



Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017

I, Simon Birmingham, Minister for Education and Training, make this instrument under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 18 September 2017

Simon Birmingham
Minister for Education and Training

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement and repeal	1
2A Authority	1
3 Definitions	1
5 Review of decisions	2
Part 2—Eligibility for approval as a child care service	2
6 Purpose of this Part	2
7 Applicant to be a suitable person	2
8 Staff of child care service to be suitable persons	4
9 Carers of family day care service and in-home care service to be suitable persons	4
10 Undertakings as to operation of child care services—general	5
10A Additional undertakings as to operation of family day care service—monitoring compliance with section 8 of the <i>Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015</i>	7
10AB Additional undertakings as to operation of family day care service—monitoring compliance with section 9 of the <i>Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015</i>	9
11 Compliance with child care laws	10
12 Child care service to be insured	11
14C Child care service to have capacity to use electronic interface	12
Part 3—Eligibility for continued approval as a child care service	12
15 Purpose of this Part	12
16 Approved child care service to continue to comply with suitability requirements etc.	13
16A Approved child care service to comply with undertakings	13
16B Approved in-home care service to comply with undertakings	13
18 Approved child care service to continue to be operated by applicant for approval	13
19 Approved child care service to notify the Secretary of certain events	14
20 Approved child care service to permit inspection	14
21 Approved child care service to provide certain information	15
21A Approval of form and manner of giving information	15
22 Approved child care service to protect personal information	15
24 Approved family day care services and approved in-home care services to have in-home care agreements	16
25 Approved child care service to only provide 24 hour care where 24 hour limit applies	16
26 Approved child care service with allocated places not to change location without approval	17
27 Standard hours family day care and standard hours in-home care	17
Part 4—Savings and transitional provisions	18
28 Definition	18
29 Applications for approval on foot at commencement	18
30 Remaking of existing Secretary’s determinations, approvals etc.	18
Schedule 1—Priority of access guidelines	20
1 Definitions	20
2 Priorities for filling vacant child care places	20
3 Priorities within each category of priority	20

Part 1—Preliminary

1 Name

This instrument is the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017*.

2 Commencement and repeal

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2017.	1 October 2017

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

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.
- (3) This instrument is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

Note: Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* commences on 2 July 2018, see section 2 of that Act.

2A Authority

This instrument is made under the *A New Tax System (Family Assistance) (Administration) Act 1999*.

3 Definitions

In this instrument:

applicant for approval of a child care service means a person who has applied, under section 194 of the Family Assistance Administration Act, to have the service approved for the purposes of the family assistance law.

carer means a person employed, contracted, or otherwise engaged by a family day care service or an in-home care service to provide child care on behalf of the service.

Part 2 Eligibility for approval as a child care service

Section

CRN of a person means the active customer reference number of the person issued by the Department of Human Services.

FDC carer means a carer of an approved family day care service.

Inclusion Support Programme means the program referred to in item 109 of Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

key personnel: a person is **key personnel** of an applicant for approval of a child care service or an operator of an approved child care service if the person is:

- (a) an officer (within the meaning given by section 9 of the *Corporations Act 2001*) of the applicant or operator; or
- (b) a member of the group of people that is responsible for the executive decisions of the applicant or operator; or
- (c) a person who is concerned with, or takes part in, the management of the applicant or the operator; or
- (d) a person who, under an arrangement with the applicant or operator, manages or supervises the child care service.

registered software means software registered by the Secretary under subsection 4(3) of the Family Assistance Administration Act.

5 Review of decisions

For subsection 108(2A) of the Family Assistance Administration Act, paragraph 108(2)(h) of that Act does not apply to a decision of an officer under this instrument, other than decision under subsection 12(3), section 21 or section 21A.

Note: This means that a decision of an officer under this instrument, other than decision under subsection 12(3), section 21 or section 21A, is reviewable on application under section 109A of the Family Assistance Administration Act.

Part 2—Eligibility for approval as a child care service

6 Purpose of this Part

This Part sets out rules relating to the eligibility of child care services to become approved for the purposes of the family assistance law.

Note: The Secretary can only approve a child care service if the Secretary is satisfied that the service satisfies the eligibility rules set out in this Part: see paragraph 195(1)(c) of the Family Assistance Administration Act.

