

EXPLANATORY STATEMENT

Child Care Subsidy Secretary's Rules 2017

Summary

The *Child Care Subsidy Secretary's Rules 2017* (the Secretary's rules) are made under subsection 85GB(2) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act).

The Secretary's rules deal with a range of administrative and machinery matters to enable the operation of the new child care subsidy (CCS) payment and approval regime, including: making a claim for CCS; applications for provider and service approval; complying written arrangements; and requirements for providers to issue statements of entitlement to individuals, and to make and keep written records.

Background

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Jobs for Families Act) gives effect to the legislative elements of the Australian Government's new child care package (the package), including the new CCS and the additional child care subsidy (ACCS). The package was developed in response to the Productivity Commission Inquiry into Childcare and Early Childhood Learning.

The centrepiece of the package is the CCS, which will replace the existing Child Care Benefit (CCB) and Child Care Rebate (CCR). The CCS will benefit residents using child care services in Australia by simplifying the current child care assistance suite of payments and providing better targeted and more assistance for low and middle income families. The package also includes the ACCS, which will replace the Special Child Care Benefit (SCCB), Grandparent Child Care Benefit (GCCB) and the Jobs, Education and Training Child Care Fee Assistance payments (JETCCFA), as part of the new Child Care Safety Net.

There are several schedules to the Jobs for Families Act, which commence at various times:

- Schedules 1 and 2, which contain the relevant provisions for the CCS and ACCS measures, commence on 2 July 2018;
- Schedule 3, Part 1, which contains enhanced compliance measures, including the power to take applications for approval as not having been made in prescribed circumstances, commenced on 5 April 2017;
- Schedule 3, Part 2, which contains measures relating to enrolment advances, commenced on 1 July 2017; and
- Schedule 4, containing the application, saving and transitional provisions, commenced on 5 April 2017.

Subsection 85GB(2) of the Family Assistance Act provides that the Secretary may make rules prescribing matters that are required or permitted by (or are otherwise necessary or convenient to give effect to) that Act or the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act). The purpose of this statement is to set out and explain those Secretary's rules.

The Secretary's rules comprise of four parts:

- Part 1 – Preliminary, which contains preliminary matters relating to the name of the rules, commencement, authority and definitions;
- Part 2 – Payment of child care subsidy and additional child care subsidy, which outlines additional requirements for when a claim for CCS is effective;
- Part 3 – Approval of providers of child care services, which relates to requirements that must be met by an applicant applying for provider approval under the family assistance law and by a provider seeking to vary its approval;
- Part 4 – Provider requirements, which outline requirements relating to 'complying written arrangements', a provider's obligation to give individuals statements of entitlement, and the making and keeping of records.

Consultation

The package reflects extensive consultation and expert analysis over several years commencing with the Productivity Commission's 2014 report into Childcare and Early Childhood Learning. This was followed by a Regulation Impact Statement (RIS) consultation process, three Senate Inquiry processes and ongoing consultation with the sector by the Department of Education and Training (the department).

In developing the underlying policy for the Secretary's rules, the department has also consulted extensively with, and taken advice from, a wide range of stakeholders including service providers, early childhood education professionals, State and Territories and other experts. National consultation sessions on the proposed settings of the rules were held in April, September and December 2016. Further targeted consultation on exposure drafts of the rules were held with key stakeholders in August 2017.

Regulation

The purpose of the Secretary's rules is to assist in giving effect to the policy objectives of the Jobs for Families Act and more broadly the package announced by the Government in the 2015 Budget. The broader policy context for the rules, along with the regulatory impact for the package, were outlined and considered in the long form RIS prepared for the package (Office of Best Practice Regulation (OBPR) ID 1872).

The Secretary's rules set out the administrative detail of particular provisions in the Family Assistance Act and the Family Assistance Administration Act. It is also expected that the new, enhanced IT system will reduce regulatory burden currently experienced by families and the child care sector.

The OBPR determined the Secretary's rules only have minor impacts on business, community organisations or individuals, therefore a further RIS was not required (OBPR ID 22401).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Child Care Subsidy Secretary's Rules 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Child Care Subsidy Secretary's Rules 2017* (the Secretary's rules) are made under subsection 85GB(2) of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) by the Secretary of the Department of Education and Training (the department).

The Secretary's rules deal with a range of administrative and machinery matters to enable the operation of the new child care subsidy (CCS) payment and approval regime, including: making a claim for CCS; applications for provider and service approval; complying written arrangements; and requirements for providers to issue statements of entitlement to individuals, and to make and keep written records.

A summary of the contents of each Part of the Secretary's rules is as follows:

Part 1 (Preliminary) contains preliminary matters relating to the name of the rules, commencement, authority and definitions.

Part 2 (Payment of child care subsidy and additional child care subsidy) contains rules for when a claim for CCS is effective. Individuals must first make a claim for CCS in order to become eligible for and entitled to be paid CCS or additional child care subsidy (ACCS).

Part 3 (Approval of providers of child care services) contains rules which prescribe information that must be contained in an application for provider approval, as well as information in relation to services that it wishes to be approved in respect of, or have added to or removed from the existing provider approval.

