
<tr>
<td>More than 48 hours</td>
<td>100 hours</td>
</tr>
</tbody>
</table>

Source: Department of Social Services (DSS), ‘3.5.2.10 CCS – activity test – general’, Family assistance guide, DSS website, last reviewed 1 July 2019.

Families that earn $68,163 or less in 2019–20 and do fewer than eight hours of recognised activities in a fortnight are able to access 24 hours of subsidised care per fortnight. Families that do not meet the activity test and have a child/children attending a preschool program provided by a centre-based Long Day Care centre are able to access 36 hours of subsidised care (however, this only applies to the child attending the preschool program).

A range of other exemptions are available for families in certain circumstances (such as disability or care requirements).

**Income test**

The income test determines the rate of CCS a person will receive for the hours they are eligible for under the activity test. The CCS will pay a percentage of the child care fee or a percentage of the hourly ‘rate cap’, whichever is lower. The income test determines the percentage paid. The current hourly rate caps are set out in Table 3.

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17. Ibid.
18. DSS, ‘2.6.2.20 CCS – Australian residency exceptions’, Family assistance guide, DSS website, last reviewed 2 July 2018.
20. Ibid.
21. Ibid.
22. Ibid.
Table 3: Child Care Subsidy hourly rate caps

<table>
<thead>
<tr>
<th>Type of child care</th>
<th>Hourly rate cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centre Based Day Care—long day care and occasional care</td>
<td>$11.98 (for below school-aged children)</td>
</tr>
<tr>
<td>Family Day Care</td>
<td>$11.10</td>
</tr>
<tr>
<td>Outside School Hours Care—before, after and vacation</td>
<td>$10.48 (for school-aged children)</td>
</tr>
<tr>
<td>In Home Care - per family</td>
<td>$32.58</td>
</tr>
</tbody>
</table>

Source: DSS, ‘3.5.3 CCS – hourly rate caps’, Family assistance guide, DSS website, last reviewed 1 July 2019.

The income test assesses the combined adjusted taxable income of the family. Adjusted taxable income is the sum of taxable income, adjusted fringe benefits, target foreign income, net investment losses, tax free pensions or benefits and reportable superannuation contributions less any child maintenance expenditure. Table 4 shows the applicable percentage by income range for 2018–19 and Figure 1 represents this graphically.

Table 4: Child Care Subsidy income test

<table>
<thead>
<tr>
<th>Combined annual adjusted taxable income</th>
<th>Applicable CCS percentage of the actual fee charged or the relevant hourly rate cap (whichever is lower)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal to or below $68,163</td>
<td>85%</td>
</tr>
<tr>
<td>Above $68,163 and below $173,163</td>
<td>Decreasing from 85% to 50% Subsidy decreases by 1% for each $3,000 of family income</td>
</tr>
<tr>
<td>Equal to or above $173,163 and below</td>
<td>50%</td>
</tr>
<tr>
<td>Equal to or above $252,453</td>
<td>Decreasing from 50% to 20% Subsidy decreases by 1% for each $3,000 of family income</td>
</tr>
<tr>
<td>Equal to or above $342,453</td>
<td>20%</td>
</tr>
<tr>
<td>Equal to or above $352,453</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: DSS, ‘3.5.1 CCS – combined annual ATI’, Family assistance guide, DSS website, last reviewed 1 July 2019.

Annual cap
If a family earns more than $188,163 per year (and less than $352,453) then the total amount of CCS they can receive in 2019–20 is $10,373 per child. Families earning less than $188,163 per year do not face a cap. Families earning over $352,453 cannot receive any CCS under the income test.

Additional Child Care Subsidy
Additional Child Care Subsidy (ACCS) is a top-up payment which provides targeted assistance to families/children facing barriers to accessing child care. There are four categories of the ACCS:

- child wellbeing—aimed primarily at children at risk of abuse or neglect
- grandparent—for grandparent carers who receive income support (such as a pension) and who are the principal carer of children
- temporary financial hardship—for those experiencing significant financial stress due to exceptional circumstances and
- transition to work—for those receiving certain income support payments such as Parenting Payment, Newstart Allowance or Disability Support Pension and who have a Job Plan (employment pathway plan) in effect.

Source: Parliamentary Library estimates.

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24. DSS, ‘3.5.1 CCS – combined annual ATI’, Family assistance guide, DSS website, last reviewed 1 July 2019.
The child wellbeing, grandparent and temporary financial hardship categories of ACCS allow eligible families to receive a subsidy equal to the actual fee charged by their child care service (up to 120 per cent of the hourly rate cap) for up to 100 hours per fortnight and be exempt from the activity test. The transition to work category provides a subsidy equal to 95 per cent of the actual fee charged (up to 95 per cent of the hourly rate cap) with subsidised hours determined by the activity test.

**Committee consideration**

**Senate Education and Employment Legislation Committee**

On 19 September 2019, the Senate referred the Bill to the Senate Education and Employment Legislation Committee for inquiry and report by 11 October 2019.\(^26\) The Committee’s report was tabled in the Senate on 11 October 2019.\(^27\)

The Committee recommended the Bill be passed.\(^28\) Australian Labor Party (Labor) Senators made additional comments and recommended one amendment to the Bill (see ‘Policy position of non-government parties/independents’ section).\(^29\)

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills raised two concerns with the Bill relating to the use of delegated legislation to set out eligibility requirements for In Home Care and restrictions on merits review of certain decisions.\(^30\) For information on the Committee’s concerns, see the discussions on ‘Reviews’ and ‘In Home Care’ in the ‘Key issues and provisions’ section below.

**Policy position of non-government parties/independents**

The Labor Senators’ Additional Comments on the Senate Education and Employment Legislation Committee’s report did not oppose the Bill. However, Labor Senators raised concerns with one measure in the Bill: the change to claim requirements to require Tax File Numbers (TFNs) and bank account details immediately (items 35–38, 41, 42, 50, 51, 57 and 87). The amendments would remove a 28-day window in which CCS claimants can provide this information.