7 Applicant to be a suitable person

- (1) The applicant for approval of a child care service must be a suitable person to operate the service.
 - (2) In making an assessment for subsection (1), the Secretary may consider the following matters:
-

Matters relevant to management of child care services

- (a) the applicant's expertise and experience in providing child care;
- (b) the applicant's ability to meet and provide the appropriate quality of child care;
- (c) the applicant's governance arrangements, including:
 - (i) any arrangements with other persons for the management or supervision of the child care service; and
 - (ii) any arrangements to ensure compliance by the applicant, or any person the applicant is, or will be, responsible for managing, with the laws and standards mentioned in paragraphs (d) through to (f);

Matters relevant to capacity to comply with all laws and standards

- (d) the applicant's understanding of obligations that would apply to it under the family assistance law, and commitment to complying with these obligations;
- (e) the applicant's record of compliance with any laws of the Commonwealth or a State or Territory;
- (f) the applicant's record of compliance with any quality standards relating to child care services;

Matters relevant to management of financial affairs

- (g) the applicant's record of financial management, including:
 - (i) any instances of bankruptcy, insolvency or external administration involving the applicant; and
 - (ii) any debts due to the Commonwealth by the applicant (whether or not the debt has been discharged);
 - (iii) the applicant's record of administering of Commonwealth, State or Territory funds;

Matters relevant to previous conduct, charges and convictions etc.

- (h) any relevant criminal charges against the applicant;
- (i) any proceedings currently before a court or tribunal that involve the applicant;
- (j) any order for the applicant to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a State or Territory;
- (k) any decision under a law of the Commonwealth or a State or Territory relating to child care which adversely affects the applicant;
- (l) subject to Part VIIC of the *Crimes Act 1914*, any conviction or finding of guilt against the applicant for an offence against a law of the Commonwealth or a State or Territory (including an offence against children, or relating to dishonesty or violence);
- (m) any act of the applicant involving fraud or dishonesty;

Other matters

- (n) any other matter relevant to the suitability of the applicant.

Section 8

- (3) In making the assessment for subsection (1), the Secretary may also consider the matters mentioned in subsection (2) in relation to the following persons:
- (a) any of the applicant's previous, current or proposed key personnel; and
 - (b) any person connected with the applicant, who affects, or is likely to affect, the operation of the service by the applicant; and
 - (c) any person connected with any of the applicant's previous, current or proposed key personnel, who affects, or is likely to affect, the operation of the service by the applicant.

Example: In assessing whether an applicant is a suitable person to operate a child care service, the Secretary may consider such matters as:

- (a) criminal convictions of the applicant's key personnel;
 - (b) the record of financial management of the holding company of the applicant, or the bankruptcy of a proposed director of the applicant;
 - (c) the record of compliance with the family assistance law of a body corporate a director of which is one of the applicant's key personnel.
- (4) For the purposes of subsection (3), *person* includes a partnership and an unincorporated body.

8 Staff of child care service to be suitable persons

- (1) Each member of the staff of a child care service for which an applicant has applied for approval must be a suitable person to provide child care.
- (2) The applicant must undertake that the child care service will take reasonable steps to ensure that each member of the staff of the service is a suitable person to provide child care.
- (3) For the purposes of subsection (2), the child care service must undertake a check for the following:
 - (a) any relevant criminal charges against the staff member pending before a court;
 - (b) any relevant convictions or findings of guilt against the staff member for an offence.
- (4) In considering whether a staff member is a suitable person to provide child care, the Secretary may consider any other matters relevant to the staff member in addition to the matters mentioned in subsection (3).

9 Carers of family day care service and in-home care service to be suitable persons

- (1) Each carer employed, contracted or otherwise engaged by a child care service for which an applicant has applied for approval must be a suitable person to provide child care.
- (2) The applicant must undertake that the child care service will take reasonable steps to ensure that each carer employed, contracted or otherwise engaged by the service is a suitable person to provide child care.

-
- (3) For the purposes of subsection (2), the child care service must undertake a check for the following:
 - (a) any relevant criminal charges against the carer pending before a court;
 - (b) any relevant convictions or findings of guilt against the carer for an offence.
 - (4) In considering whether a carer is a suitable person to provide child care, the Secretary may consider any other matters relevant to the carer in addition to the matters mentioned in subsection (3).