Part 4 (Provider requirements) contains rules that set out:

- the requirements for when an arrangement between a provider and an individual is a 'complying written arrangement' for the purposes of establishing when a child starts to be 'enrolled' and an individual's eligibility for CCS;
- additional information that must be contained in a statement of entitlement that an approved provider is required to provide to individuals under section 201D of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act); and
- record making and record keeping requirements on approved providers.

Human rights implications

The Secretary's rules engage the following rights:

- rights of the child under Articles 3, 18(2), 19 and 27 of the *Convention on the Rights of the Child* (CRC);
- the right to work and the right to social security under Articles 6 and 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the right to protection against arbitrary and unlawful interferences with privacy, family and home under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), and under Article 16 of the CRC.

Rights of the child

Article 3(1) of the CRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 3(3) requires institutions and services responsible for the care of children to conform to standards including maintaining suitability of staff.

Although primary responsibility for ensuring child care services and staff are appropriately qualified, and that care provided conforms to certain quality and safety standards, rests with the State and Territory authorities, the Commonwealth has also taken steps to supplement and complement those regimes. The Secretary's rules reflect an increasing recognition of the importance of cooperation between the various levels of government.

The Secretary's rules supplement the requirements in the Family Assistance Administration Act in order to enable the proper administration and oversight of care provided to children under the Australian Government's new child care package (the package). The Secretary's rules also further Article 3(3) of the CRC by allowing for the proper assessment of the suitability of the provider, service and staff.

Part 3 of the Secretary's rules requires information to be contained in an application for provider approval under section 194A of the Family Assistance Administration Act or in an application to vary a provider approval under section 196A of the Family Assistance Administration Act. The information and evidence required in Part 3 helps to ensure that there is sufficient information to verify the legitimacy of a potential provider and service, and to allow for the assessment of whether an applicant is a suitable person to operate a child care service including by reference to its staff or key personnel (to complement Part 4 of the *Child Care Subsidy Minister's Rules 2017* (Minister's rules). An applicant is required to include details of working with children cards, and various background checks in relation to each person with management or control of the provider and those with responsibility for the day-to-day operation of the service. These measures are intended to ensure that providers, persons with management or control, and educators, can be appropriately assessed, to ensure that children receive an appropriate standard of care and education. The measures therefore promote the rights of the child, as well as furthering Article 18(2) of the CRC by facilitating the proper development of institutions, facilities and services for the care of children.

Article 19 of the CRC requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. In addition to the initial assessment of suitability before a

provider in respect of a service may be approved, Division 3 of Part 4 of the Secretary's rules require a provider to make and keep a written record of certain information and events including those relating to matters of where a child is at risk of serious abuse or neglect. This particular record making and keeping requirement supplements section 204K of the Family Assistance Administration Act where a provider is required to notify the relevant State or Territory authority when a child is considered at risk of serious abuse or neglect. Records must be made and retained relating to premises where care is provided and also any evidence or information in relation to the background checks as required under both the Secretary's rules and the Minister's rules. The failure to make or keep such records can constitute an offence or attract a civil penalty. This measure ensures that the relevant Commonwealth, State or Territory body will be able to access the information and investigate where necessary, including for compliance, child protection and safety purposes.

Right to an adequate standard of living

Article 27 of the CRC requires that States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 27(3) requires States Parties to take appropriate measures to assist parents and others responsible for the child to support the child's development.

The Secretary's rules advance this right through recognising that in certain circumstances, where an individual's claim for CCS fails due to the actions of an individual's former partner, it may not be appropriate for the individual to be restricted from making a new claim for CCS.

This discretion will address barriers to accessing child care where appropriate, and ensure that all children, regardless of separated parents, may have access to an adequate amount of child care to aid the child's socialisation and development.

Right to social security

Article 9 of the ICESCR recognises the right of everyone to social security. Under the package, individuals who meet basic eligibility criteria may be eligible for some fee assistance through the CCS and ACCS, so long as they also meet an income and activity test, where applicable.

The Secretary's rules support the operation of the CCS and ACCS, which are family assistance payments that operate as part of Australia's personal assistance, social security and family assistance system, to assist with the costs involved in raising a family.

Right to work

Article 6 of the ICESCR requires that State Parties recognise the right to work, including through developing policies and techniques to achieve steady economic, social and cultural development and full and productive employment.

To the extent that the Secretary's rules support the right to social security, it also supports the right to work. The core objective of the package is to help parents who want to work, or who want to work more. Individuals receiving family assistance payments and consistently informed of the amount of fee reduction made in relation to each statement period, are

empowered to work and determine the amount of activity they should engage in so as to balance their various commitments.