Labor Senators noted the concerns that submitters had regarding the impact of these changes on families who would be unable to access urgent care because they did not have immediate access to their personal information.\(^31\) Labor Senators stated they believed ‘the Bill should be amended to retain the current 28-day grace period for providing personal information to better meet the needs of families and providers’.\(^32\)

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28. Ibid., p. 19.
32. Ibid., p. 23.
Centre Alliance MP Rebekha Sharkie welcomed the measure in the Bill which extends the period of absence allowed before a child care enrolment ceases.33

Position of major interest groups

Early Childhood Australia

Early Childhood Australia (ECA), a peak body, stated in its submission to the Senate committee inquiry that the ‘Bill is largely successful in addressing the limited number of issues that it has targeted’.34 ECA is opposed to the amendments relating to TFN and bank account details for CCS claims stating:

In contrast to the rest of the Bill, this proposed amendment would remove flexibility currently in the child care system, with the potential for negative effects for a small number of families in difficult circumstances.35

ECA also suggested that the amendments relating to the treatment of third party payments in calculating CCS entitlements should be clarified to ensure that third parties other than state and territory governments are covered by the proposed changes. ECA argued that assistance from philanthropic organisations should be treated in the same way as payments from state and territory agencies under the proposed amendments.36

Family Day Care Australia

In its submission to the Senate committee inquiry Family Day Care Australia, the peak body for Family Day Care providers, stated its support for the Bill but sought clarification or further detail regarding the amendments relating to absence provisions and the recovery of debts where the provider is at fault.37

Goodstart Early Learning

Goodstart Early Learning (Goodstart), Australia’s largest child care provider, supports the Bill with the exception of the amendments relating to TFN and bank account details for CCS claims. Goodstart’s submission to the Senate committee inquiry stated:

In particular, we do not support this proposed change because it is likely to have a disproportionately negative impact on families experiencing vulnerability or disadvantage, particularly women and children escaping domestic and family violence who may not have ready access to their TFN, or who may need time to collect the necessary personal information to open new bank accounts. At Goodstart, we have encountered several women who have been in these circumstances whom would have incurred significant debts in a period of crisis under this proposal.38

33. R Sharkie, Child Care Bill a boon for parents seeking holiday care, media release, 18 September 2019.
34. Early Childhood Australia, Submission to the Senate Education and Employment Legislation Committee, Inquiry into the Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019, [Submission no. 3], September 2019, p. 2.
35. Ibid.
36. Ibid., p. 3.
37. Family Day Care Australia, Submission to the Senate Education and Employment Legislation Committee, Inquiry into the Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019, [Submission no. 8], September 2019, pp. 3–4.
38. Goodstart Early Learning, Submission to the Senate Education and Employment Legislation Committee, Inquiry into the Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019, [Submission no. 4], n.d., p. 3.
Goodstart recommended that TFN and bank account details not be required for individuals to make an effective claim for CCS and claimants be given three months to provide this additional information.  

*Australian Childcare Alliance*

The Australian Childcare Alliance (ACA), a peak body representing primarily for-profit child care providers, also supported the measures in the Bill with the exception of the proposed changes to claim requirements.  

In its submission to the Senate committee inquiry into the Bill, the ACA stated:

> There must be an adequate safety net for the provision of this information to allow for the CCS claim to be effective. Allowing 28 days is not an unreasonable timeline to allow families to complete the requisite details for an effective application.

**Financial implications**

According to the Explanatory Memorandum, the measures in the Bill are not expected to have a ‘discernible financial impact’. However, the Explanatory Memorandum notes that Minister’s Rules made under new powers proposed by the Bill could have a financial impact but that detailed costings would be developed and agreed in the process of making any such Rules.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Parliamentary Joint Committee on Human Rights**

At the time of writing, the Parliamentary Joint Committee on Human Rights was yet to consider the Bill.

**Key issues and provisions**

**Changes to absence provisions**

CCS can only be paid in respect of ‘sessions of care’—the period of time that approved providers charge a fee to an individual for providing child care.

Section 10 of the *FA Act* sets out the general rules for when a session of care is considered to have been provided. Generally, a child must be enrolled for care by the service and attend the session of care (or any part of it). In some circumstances, set out in subsections 10(2) and (3), a service can be taken to have provided a session of care for the purposes of CCS eligibility even when the child

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39. Ibid.
41. Ibid.
42. *Explanatory Memorandum*, Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019, p. 4.
43. Ibid. The Minister’s Rules are the *Child Care Subsidy Minister’s Rules 2017*.
44. Ibid., pp. 5–9.
45. DSS, ‘1.1.5.40 Sessions of care (CSS)’, *Family assistance guide*, DSS website, last reviewed 2 July 2018.
has not attended any part of it. For a period where a child is physically absent to be considered a session of care, the individual claiming CCS needs to be liable to pay for the session of care and the child’s absence must be:

- after the day the child first physically attended a session of care by the service and
- before the day the child last physically attended a session of care provided by the service.\(^\text{46}\)

In general, an individual can access up to 42 absences for a child in a financial year, however, additional absences may be accessible in certain circumstances (set out in subsection 10(4) of the \textit{FA Act}).

\textbf{Items 6 and 9 of Schedule 1} insert \textit{proposed subsections 10(2A) and (3A), respectively} which will allow the Minister to prescribe circumstances where the rules around when a child’s absence must have occurred to be considered a session of care do not apply. This will mean the Minister can set out circumstances where an individual can access CCS for absences that occur before the first or after the last day the child physically attends a session of care. The Explanatory Memorandum states that this will provide ‘greater flexibility’.\(^\text{47}\) The Explanatory Memorandum gives the example of a situation where a child care service transfers ownership and a child continues attending the service—a child may be absent at the end of their enrolment with the former owner and the start of their enrolment with the new owner.\(^\text{48}\) Under the current rules, these absences might not be considered sessions of care, despite the child still attending the same service.