10 Undertakings as to operation of child care services—general

- (1) The applicant for approval of a centre-based long day care service must undertake that:
 - (a) most of the children to be provided with care by the service will:
 - (i) not have commenced school; and
 - (ii) attend the service at least one day a week;
 - (b) the service will operate on all normal working days in at least 48 weeks of the year;
 - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
 - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session.
 - (1A) The applicant for approval of a family day care service must undertake that:
 - (a) most of the children to be provided with care by the service will attend the service at least one day a week; and
 - (b) the service will operate on all normal working days in at least 48 weeks of the year; and
 - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
 - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session; and
 - (f) if a service approval has been granted in relation to the service under the Education and Care Services National Law, the service will comply with any conditions imposed by the Regulatory Authority (within the meaning of that Law) to which the service approval is subject; and
- Note: A service approval may be granted subject to conditions imposed by the Regulatory Authority: see paragraph 51(5)(b) of the Education and Care Services National Law.
- (g) the service will ensure that:
 - (i) each of its FDC carers is listed as ‘service personnel’ and is assigned a unique alphanumeric identifier (***Service Provider Personnel ID***) in its registered software; and
 - (ii) in each report given by the service in accordance with subsections 219N(1) or 219N(2) of the Family Assistance Administration Act, the service includes the Service Provider Personnel ID for the FDC carer

Section 10

- who provided the session or sessions of care that is or are the subject of the report; and
- (h) the service will ensure that, for each of its FDC carers that has a CRN, the CRN is entered in its registered software.
- (1B) The applicant for approval of an in-home care service must undertake that:
- (a) the service will provide in-home care only to a child:
 - (i) to whom a circumstance mentioned in subsection (1C) applies; and
 - (ii) to whom only an in-home care service can provide suitable care;
 - (b) the service will operate on all normal working days in at least 48 weeks of the year;
 - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
 - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session.
- (1C) For subparagraph (1B)(a)(i), the circumstances are the following:
- (a) the child, or any other child with whom the child lives, has an illness or disability;
 - (b) the individual in whose care the child is, or the individual's partner (if any), has an illness or disability that reduces the individual's, or the partner's capacity to care for the child;
 - (c) the child lives in a rural or remote area;
 - (d) work hours of the individual in whose care the child is, or the individual's partner (if any), are (or include) the hours during which no other approved child care service (other than an approved in-home care service) operates that could otherwise provide care;
 - (e) the individual in whose care the child is or the individual's partner (if any) is caring for three or more children (including the child) who have not yet commenced school;
 - (g) any other circumstances determined by the Secretary in relation to the child.
- (2) The applicant for approval of an occasional care service must undertake that:
- (a) most of the children to be provided with child care will not have commenced school; and
 - (b) the service will operate for a maximum of 9 hours per day.
- (3) The applicant for approval of an outside school hours care service must undertake that:
- (a) most of the children to be provided with care by the service will be attending school;
 - (b) if the service provides before or after school care—the service will operate on each school day; and
 - (c) if the service provides vacation care—the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day for at least 7 weeks of school holidays in a year.

**10A Additional undertakings as to operation of family day care service—
monitoring compliance with section 8 of the *Child Care Benefit
(Children in respect of whom no-one is eligible) Determination 2015***

- (1A) The applicant for approval of a family day care service must undertake to do the things set out in this section.
- (1) Within 7 days of the date on which a child is enrolled by an individual for care by the service, the service will ensure that:
- (a) each eligible individual is asked whether the eligible individual or the eligible individual's partner is an FDC carer; and
 - (b) each eligible individual is asked to inform the service if, in the future, the eligible individual or the eligible individual's partner becomes an FDC carer.
- (2) If the service becomes aware (because of subsection (1) or for any other reason) that an eligible individual or their partner is an FDC carer, the service will, within 7 days of becoming aware, request the information or documents set out in subsection (4) from the eligible individual, if the eligible individual informs the service that in relation to one or more sessions of care the service has provided, is providing, or will provide, to the FDC child of the eligible individual or the eligible individual's partner any of the following provisions in the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015* apply:
- (a) the FDC child is an eligible disability child;
 - (b) the FDC child is a remote area child;
 - (c) paragraph 8(2)(c) of the *Child Care Benefit (Children in respect of whom no-one is eligible Determination) 2015* applies to the FDC carer in relation to sessions of care provided to the FDC child;
 - (d) paragraph 8(2)(d) of the *Child Care Benefit (Children in respect of whom no-one is eligible Determination) 2015* applies to the FDC carer in relation to sessions of care provided to the FDC child.
- (3) If the service becomes aware (because of subsection (1) or for any other reason) that an eligible individual or their partner is an FDC carer and the service is aware that, in relation to one or more sessions of care the service has provided, is providing, or will provide, to the FDC child of the eligible individual or the eligible individual's partner, the child is an eligible ISP child, the service will:
- (a) request from the eligible individual the information or documents set out in paragraphs (4)(a) to (g) and record the information or documents in the register mentioned in subsection (6); and
 - (b) record, in the register mentioned in subsection (6), documentary evidence that the child is an eligible ISP child.
- Note: The documentary evidence mentioned in paragraph (b) could be a copy of information that the service has received regarding funding under the Inclusion Support Programme in relation to the child.
- (4) The information or documents are:
- (a) the name of the eligible individual and the eligible individual's partner (if any); and