\textbf{Items 4 and 7} amend \textit{subparagraphs 10(2)(b)(iii) and 10(3)(c)(iii), respectively} to replace references to when a service ‘permanently ceased providing care’ with references to when a child last attended a session of care provided by the service before they ‘ceased to be enrolled for care by the service’. This aligns the session of care rules with the enrolment requirements in section 200B of the \textit{FA Admin Act}. The amendments will clarify that the general rule for absences is that they must occur between a child’s first and last physical attendance in an enrolment unless circumstances set out in the Minister’s Rules exist. The Minister’s Rules are a disallowable legislative instrument.\(^\text{49}\)

\textbf{Impact of third party payments on CCS rates}

CCS rates are calculated as a percentage of the fee charged to an individual, or the hourly fee cap, whichever is lower. Where a third party makes a payment to a child care provider to reduce fees charged to a particular individual, then the child care provider must report the reduced fee for the purposes of calculating the CCS rate.\(^\text{50}\) Third parties could include state or territory government agencies providing assistance to disadvantaged or vulnerable families to help with costs of child care.\(^\text{51}\)

The Explanatory Memorandum notes that the reason any other payments or subsidies are deducted from the fee that is used to calculate CCS is to ‘ensure all CCS recipients make a co-

\begin{footnotes}
\item[46] Explanatory Memorandum, op. cit., p. 13.
\item[47] Ibid., p. 14.
\item[48] Ibid.
\item[49] Section 85GB, \textit{A New Tax System (Family Assistance) Act 1999 (FA Act)}; \textit{Child Care Subsidy Minister’s Rules 2017}.
\item[50] Third parties could include state or territory government agencies providing assistance to disadvantaged or vulnerable families to help with costs of child care.\(\text{51}\)
\item[51] The hourly session fee for an individual is the amount the individual is liable to pay reduced by the hourly rate of any subsidy (other than CCS or ACCS) which the individual benefits from in respect of that session of care. Subclause 2(2) of Schedule 2, \textit{FA Act}.
\end{footnotes}
contribution to the cost of care’. The Explanatory Memorandum states that the resulting co-contribution ‘may present a barrier to some vulnerable and disadvantaged families accessing affordable child care’.

The changes proposed in the Bill will enable the Minister to prescribe that certain third party payments are not required to be taken into account in calculating an individual’s rate of CCS. The Explanatory Memorandum gives the example of payments from a state or territory government but no other information as to what kinds of payments may be prescribed by the Minister.

Clause 2 of Schedule 2 of the FA Act provides for the calculation of the hourly rate of CCS for a session of care—this is the individual’s applicable percentage of the lower of: the hourly session fee for the individual, and the CCS hourly rate cap for the session, rounded to the nearest cent. Currently, subclause 2(2) states that the hourly session fee for an individual, for a session of care provided to a child, is the amount the individual (or their partner) is liable to pay for the session of care:

- divided by the number of hours in the session of care and
- reduced by the hourly rate of any third party subsidy and any reimbursement fringe benefit in respect of the session of care.

Item 22 repeals and substitutes subparagraph 2(2)(b)(i) of Schedule 2 so the hourly session fee for an individual is the amount the individual is liable to pay reduced by the hourly rate of any payment except a payment referred to in proposed subclause 2(2A). Proposed subclause 2(2A) is inserted by item 23 and lists the CCS, the ACCS and ‘a payment prescribed by the Minister’s Rules’. This allows the Minister to prescribe certain third party payments which do not need to be taken into account for working out the hourly rate of CCS.

The proposed amendments also include provisions that ensure a provider cannot receive more from CCS, ACCS and third party payments than the actual fee for the session of care. Item 25 inserts proposed clause 4A which provides for situations where the amount a person is liable to pay is less than the sum of the activity-tested amount of CCS and the amount of any payment prescribed by the Minister’s Rules (under proposed subclause 2(2A)). For sessions of care where this situation applies, the CCS amount is reduced by the amount in excess of the amount the person is liable to pay. That is, the adjusted activity-tested amount will be the amount of CCS that makes up the difference between the fee charged and any prescribed payment received for that session of care.

Item 20 of Schedule 1 amends the method statement at subclause 1(1) of Schedule 2 so that step 5 is to work out the activity-tested amount of CCS or the adjusted activity-tested amount (if proposed clause 4A applies). Item 21 adds a step 7 to the method statement which provides that in cases where proposed clause 4A does apply, the CCS amount for the individual is either the adjusted activity-tested amount or the amount up to the annual cap (the annual cap applies to those with family income over $188,163 per year).

Items 26 and 27 amend the method statements at clause 5 and clause 7 of Schedule 2, respectively to apply the same method for working out ACCS rates where an individual has benefited from a prescribed payment for a particular session of care.

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52. Ibid.
53. Ibid.
54. Ibid.
Item 71 repeals and substitutes paragraph 201B(1)(b) of the FA Admin Act so that providers are responsible for collecting any gap fee between the amount charged for the session of care and the amount provided in the form of CCS/ACCS and any prescribed payments set out in the Minister’s Rules. Item 72 inserts proposed subsection 201C(1A) so that providers cannot charge higher fees to individuals who benefit from prescribed payments than those who do not benefit from prescribed payments.

**Late attendance reports and late enrolment notices**

Providers must generally report on each child’s sessions of care for a week within 14 days in order for an individual to be entitled to CCS/ACCS in respect of those sessions of care. If a provider was not yet approved for CCS purposes or was suspended, then the session report must be provided within seven days after the end of the week in which the approval was provided or suspension revoked. Where a provider has received business continuity payments because it has been unable to provide session reports, then the provider must submit the session reports within 14 days after it becomes able to submit the reports again.

Similarly, providers must submit enrolment notices within seven days from:

- the end of the week in which the provider and family made an arrangement for child care
- the provider or service being approved for CCS purposes or
- the end of a suspension of a service.

Where an enrolment notice or a session report is submitted outside the required timeframe, an individual is not entitled to be paid CCS or ACCS for any relevant sessions of care. Currently, compliance actions may be taken against providers who fail to submit these notices or reports within the required timeframes but these compliance actions do not address the impact on families claiming CCS/ACCS.

The Bill proposes to amend the provisions relating to these attendance reports and enrolment notices so that individuals may still be entitled to CCS and ACCS, despite providers submitting the reports and notices outside the requisite timeframes. Providers will still be subject to the timeframe requirements and can still face compliance actions if they fail to submit the reports/notices within the specified timeframes.

**Items 39, 40, 43–46, 68 and 70 of Schedule 1** amend sections 67CD, 67CF, 67CH, 200A and 200D, respectively of the FA Admin Act so that where an approved provider submits an enrolment notice or attendance report outside the required timeframe, an individual will still be entitled to CCS or ACCS. **Items 77 and 80** amend sections 204C and 204H, respectively to provide that these reports
or notices are taken to be given even if they were not submitted by the required day, and to note that providers are still bound to submit the reports and notices.

Attendance reporting requirements

Item 75 of Schedule 1 makes a minor amendment to attendance reporting requirements at section 204B of the FA Admin Act. Currently, the requirement is to report for each week in which a ‘session of care’ is provided where the provider has given an enrolment notice and care was provided to the child on at least one day in the week. The Bill proposes to remove the reference to ‘session of care’ which specifically refers to care provided under an arrangement that can attract the CCS. This will mean that reporting requirements apply to all care provided, regardless of whether it attracts a subsidy.

Some children may be enrolled and attend care under arrangements that do not attract the CCS. Generally, providers already report on all children they provide care to, regardless of the arrangement the care is provided under. The note at section 204B also states that providers must give enrolment notices to the Secretary of the Department of Education relating to all children for whom care is provided, whether the arrangement the care is provided under attracts a subsidy or not.

The Explanatory Memorandum notes that attendance reporting is:

... fundamentally important to ensure that an accurate and complete snapshot of care being provided can be received by the Commonwealth, to amongst other things, ensure that requirements under the National Law relating to child safety, such as ratios, are being met and to help identify any risk or compliance concerns with the provision of care by approved providers. 61

Apportioning partner income

Currently, under clause 3AA of Schedule 3 of the FA Act, each partner in a couple has their adjusted taxable income for a financial year apportioned based on the number of fortnights in the year for which the partner was a member of a couple with the individual claiming CCS. Where the individual claiming CCS and their partner were a couple for the whole year then all of the partner’s adjusted taxable income is assessed under the CCS income test. Where the individual was in a couple relationship with the partner for only 30 per cent of the fortnights in the income year, then only 30 per cent of the partner’s adjusted taxable income would be assessed under the CCS income test for that individual’s claim.

The Explanatory Memorandum notes the current arrangements have an unintended consequence in that the adjusted taxable income of the partner ‘is apportioned irrespective of whether for all, or only some, of the CCS fortnights in question, the individual was not accessing CCS’. 62

The Bills Digest for the legislation that introduced the CCS (the 2016 Bills Digest) flagged the design of this part of the income test as an issue stating:

As CCS is to be worked out on a fortnightly basis, it appears this provision has been included to allow for couple rates to be calculated based on the fortnights a couple was together in a relationship. This is different from other family assistance payments where rates are calculated on an annual basis divided into a daily rate. For these payments, where circumstances change during the year such as a person

62. Ibid., p. 19.
entering a couple relationship, a different rate is calculated based on the relevant period where the circumstances are changed (a new annual rate is calculated and a new daily rate determined). 63

The Family Tax Benefit income test allows for rates to be calculated based on the person’s circumstances in the relevant period. At the time the CCS was introduced, it was unclear why it had adopted a very different approach to considering the income of partners where circumstances had changed during the year.

**Item 29 of Schedule 1** will amend the income test arrangements at subclause 3AA(2) of Schedule 3 so that an individual’s partner income is only apportioned across the fortnights where they were both a couple and entitled to CCS or ACCS.

**Item 86** is an application provision that provides for the amended income test arrangements to apply for the 2019–20 income year and later income years. This will mean that the amendments operate retrospectively and that some individuals will have been entitled to higher rates of payment for some prior fortnights in 2019–20.

**Requiring Tax File Numbers and account details at the time of claim**

The Bill will make amendments to the CCS claims processes to require TFNs and bank account details to be provided at the time a claim is made.

Currently, individuals can make an effective claim for CCS without providing their or their partner’s bank account or TFN. However, these details are required to be submitted within 28 days. 64 If these details are not submitted within the timeframe, any CCS paid will be considered a debt. 65

The Explanatory Memorandum states that by requiring TFNs and bank account details be provided at the time a claim is made, it will ensure ‘the requirements for making an effective claim for CCS are clear and unambiguous for individuals, and reduces regulatory and administrative burden’. 66 While this simplifies the claims process from the Department of Human Services side, it will create delays in accessing CCS for those who do not have a TFN or their bank account details. Child care peak bodies and providers, and Labor Party Senators, have stated their opposition to this change (‘Policy position of non-government parties/independents’ and ‘Position of major interest groups’ sections above). There is concern the measures will have a significant impact on vulnerable groups, including parents fleeing domestic violence who do not have access to all relevant documentation at the time they make a claim for CCS.

Section 67BE of the **FA Admin Act** sets out when a claim for CCS is considered an ‘effective claim’. Section 67BF specifies that a claim that is not effective is taken not to have been made, and sets out circumstances in which a claim is taken not to have been made. **Item 35 of Schedule 1** repeals and substitutes paragraphs 67BE(c) to (e) so that an effective claim is one which contains details of a bank account into which CCS can be paid and the TFN of each claim person. **Item 36** repeals subsections 67BF(2) and (3) which set out the 28 day grace period for submitting bank account and TFN details and inserts **proposed subsection 67BF(2)** which provides for the Secretary’s rules to prescribe circumstances in which a claim for CCS is taken not to have been made.

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64. DSS, ‘4.6.1.10 CCS – making an effective claim’, Family assistance guide, DSS website, last reviewed 2 July 2018.


66. Ibid.
Item 37 repeals sections 67BG, 67BH and 67BI which currently set out the requirements for providing bank account and TFN details in different circumstances (including where a person has a TFN application pending). The basic requirements to provide TFN and bank account details will be now set out in section 67BE (as amended by item 35) with no provision for circumstances where a person is unable to provide these details at the time of their claim.