Section 10A

- (b) the name of the FDC carer; and
- (c) the CRN (if any) of the FDC carer; and
- (d) the CRN (if any) of the eligible individual, if the eligible individual is not the FDC carer; and
- (e) the CRN of the FDC child of the eligible individual, or of the eligible individual's partner; and
- (f) the name of the approved family day care service where the FDC carer works (regardless of whether this is the service or another approved service); and
- (g) the days and times of sessions of care that the FDC carer ordinarily provides at the approved family day care service where the FDC carer works (regardless of whether this is the service or another approved service); and
- (h) where relevant, documentary evidence that the FDC child is an eligible disability child; and
- (i) where relevant, documentary evidence that the FDC child is a remote area child; and
- (j) where relevant, documentary evidence that:
 - (i) paragraph 8(2)(c) of the *Child Care Benefit (Children in respect of whom no-one is eligible Determination) 2015* applies; or
 - (ii) paragraph 8(2)(d) of the *Child Care Benefit (Children in respect of whom no-one is eligible Determination) 2015* applies.

Note: For the definition of **documentary evidence** for the purposes of this paragraph, see section 8 of the *Child Care Benefit (Children in respect of whom no-one is eligible Determination) 2015*. For example, documentary evidence for the purposes of subparagraph (i) could include a copy of an enrolment form detailing the times that the eligible individual is usually required to study. Where the form does not provide such details, it must be supplemented with additional documentary evidence, such as an official course timetable. Documentary evidence for the purposes of subparagraph (ii) could include an employment contract or a payslip, showing usual hours of work—but where the contract or payslip does not show usual hours of work, a letter signed by the relevant employer is required stating usual hours of work.

- (5) If the service requests that an eligible individual provide information or documents to the service under subsection (2) or paragraph (3)(a), the service will also request:
 - (a) that the individual inform the service of any change in circumstances which would result in the individual providing information or documents different from those provided under subsection (2) or paragraph (3)(a); and
 - (b) within 7 days of the change in circumstances, that the individual provide to the service the different information or documents.
- (6) The service will record any information provided in response to a request mentioned in subsection (2), paragraph (3)(a) or subsection (5) in a register in the form approved by the Secretary, and also record in the register the following information in relation to each entry:
 - (a) the day on which the service enters the information in the register; and
 - (b) the day on which the service is given or sees documentary evidence provided under subsections (2) or (5).

Section 10AB

-
- (7) The service will, within 7 days of being notified that funding under the Inclusion Support Programme is no longer being paid in relation to a child to whom subsection (3) applies, or applied, record that fact and any other relevant information in the register mentioned in subsection (6).
- (8) The service will keep:
- (a) any documents provided in response to a request mentioned in subsections (2) or (5); and
 - (b) if applicable:
 - (i) a copy of the documentary evidence mentioned in paragraph (3)(b); and
 - (ii) any notification of the kind mentioned in subsection (7).
- (9) The service will request that an individual who provides information or documents to it under this section will authorise the service, in writing, to disclose the information and documents to the Secretary.
- (10) In this section:

eligible disability child has the same meaning as in the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*.

eligible ISP child has the same meaning as in the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*.

eligible individual means an individual whom the Secretary has determined to be conditionally eligible for child care benefit by fee reduction in respect of a child, under section 50F of the Family Assistance Administration Act.

FDC child means a child who is:

- (a) enrolled for care by an approved family day care service; and
- (b) the FTB child or regular care child of an FDC carer or the partner of an FDC carer.

remote area child has the same meaning as in the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*.