Item 87 is an application provision and will apply the amendments made by items 35, 36 and 37 to any CCS claims made on or after the commencement of the item (the first CCS fortnight after Royal Assent) and to any CCS claims made before commencement where eligibility had not been determined immediately before commencement.

**CCS indexation**

Currently, the CCS lower income test threshold, the CCS hourly rate cap and the CCS annual limit are adjusted on 1 July of each year to reflect movements in the consumer price index (CPI)—this adjustment is known as indexation. Family Tax Benefit income test thresholds and payment rates are adjusted in a similar way on 1 July of each year.

Where 1 July occurs in the middle of a CCS fortnight (the fortnight for which an individual’s CCS is calculated), then an individual’s CCS payment rates would change in the middle of the relevant period. CCS differs from Family Tax Benefit in that CCS rates are calculated on a fortnightly basis while Family Tax Benefit is calculated on an annual basis (for the financial year) which is then converted to a daily rate. This means that it does not matter where 1 July falls for Family Tax Benefit calculations, but it does complicate the calculation of CCS entitlements.

The Bill proposes to change these indexation arrangements so that CCS indexation occurs for the first fortnight of the financial year rather than on 1 July. Items 30–32 of Schedule 1 amend subclause 3(1) of Schedule 4 to the FA Act to replace references to 1 July with ‘first day of first CCS fortnight of income year’. The amendments will mean that the adjustment of thresholds and rate caps takes place from the first full CCS fortnight of the financial year rather than 1 July. ‘CCS fortnight’ is defined at subsection 3(1) of the FA Act as a period of two weeks beginning on Monday 2 July 2018 or every second Monday after that Monday.

**Reviews**

The Bill makes some clarifying amendments to the provisions for reviews of decisions made under the FA Admin Act to ensure that decisions made under section 105 of the FA Admin Act (known as Secretary initiated reviews) must first be subject to an internal review before an application can be made to the Administrative Appeals Tribunal.

The amendments (items 54, 58 and 59 of Schedule 1) make clear that decisions made as a result of a review initiated by the Department of Human Services must be first reviewed internally, by an Authorised Review Officer, where an individual is dissatisfied with the decision. If the individual remains dissatisfied, they may appeal to the Administrative Appeals Tribunal.

Schedule 2 of the Bill makes separate amendments to prevent providers applying to the Administrative Appeals Tribunal for a review of a decision to cancel or vary their approval under section 197H or 197J of the FA Admin Act. Section 197H requires the Secretary to cancel approval if a provider ceases to operate all the approved services of the provider. Section 197J similarly requires the Secretary to vary the approval of a provider where they cease to operate a service (to remove that service from their approval). Both sections state that the Secretary must cancel or vary the approval where the specific circumstances exist. The FA Admin Act prior to the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017 (JFF Act) — the
Act which introduced the CCS and ACCS) amendments also prevented Administrative Appeals Tribunal review of decisions to cancel a service’s approval if the service ceased to be operated by the person on whose application the approval was granted.67

**Item 9 of Schedule 2** amends paragraph 138(1)(a) and **item 10 of Schedule 2** amends subsection 138(3) of the FA Admin Act to prevent providers applying to the Administrative Appeals Tribunal for a review of decisions under sections 197H or 197J.

The Explanatory Memorandum notes that the amendments are intended to bring the provisions into line with the legislation as it existed before 2 July 2018.68 The Bill also corrects an omission where the term ‘ceases to operate’ is not currently defined in the FA Admin Act by allowing the Minister’s Rules to define the term (**items 21 and 22 of Schedule 2**).

**Scrutiny of Bills Committee**

The Senate Scrutiny of Bills Committee stated that despite the fact that decisions made under 197H and 197J are not discretionary: ‘it remains unclear to the committee why merits review should not be available in circumstances where there has been a mistake of fact as to whether the relevant conditions in sections 197H and 197J have occurred’.69 The Committee requested the Minister for Education provide more detailed advice as to why merits review will no longer be available for decisions made under these sections.70

The Minister for Education provided a response to the Committee on 6 November 2019. The Minister stated that it was not intended that decisions under sections 197H and 197J be reviewable by the Administrative Appeals Tribunal but that exemptions from merits review were ‘omitted by oversight’. 71 The Minister noted that individuals affected by decisions under these sections may seek internal review by the Secretary of the Department of Education or an authorised review officer.72

The Committee noted the Minister’s advice but reiterated its previous point that it was unclear why merits review should not be available in circumstances where there has been a mistake of fact.73 The Committee stated that it ‘draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of removing merits review to decisions made under sections 197H and 197J …’.74

**Including ABSTUDY as an eligible payment for ACCS—Grandparent**

To be eligible for the ACCS—Grandparent, a person must:

- meet the general eligibility requirements for CCS (such as residency and being liable to pay for child care sessions)
- be the grandparent or great-grandparent of the child

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68. Explanatory Memorandum, op. cit., p. 34.
70. Ibid.
72. Ibid., p. 77.
73. Ibid.
74. Ibid., p. 78.
be the principal carer of the child by providing at least 65 per cent of ongoing daily care and having substantial autonomy for the day to day decisions about the child’s care, welfare and development and

receive an income support payment from the Department of Human Services or the Department of Veterans’ Affairs (such as the Age Pension, Service Pension, Carer Payment, Disability Support Pension and Newstart Allowance). \(^7^5\)

Currently, payments under the ABSTUDY (Aboriginal and Torres Strait Islander Study Assistance) Scheme are not included as payments eligible for ACCS—Grandparent. The ABSTUDY scheme is aimed at addressing the educational disadvantages faced by Aboriginal and Torres Strait Islander people by ‘improving educational outcomes to a level equivalent to that of the Australian population in general’. \(^7^6\)

The ABSTUDY scheme consists of a wide range of allowances grouped into seven ‘award’ categories. \(^7^7\) ABSTUDY allowances include an income support payment, the Living Allowance, which is paid at a rate similar to Youth Allowance and supplementary allowances which cover additional costs such as fares, fees, the need to live away from home to study, and additional incidental costs. The allowances available depend on the specific award or awards an individual is eligible for. \(^7^8\) For example, tertiary students are eligible for a different set of payments at a different rate to most secondary students. The ABSTUDY Living Allowance and some of the supplementary allowances are subject to means testing.

The Grandparent Child Care Benefit, the payment under the pre-July 2018 child care payment system most similar to ACCS—Grandparent, included the same list of eligible payments and excluded ABSTUDY recipients from receiving the payment. \(^7^9\)

**Item 17 of Schedule 1** will insert **proposed subparagraph 85C(1)(d)(vi)** into the FA Act which will allow for the Minister’s rules to prescribe payments eligible for ACCS—Grandparent. While the proposed subparagraph does not expressly refer to ABSTUDY, the Explanatory Memorandum states that it is intended the amendment will allow ABSTUDY payments, and other payments, to be added to the list of eligible payments for the purposes of ACCS—Grandparent. \(^8^0\)

**In-Home Care**

In-Home Care refers to child care services delivered in a family’s home. This form of care differs from Family Day Care where the care is usually delivered in the educator’s home. In-Home Care services are intended to support the provision of ECEC for families who have difficulty accessing Long Day Care, Family Day Care and Outside School Hours Care due to their non-standard working hours, geographical isolation or complex and challenging needs. \(^8^1\)

The Australian Government subsidises a limited number of In-Home Care places through the CCS. The Department of Education has contracted In-Home Care Support Agencies in each state and

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75. DSS, ‘2.8.2.10 ACCS (grandparent) – eligibility’, *Family assistance guide*, DSS website, last reviewed 2 July 2018.
76. DSS, *ABSTUDY policy manual*, Study and Compliance Branch, DSS, Canberra, 1 July 2019, p. 6.
77. Ibid., p. 57.
78. Ibid., pp. 57–69.
79. DSS, ‘2.6.8 Grandparent Child Care Benefit (GCCB) – eligibility criteria’, *Family assistance guide*, DSS website, 2 January 2018.
territory to deliver In-Home Care to eligible families. These support agencies match educators/services with families.\(^\text{82}\)

Currently, there are 3,200 In-Home Care places funded. Each place is equivalent to 35 hours of subsidised care per week per child but a family may access more than one place or part of one place, up to the total number of hours of subsidised care the family is entitled to under the activity test.\(^\text{83}\)

The CCS payment rate for In-Home Care is based on a family hourly rate cap rather than a per child hourly rate cap. The hourly rate cap for In-Home Care is currently $32.00.\(^\text{84}\) The income test determines the percentage of the family hourly rate cap or the actual fee charged as the payment rate for CCS. Families may also be eligible for the ACCS in respect of In-Home Care.

In-Home Care providers must comply with the approval conditions in the FA Admin Act and the Minister’s Rules (including a requirement to operate in a manner consistent with the In Home Care National Guidelines).\(^\text{85}\) In-Home Care is currently outside the scope of the National Quality Framework but providers must comply with any state or territory legislation. While the CCS and ACCS payments for In-Home Care are provided for under the FA Act and FA Admin Act, much of the detailed criteria and rate caps are provided for in the Minister’s Rules rather than the Acts.

**Changes proposed in the Bill**

The Bill proposes to include more concepts relating to In-Home Care in the FA Act and the FA Admin Act and to allow the Minister to specify additional eligibility criteria relating to CCS paid for In-Home Care in the Minister’s Rules. The Explanatory Memorandum states that In-Home Care was not included in the JFF Act as ‘consideration and review of In Home Care was not completed until after the JFF Act was passed’.\(^\text{86}\)

**Nanny pilot program**

From 2016 to 2018, the Government trialled reforms to In-Home Care arrangements with the funding of nannies (who were not required to hold ECEC qualifications, only a working with children check and a first aid qualification).\(^\text{87}\) The nanny pilot program (initially called the Interim Home Based Carer Subsidy Programme) was intended to support up to 10,000 children; however, by the end of 2016, only 213 families were participating.\(^\text{88}\) The evaluation of the nanny pilot program was conducted by the Institute for Social Science Research at the University of Queensland. It found the advantages of the scheme were that it provided some families with non-standard work schedules with access to care. The disadvantages were the costs to families (the subsidy did not make it affordable enough for many who wanted to participate) and issues with

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83. DoE, *In Home Care handbook*, op. cit., p. 5.
84. DoE, *In Home Care National Guidelines*, op. cit., p. 5.
85. Ibid., p. 7; *Child Care Subsidy Minister’s Rules 2017*, subsection 48A(8).
the recruitment and administration of the program. The pilot program ended in mid-2018 when the current In-Home Care arrangements commenced.

**Scrutiny of Bills Committee**

The Senate Scrutiny of Bills Committee raised issue with the use of delegated legislation, such as the Minister’s Rules, to set out eligibility requirements for In Home Care. The Committee stated:

> The committee’s view is that significant matters, such as the eligibility requirements for Commonwealth-subsidised in home care places, should be included in the primary legislation unless a sound justification for the use of delegated legislation is provided. In this instance, it is unclear to the committee why at least high level guidance regarding the circumstances in which child care subsidies will be available for in home care cannot be included in the primary legislation.

While the amendments in the Bill do propose to include more concepts relating to In Home Care in the primary legislation, many of the detailed criteria will remain in the Minister’s Rules or in guidelines published by the Department of Education.

The Committee requested the Minister for Education provide more detailed advice as to why it is considered necessary and appropriate to leave significant elements of the provision of subsidies for In Home Care to delegated legislation, and whether the Bill could be amended to include ‘at least high level guidance of the relevant eligibility requirements on the face of the primary legislation’.

The Minister provided a response to the Committee on 6 November 2019. In the response, the Minister stated that section 85BA of the *FA Act* contains high level criteria for CCS eligibility which will also apply to In Home Care. The Minister stated:

> Given that the primary eligibility requirement for In Home Care is contained in the Assistance Act, incorporating targeted eligibility criteria for In Home Care in the Child Care Subsidy Minister’s Rules 2017, is appropriate, as it enables the other criteria to be amended in response to changes in demand for the program.