**10AB Additional undertakings as to operation of family day care service—
monitoring compliance with section 9 of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015***

- (1A) The applicant for approval of a family day care service must undertake to do the things set out in this section.
- (1) Where care is provided to a child to whom subsection 9(2) of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015* applies, the service will keep a register, in the form approved by the Secretary, of the information or documents listed in subsection (2).
 - (2) The information or documents are:

Section 11 Compliance with child care laws

- (a) all documentary evidence required to be provided to, or held by, the service in relation to the child under section 9 of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*; and

Note: For the definition of **documentary evidence** for the purposes of this paragraph see sections 4 and 9 of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*.

- (b) the name of the child; and
(c) the CRN of the child; and
(d) except where the service is eligible under section 47 of the Family Assistance Act:
(i) the name of each individual for whom the child is an FTB child or regular care child; and
(ii) the CRN (if any) of each individual for whom the child is an FTB child or regular care child; and
(e) which of the exemptions are considered to apply; and

Note: The exemptions which may apply are those that are referred to in subsections 9(2) and (3) of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*. These are: the child is an eligible disability child or an eligible ISP child; the child lives in an area designated remote or very remote; or an individual is required to work during the time the session of care is provided.

- (f) the day that the documentary evidence was provided or became held; and
(g) the day on which the service enters the information in the register.

- (3) The service will, within 7 days of being notified that funding under the Inclusion Support Programme is no longer being paid in relation to a child to whom subsection (1) applies, or applied, record that fact and any other relevant information in the register mentioned in subsection (1).

11 Compliance with child care laws

The operation of the service, the provision of care by the service, the construction of the premises of the service and the equipment at the premises of the service must comply with all applicable legal requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the service operates.

Note

The law of the State or Territory includes:

- (a) a licensing law applying in the State or Territory;
(b) the Education and Care Services National Law applying as a law of the State or Territory;
(c) a law of the State or Territory that applies the Education and Care Services National Law as the law of that State or Territory or that substantially corresponds to the provisions of the Education and Care Services National Law.

The Education and Care Services National Law regulates the operation of education and care services, which include child care services of the following kinds: centre based long day care services, family day care services and outside school hours care services.

12 Child care service to be insured

- (1) The applicant for approval of a child care service must ensure that the child care service is covered by:
 - (a) workers compensation insurance as required by law; and
 - (b) public liability insurance.
- (2) However, if the service does not exist when the application is made, insurance is not required until the service is established.
- (3) The applicant must give the Secretary, on request, a copy of any insurance policy required under subsection (1) and a certificate of currency for the policy.

13 Certain child care services to give priority of access to certain children

- (1) An applicant applying for approval of a centre-based long day care service, an in-home care service, a family day care service or an outside school hours care service must undertake that the service will provide child care places for children in accordance with the following provisions of this section.
- (2) A child care service funded by an employer in order to provide child care solely or primarily for the children of the employer's employees may give priority to those children.
- (3) A child care service that has entered into an agreement with an employer that, in exchange for payment made by the employer to the service, the service will provide access to a certain number of child care places for the children of the employer's employees, may give priority to those children to the extent of the agreed number of places.
- (4) Subject to subsections (2) and (3), when an outside school hours care service fills vacant places, it must give school children priority over children who have not yet commenced school.
- (5) Subject to subsections (2) and (3), where an outside school hours care service has no vacant places and is providing child care for a child who has not yet commenced school, the service may require that child to leave the child care service in order for the service to provide a place for a school child, but only if:
 - (a) the person who is liable to pay child care fees in respect of the child was notified when the child first occupied the child care place that the service followed this policy; and
 - (b) the service gives that person at least 14 days' notice of the requirement for the child to leave the child care service.
- (6) Subject to the preceding provisions of this section, when a child care service fills vacant places it must follow the priority of access guidelines in Schedule 1 to this instrument.

Section 14C

- (7) Subject to the preceding provisions of this section, where the service has no vacant places and is providing child care for a child who is a third priority under item 2 of Schedule 1 to this instrument, the service may require that child to leave the child care service in order for the service to provide a place for a higher priority child, but only if:
- (a) the person who is liable to pay child care fees in respect of the child was notified when the child first occupied the child care place that the service followed this policy; and
 - (b) the service gives that person at least 14 days' notice of the requirement for the child to leave the child care service.