The Committee noted the Minister’s response but reiterated its ‘long-standing scrutiny view that significant matters, such as the eligibility criteria for Commonwealth-subsidised in home care places, should be included in the primary legislation unless a sound justification for the use of delegated legislation is provided’. The Committee drew its scrutiny concerns to the attention of the Senate Standing Committee on Regulation and Ordinances.

89. J Povey, M Brady, F Perales, D Clague, J Baxter, C Pedde and E Kennedy, *Key findings from the ISSR evaluation of the Nanny Pilot Program*, Institute for Social Science Research, University of Queensland, n.d., p. 6.
92. Ibid., pp. 29–30.
94. Ibid.
95. Ibid., p. 76.
96. Ibid.
Key provisions

Item 11 of Schedule 1 adds proposed paragraph 85BA(1)(e) to the FA Act so that CCS eligibility for care provided by a child care service ‘of a kind prescribed by the Minister’s Rules’ is contingent on any requirements prescribed by the Minister’s Rules in relation to that service. The Secretary of the Department of Education (or a delegate such as a Department of Human Services official) will need to determine that the requirements are met. The Explanatory Memorandum states that the ‘primary purpose of this amendment is to enable targeted eligibility criteria for CCS for In Home Care to be prescribed and clarified in the Minister’s Rules’. The kind of criteria envisaged include the availability and suitability of access to other forms of care, geographic location, non-standard or variable working hours of parents and whether a family has complex or extensive additional needs. However, the provision is broad and not limited to In-Home Care. It will allow the Minister to prescribe new CCS eligibility conditions relating to child care provided by any type of service.

Item 18 inserts proposed section 85ECA which will limit eligibility for CCS and ACCS to sessions of care provided by In-Home Care services which meet the requirements prescribed by the Minister’s Rules. This will allow the Minister to prescribe requirements for In-Home Care services. The Explanatory Memorandum suggests that such requirements may include child-to-educator ratios and the numbers of children.

Item 24 will replace the table at subclause 2(3) of Schedule 2 of the FA Act to include the CCS hourly rate cap for In-Home Care services with the list of rate caps for other categories of child care services.

Item 66 adds proposed paragraph 198A(ba) to the FA Admin Act to allow for the Minister’s Rules to prescribe what constitutes a child care place in respect of a specified class of approved child care services. This is for the purpose of allocating CCS-subsidised child care places. Currently, only In-Home Care has an allocated number of places but there is no definition of ‘child care place’ in family assistance law.

Extending periods of absence before enrolment ceases

Being enrolled with a child care provider is one of the steps required for a family to be eligible for the CCS—family assistance law actually requires all children who attend child care to have an enrolment notice issued by the provider regardless of their CCS eligibility status. Enrolment links the child to the family claiming CCS and to the child care provider. Providers submit enrolment notices via the Child Care Subsidy system to indicate they have entered into an agreement with a family and that a child is enrolled with them. Once an enrolment notice is submitted, the provider must report on the attendance of that child.

Claims for CCS are made by families to the Department of Human Services. An enrolment notice is not a claim but a notice made by the provider to the Department that a child is being enrolled for sessions of care with that provider. As part of the process for receiving CCS, families also need to enter into a ‘Complying Written Arrangement’ with the child care provider setting out the care

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98. Ibid.
99. Ibid., p. 25.
100. Ibid., p. 25.
102. Ibid.
arrangements for the child. Only after agreeing to the Complying Written Arrangement can the provider submit an enrolment notice to the Department of Human Services. The Department then asks the family to confirm the enrolment. Once these three processes are complete—claim, written arrangement and enrolment—CCS entitlements can be calculated and the payments made.\(^\text{103}\)

**Enrolments cease after eight weeks non-attendance**

Under subparagraph 200B(1)(b)(iii) of the *FA Admin Act*, a child ceases to be enrolled for care by a particular provider when eight weeks have passed since the child last attended any of the service’s sessions of care. There are no provisions to extend enrolments or grant exemptions. In regards to long absences, the *Child Care Provider Handbook* notes:

> If a long absence from care is anticipated, the plan for this, and how it will be managed, can be specified in the Complying Written Arrangement... However, where a child does not attend a service within a period of eight weeks or more, the enrolment will be ceased. Even where an absence longer than eight weeks is planned in the Complying Written Arrangement, a new enrolment notice will need to be submitted when care recommences after the absence. If a long absence is planned, the family may prefer to end the enrolment and submit a new notice when physical attendance recommences so that the child is not reported as absent (using up the child’s initial 42 days of absence).\(^\text{104}\)

**Enrolment may cease but claims remain active for a year**

While an enrolment may cease after eight weeks absence, or a family may choose to end an enrolment where a long absence is planned, the family’s claim for CCS remains active for a year. This means that the family does not need to make a new claim for CCS every time enrolment ceases. A family whose child is attending vacation care sporadically could keep an active claim over a year but would need to make a new Complying Written Arrangement with that provider, and the provider would need to submit a new enrolment notice, each time the child commences care.\(^\text{105}\)

**Bill extends absence period from eight weeks to 14 weeks**

The Explanatory Memorandum states that, based on feedback from families and child care providers, the current absence period for an enrolment to lapse is too short: ‘In particular, it has had unintended consequences where children only attend outside school hours care ... as their enrolments cease due to regular breaks in their pattern of attendance’.\(^\text{106}\)

**Item 88 of Schedule 1** amends subparagraph 200B(1)(b)(iii) of the *FA Admin Act* so that an enrolment ceases after 14 weeks of non-attendance, rather than eight weeks. This measure is to commence 13 January 2020.

**Removing the ACCS—child wellbeing limit**

ACCs—child wellbeing is paid in respect of children considered at risk of serious abuse or neglect and provides a subsidy equal to the actual fee charged by a child care service (up to 120 per cent

\(^{103}\). Ibid.

\(^{104}\). DoE, *Reporting absences*, *Child care provider handbook*, DoE website, current as of 8 July 2019.