14C Child care service to have capacity to use electronic interface

- (1) An applicant for approval of a child care service must undertake that the service will be equipped to use the electronic interface, including by having registered software, for the purpose of compliance with the condition imposed on an approved child care service by subsection 196(2) of the Family Assistance Administration Act.
- (2) The applicant must undertake that the service will have the operational capacity to use the electronic interface for the purpose of compliance with the condition imposed on an approved child care service by subsection 196(2) of the Family Assistance Administration Act.
- (3) In this section, *electronic interface* means electronic equipment, the use of which is approved by the Secretary or another officer, under a provision of the family assistance law to which subsection 4(1) of the Family Assistance Administration Act relates, as the form, manner or way of:
 - (a) making an application or claim that the service is required or permitted to make under a provision of the family assistance law; or
 - (b) withdrawing an application or claim that the service is required or permitted to withdraw under a provision of that law; or
 - (c) doing any other thing that the service is required or permitted to do under a provision of that law; or
 - (d) giving notices by the Secretary under a provision of that law.

Part 3—Eligibility for continued approval as a child care service

15 Purpose of this Part

This Part sets out rules relating to the eligibility of child care services to continue to be approved for the purposes of the family assistance law.

Note: Obligations imposed on an approved child care service under this Part are taken to be imposed on the operator of the service: see section 195A of the Family Assistance Administration Act.

16 Approved child care service to continue to comply with suitability requirements etc.

- (1) The operator of an approved child care service must be a suitable person to operate the service.
- (2) In making an assessment for subsection (1), the Secretary may consider the matters mentioned in subsections 7(2) and (3) in relation to the operator.
- (3) Each staff member of an approved child care service must at all times be a suitable person to provide child care.
- (4) Each carer employed, contracted or otherwise engaged by an approved child care service must at all times be a suitable person to provide child care.
- (5) When a service employs a new member of staff, or employs, contracts or otherwise engages a new carer, the service must undertake the same checks in relation to that person as it was required to undertake under section 8 or 9 in relation to staff and carers before the service was approved.
- (7) The approved child care service must continue to comply with section 12.

16A Approved child care service to comply with undertakings

- (1) An approved child care service must comply with all undertakings given by the applicant for approval of the service under subsections 8(2), 9(2) and 13(1), and section 14C.
- (2) An approved child care service must:
 - (a) if it is a centre based long day care service—comply with all undertakings given by the applicant for approval of the service under subsection 10(1); and
 - (b) if it is a family day care service—comply with all undertakings in subsection 10(1A), section 10A and section 10AB (whether or not the applicant for approval of the service gave the undertakings); and
 - (c) if it is an occasional care service—comply with all undertakings given by the applicant for approval of the service under subsection 10(2); and
 - (d) if it is an outside school hours care service—comply with all undertakings given by the applicant for approval of the service under subsection 10(3).

16B Approved in-home care service to comply with undertakings

An approved in-home care service must comply with an undertaking given under subsection 10(1B).

18 Approved child care service to continue to be operated by applicant for approval

An approved child care service must continue to be operated by the applicant who made the application for approval of the service under section 194 of the Family Assistance Administration Act.

Section 19

19 Approved child care service to notify the Secretary of certain events

- (1) An approved child care service must give the Secretary written notice of the following at least 30 days before it occurs:
 - (a) a contract for the sale of premises where the child care service is conducted is entered into;
 - (b) the lease of the premises where the child care service is conducted is terminated;
 - (c) the service changes its address.
- (2) An approved child care service must give the Secretary written notice within 14 days of any change to the details contained in the application for approval of the service made under section 194 of the Family Assistance Administration Act (other than the address of the service).
- (3) If an approved child care service becomes aware of something in relation to the persons listed in subsection (5) that affects or is likely to affect the suitability of the person to provide child care, the service must give the Secretary written notice within 7 days of becoming aware, setting out:
 - (a) the matter; and
 - (b) the action that the service has taken or intends to take to deal with the situation.
- (4) Without limiting subsection (3) above, the matters that must be notified include:
 - (a) any criminal charge, conviction or finding of guilt against the person for an offence against a law of the Commonwealth or a State or Territory which relates to an indictable offence punishable by imprisonment of 2 years or more, or an offence for which a penalty equivalent to 40 penalty units or more could be imposed;
 - (b) any instances of bankruptcy involving the person;
 - (c) any refusal (which includes the cancellation) of, or conditions imposed in relation to, a working with children check (where required under the law of the State or Territory in which the service is situated) which relates to the person's ability to work with children.
- (5) For the purposes of subsections (3) and (4), the service must provide a written notice in respect of any of the following persons:
 - (a) a member of the service's staff;
 - (b) key personnel of the service;
 - (c) a carer employed, contracted or otherwise engaged by the service.

20 Approved child care service to permit inspection

An approved child care service must, at any time during the service's hours of operation:

- (a) allow an officer of the agency to enter the premises of the service to ensure that the service is being operated in accordance with the family assistance law and this determination; and
- (b) give the officer all reasonable assistance.

Section 21A

Note: *Agency* means the Department or the Human Services Department: see subsection 3(1) of the Family Assistance Administration Act.

21 Approved child care service to provide certain information

- (1) The Secretary may request an approved child care service to give information:
 - (a) for a census or survey of child care services; or
 - (b) regarding the operation of child care services.
- (2) Without limiting paragraph (1)(b), the information that the Secretary may request includes:
 - (a) personal details of each FDC carer of the service and the address and telephone number of the premises where child care is provided by that carer; and
 - (b) the number of child care places provided by, or likely to be available at, the service during a specified period or periods.
- (3) The Secretary may request information to be given on an ongoing basis.
- (4) The requested information must be:
 - (a) accurate; and
 - (b) given to the Secretary, or to a person specified by the Secretary:
 - (i) at the time, or within the period or periods, specified in the request; and
 - (ii) in the form, manner or way specified in the request.
- (5) If the Secretary's request requires that information given be kept up to date, any updated information must be given within 14 days after a change affecting the information occurs.
- (6) The Secretary may terminate a request for information at any time.

21A Approval of form and manner of giving information

The Secretary may approve a form, manner or way of requesting or giving information under section 21.

Note: For the power of the Secretary to approve the form, manner or way of doing anything that is required or permitted to be done under the family assistance law, see section 4 of the Family Assistance Administration Act. Under that section, the Secretary may approve the use of a telecommunication system or other electronic equipment.

22 Approved child care service to protect personal information

- (1) An approved child care service (including its officers, employees, agents and contractors engaged in the conduct of the service) must not disclose to any person, other than an agency, personal information about clients.
- (2) Subsection (1) does not apply if the information is legally required to be disclosed.
- (3) The service must ensure that personal information about clients is securely stored and that staff respect the privacy of individuals using the service by not

Section 24

discussing their personal details other than as needed for the administration of the service.

- (4) The service must comply with the Australian Privacy Principles under the *Privacy Act 1988*.
- (5) The service must not provide a client with any information that may identify a child as being at risk of serious abuse or neglect.
- (6) In this section:

client means any person who is or has been liable to pay child care fees, and any member of the family of such a person.

personal information has the same meaning as in the *Privacy Act 1988*.

Note: **Agency** means the Department or the Human Services Department: see subsection 3(1) of the Family Assistance Administration Act.

24 Approved family day care services and approved in-home care services to have in-home care agreements

- (1) An approved family day care service that provides in-home care for a child and an in-home care service that provides care for a child must enter into a written agreement with the in-home carer for the child and the person who is, or the persons who are, liable to pay child care fees in respect of the child.
- (2) The agreement must set out terms and conditions for the provision of in-home care, and must include the following:
 - (a) details of the care to be provided to the child, including any particular requirements of children with disabilities, and provision for emergencies;
 - (b) the names of the child and the period for which the care will be provided;
 - (c) arrangements for insurance;
 - (d) confirmation that the carer is not required to carry out any duties other than child care;
 - (e) details of any training and support that the service will provide to the carer;
 - (f) any safety requirements to be met by the premises where the care is to be provided;
 - (g) details of the fees to be charged for the care;
 - (h) details of alternative arrangements if the usual carer is unavailable for any reason.

25 Approved child care service to only provide 24 hour care where 24 hour limit applies

- (1) An approved child care service must not provide 24 hour care to a child unless the period of 24 hour care has been approved.
- (2) Where the period of 24 hour care was not approved at the time the care was provided, but:
 - (a) is subsequently approved; and
 - (b) the approval is given before the service's next report is due;

for the purposes of subsection (1) the approval is taken to have been given before the care was provided.

- (3) For the purposes of this section, a period of 24 hour care is **approved** if:
 - (a) the child care service has given a certificate in respect of the period under subsection 56(3) or (4) of the Family Assistance Act; or
 - (b) the Secretary has made a decision in respect of the period under subsection 56(6) or (8) of that Act.
- (4) In paragraph (2)(b), a service's **next report** means the first report of the service under section 219N of the Family Assistance Administration Act following the provision of the 24 hour care.