\(^{105}\). DoE, *Updating and ending arrangements and enrolments*, *Child care provider handbook*, DoE website, current as of 8 July 2019.

\(^{106}\). Explanatory Memorandum, op. cit., p. 27.
of the hourly rate cap) for up to 100 hours per fortnight. Individuals eligible for ACCS—child wellbeing are exempt from the activity test.  

An individual is eligible for ACCS—child wellbeing where they are eligible for CCS for that session of care and:

- either a certificate has been given under section 85CB of the FA Act, or a determination made by the Secretary under section 85CE is in effect and
- none of the limitations to eligibility for the ACCS—child wellbeing under Division 5 of Part 4A of the FA Act applies.  

A certificate under section 85CB of the FA Act is made by a child care provider where it considers that a child is at serious risk of abuse or neglect. Currently, a provider cannot issue a certificate where it would mean that in any period of 12 months, certificates given by the provider for the same child at the same service would be in effect for more than six weeks. Also, a provider cannot issue a certificate where it would mean that during the first week the certificate applies, the total number of children accessing ACCS—child wellbeing at the child care service is more than 50 per cent of the total number of children being cared for by the service (known as the ‘50 per cent rule’).  

Where a provider is unable to issue a certificate because of the time limit or the 50 per cent rule, the provider may apply to the Department of Human Services or the Department of Education, respectively, to make a determination under section 85CE that a child is at risk of serious abuse or neglect (and that ACCS—child wellbeing is therefore payable in respect of that child’s sessions of care). Applications for determinations relating to provider certificates that would exceed six weeks in 12 months are made to the Department of Human Services while applications for determinations to exceed the 50 per cent limit are made to the Department of Education.  

The Department of Education may, at any time, increase or decrease the percentage limit that applies to a particular service, based on evidence previously submitted by the provider or compliance data analysis. The Secretary may also prescribe a different percentage to apply across the board.  

**Removing the 50 per cent rule**

The Explanatory Memorandum states that the current approval process for providers seeking to increase the 50 per cent limit on ACCS—child wellbeing children is ‘unnecessarily burdensome and may cause delays for at-risk children having access to supported child care’. Further, ‘the default 50 per cent limit ... is also causing unintended consequences for approved providers and child care services’.

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108. FA Act, subsection 85CA(1).
109. FA Act, subsection 85CB(3).
110. FA Act, subsection 85CB(4).
111. FA Act, section 85CE.
113. Ibid., p. 34; FA Act, paragraph 85CB(4)(c).
114. FA Act, paragraph 85CB(4)(b).
115. Explanatory Memorandum, op. cit., p. 28.
116. Ibid.
Item 89 of Schedule 1 repeals subsection 85CB(4), which provides for the 50 per cent rule, and inserts proposed subsections 85CB(4) and (4A) which only limit the number of certificates that can be issued by a provider when the Secretary of the Department of Education has determined a particular percentage should apply to a particular service. If the Secretary has not made such a determination, then providers are not limited in the percentage of ACCS—child wellbeing certificates they can issue.

It is unclear why the issues with the approval process for increasing the limit could not have been addressed through the Department of Education’s existing powers to change the percentage limit at any time.

Compliance changes
Schedule 2 to the Bill provides for a range of amendments relating to the requirements providers need to meet in order to be considered approved for CCS, and to the CCS payment integrity framework.

Suspension or cancellation if approval suspended/cancelled under the National Law
The FA Admin Act sets out conditions for providers to be approved for the purposes of CCS, and conditions for continued approval. These include that the provider holds any approvals or licences required to operate a child care service under the state or territory law in which the service is situated, and that the Secretary of the Department of Education is satisfied that that it is appropriate for the provider to be approved having regard to any non-compliance with a law of the Commonwealth or a state or territory. Where the Department of Education is satisfied that an approved provider has not complied, or is not complying, with any condition for continued approval, then they may suspend, cancel or vary the provider’s approval.

The Bill proposes to extend existing conditions which relate to approval under state and territory law by inserting provisions that will automatically suspend, cancel or vary a provider’s approval where the provider has had their approval suspended, cancelled or varied, respectively, under the National Law (that is, under state and territory law).

The measures introduce an automatic flow-on effect from changes in approval status at the state and territory level to the approval status at the Commonwealth level. While the Commonwealth already has the power to suspend, cancel or vary approvals as a result of changes in a provider’s status under the National Law, the current provisions require an action on the part of the Department of Education. The amendments will mean that any change under the National Law will trigger a change under Commonwealth law.

Item 17 inserts proposed section 197AB into the FA Admin Act so that where a provider’s approval is suspended under the National Law the provider’s approval for CCS purposes is taken to be suspended. The provision does not apply if the provider is voluntarily suspended under the National Law.

Item 23 inserts proposed section 197L into the FA Admin Act which provides for the cancellation or variation of a provider’s approval for CCS purposes where the provider’s approval has been cancelled or varied under the National Law.

117. FA Admin Act, paragraphs 194C(a), 194D(b) and 194D(f) and subsection 195A(1).
Item 2 inserts proposed section 71G into the FA Admin Act which provides that any payments or fee reductions paid to a provider, to which they were not entitled as a result of their approval being affected by proposed sections 197AB or 197L, are considered debts due to the Commonwealth.

Voluntary suspension

Currently, child care providers may request to have their provider or service approvals under the Education and Care Services National Law (the National Law) voluntarily suspended in order to cease operating a service without being in breach of the approval requirements under the National Law. The Explanatory Memorandum states that such voluntary suspensions are often requested so that a provider can carry out capital works on their premises. The FA Admin Act does not allow for CCS approvals to be voluntarily suspended.

Item 17 of Schedule 2 adds proposed section 197AA to the FA Admin Act which will allow for the Secretary of the Department of Education to suspend the approval of an approved provider where the provider has requested the suspension. The request must be in a form and manner approved by the Secretary and it must specify a proposed start and end day for the suspension.

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118. The National Law is the Education and Care Service National Law Act 2010 (Vic) and the corresponding legislation or application Acts passed in each of the other states and territories. ACECQA, ‘National Law’, ACECQA website, n.d.