26 Approved child care service with allocated places not to change location without approval

- (1) Where an approved child care service has been allocated child care places under section 207 of the Family Assistance Administration Act, the service must not change its location unless the Secretary has approved the new location.
- (2) In considering whether to approve a service's proposed new location for the purposes of subsection (1), the Secretary must take into account any determination made under subsection 6(1) of the *Child Care Benefit (Allocation of Child Care Places) Guidelines 2017*.

27 Standard hours family day care and standard hours in-home care

- (1) This section sets out standard hours family day care, standard hours in-home care, non-standard hours family day care, and non-standard hours in-home care for the purposes of the definitions of those terms in section 3 of the Family Assistance Act.
- (2) An approved family day care service or an approved in-home care service must, in accordance with subsection (3), identify its standard hours in its publications, and in information given to people using the service, as being its standard hours of care.
- (3) A service may only identify hours of care provided by the service as standard hours if they are:
 - (a) subject to subsection (4), hours between 7am and 6.30pm; and
 - (b) 10 continuous hours each day, on Monday to Friday (inclusive); and
 - (c) hours during which the service normally provides care for the greatest number of children.
- (4) A service's standard hours of care may be at times other than those specified in paragraph (3)(a) if the Secretary approves the provision of standard hours of care at other specified times.
- (5) For the avoidance of doubt, an approved family day care service's standard hours of care, or an approved in-home care service's standard hours of care, apply for all purposes and in respect of all children in that service's care.

Section 28

- (6) Non-standard hours of family day care or in-home care may be any hours that are not standard hours in accordance with the previous provisions of this section.

Part 4—Savings and transitional provisions

28 Definition

In this Part:

old instrument means the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

Note: The old instrument is repealed on 1 October 2017 under Part 4 of Chapter 3 of the *Legislation Act 2003* (Sunsetting of legislative instruments).

29 Applications for approval on foot at commencement

Notwithstanding the repeal of the old instrument, Part 2 of the old instrument continues to apply for the purposes of considering an application for approval of a child care service for the purposes of the family assistance law under section 194 of the Family Assistance Administration Act that was made before the repeal of the old instrument.

30 Remaking of existing Secretary's determinations, approvals etc.

For the purposes of this instrument, the Secretary is taken to have done the following immediately after the commencement of this instrument:

- (a) made a determination under paragraph 10(1C)(g) of this instrument in the same terms as a determination under paragraph 10(1C)(g) of the old instrument that was in force immediately before the repeal of the old instrument;
- (b) approved a form of register under subsection 10A(6) of this instrument in the form of the register approved by the Secretary under subsection 10A(6) of the old instrument in force immediately before the repeal of the old instrument;
- (c) approved a form of register under subsection 10AB(1) of this instrument in the form of the register approved by the Secretary under subsection 10AB(1) of the old instrument in force immediately before the repeal of the old instrument;
- (d) made a request for information under subsection 21(1) of this instrument on the same terms as a request for information made under subsection 21(1) of the old instrument in force immediately before the repeal of the old instrument;
- (e) approved standard hours family day care for an approved family day care service under subsection 27(4) of this instrument in the same terms as an approval of those hours for the service under subsection 27(4) of the old instrument in force immediately before the repeal of the old instrument;
- (f) approved standard hours in-home care for an approved in-home care service under subsection 27(4) of this instrument in the same terms as an

approval of those hours for the service under subsection 27(4) of the old instrument in force immediately before the repeal of the old instrument.

Section 1

Schedule 1—Priority of access guidelines

Note: See subsection 13(6).

1 Definitions

In this Schedule:

family of a child means the child, the individual in whose care the child is, that individual's partner (if any), and any other individual with whom the child lives.

parents of a child means the individual in whose care a child is, and that individual's partner.

single parent means an individual in whose care a child is who has no partner.

2 Priorities for filling vacant child care places

For subsection 13(6), the priorities for filling vacant child care places are as follows:

- (a) first priority—a child at risk of serious abuse or neglect;
- (b) second priority—a child of a single parent who satisfies, or of parents who both satisfy, the work/training/study test under section 14 of the Family Assistance Act;
- (c) third priority—any other child.

3 Priorities within each category of priority

Within each priority mentioned in item 2, the following children are to be given priority for filling vacant child care places:

- (a) children in Aboriginal and Torres Strait Islander families;
- (b) children in families which include a disabled person;
- (c) children in families which include an individual whose taxable income % under clause 7 of Schedule 2 to the Family Assistance Act is 100%;
- (d) children in families with a non-English speaking background;
- (e) children in socially isolated families;
- (f) children of single parents.