Right to privacy

Article 17 of the ICCPR and Article 16 of the CRC requires that no one shall be subject to arbitrary or unlawful interference with privacy. Australia interprets the term ‘unlawful’ as being taken to mean that no interference should occur except in cases envisaged by the law and the law itself must comply with the provisions, aims and objectives of the ICCPR. Interference provided for by law can be arbitrary if the law is not in accordance with the provisions, aims and objectives of the ICCPR and is not reasonable in the particular circumstances. The Australian Government has accepted that the term ‘arbitrary’ could encompass interferences which although lawful, would be ‘unreasonable’. ‘Reasonable interferences’ with privacy are measures based on reasonable and objective criteria which are proportional to the purpose for which they are adopted.

The additional record making and keeping requirements in the Secretary’s rules engage the right to privacy, as it involves personal or sensitive information (under the *Privacy Act 1988* (Cth)) relating to a child’s circumstances, an individual’s police background checks and residential address. The records required to be kept by the service may be requested to be viewed by the department, as part of verifying a person’s eligibility and/or entitlement to child care fee assistance, and ongoing monitoring of a service’s compliance with the family assistance law.

To the extent that the Secretary’s rules limits the right to privacy, that limitation is reasonable and proportionate because it supports an ongoing obligation upon providers to provide accurate and complete information to assist the Secretary of the department to verify eligibility and calculate CCS and ACCS entitlement, which underpins the integrity of the entire Commonwealth payments scheme. In the absence of such obligations to keep records of information supporting claims for CCS or ACCS, and the ability to access such information by the department upon request to verify that care is being accurately reported, the Commonwealth would not be able to properly administer its child care payments scheme, leading to an increase of incorrect calculations and, in some cases, fraudulent activity. These requirements do not go any further than what services are already obliged to do in that separate context, nor do they go any further than what is necessary to ensure the integrity of the child care payments scheme.

Any limitation on the right to privacy is also reasonable and proportionate, given the objective is to allow the Secretary to make robust decisions to only approve providers and services which demonstrate suitability to provide child care services, which ultimately furthers other rights, including the best interests of the child and the right of parents to work. Further, there are a number of safeguards in place in relation to the information that is collected and disclosed by the provider. This includes that the *Privacy Act 1988* applies in relation to the management by the provider of information collected. In addition, any information collected by the provider and provided to the Secretary will, once it is obtained and recorded by the Secretary, be subject to the confidentiality provisions in sections 161 to 168 of the Family Assistance Administration Act.

Conclusion

The Secretary's rules are compatible with human rights. Measures in this instrument are compatible with and advance human rights under the CRC, ICESCR and ICCPR. These measures ultimately ensure that child care providers and services are suitable and provide parents with the ability to choose whether to work, by enabling accessible, affordable and safe child care that promotes children's development and wellbeing.

Mr David Learmonth, Acting Secretary of the Department of Education and Training

Explanation of the provisions

Part 1 – Preliminary

Part 1 contains preliminary matters relating to the name of the rules, commencement, authority and definitions.

Section 1 states the name of the rules is the *Child Care Subsidy Secretary's Rules 2017* (the Secretary's rules).

Section 2 states that all provisions of the Secretary's rules commence on 2 July 2018, to align with the commencement of Schedule 1 to the Jobs for Families Act.

Section 3 refers to the Secretary's authority to make the Secretary's rules under subsection 85GB(2) of the Family Assistance Act.

Section 4 contains definitions of terms used in the Secretary's rules. A note clarifies that a term used in the Secretary's rules that is defined in the Family Assistance Act or the Family Assistance Administration Act has the same meaning as it has in the relevant Act.

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

Part 2 relates to additional requirements for the making of effective claims for CCS. Individuals must make a claim for CCS, and an initial determination of eligibility must be made by the Secretary in respect of the claim under subsection 67CC(1) of the Family Assistance Administration Act, for the individual to subsequently become eligible for and entitled to be paid CCS or ACCS in relation to a session of care.

Section 5 sets out requirements in addition to those in section 67BE of the Family Assistance Administration Act for when a claim made by an individual in respect of a child for CCS is effective.

Subsection 5(1) ensures that new claims for CCS are not possible: where an individual (or their partner) has failed to lodge their tax return for a previous income year during which they received CCS (where they have a requirement to lodge); or where an individual (or their partner) has incurred a debt that remains outstanding and is not being paid off by instalments under a repayment arrangement.

Subsection 5(2) allows the Secretary, in her discretion, to allow an individual to make a new claim for CCS where the only reason why subsection 5(1) applies is because of an ex-partner who has failed to lodge a tax return or where the ex-partner owes a debt. The intent of this discretion is to allow individuals to be able to claim where the only reason they would not be able to is because a previous partner owes a debt or has not lodged their tax return, and the individual was not responsible for the debt or the failure to lodge, and it is not reasonable for the individual to get the former partner to take appropriate action on the debt, or lodge their tax return.

Part 3 – Approval of providers of child care services

Division 1 – Application for approval

Division 1 relates to the application for provider approval in respect of a child care service. In accordance with subsection 194A(3) of the Family Assistance Administration Act, the application is taken not to have been made if it does not comply with subsection 194A(2) of that Act, including because it does not contain information prescribed by this Division of the Secretary's rules.

Section 6 prescribes information that must be contained in an application for provider approval under section 194A of the Family Assistance Administration Act.

Section 6 specifies the information that must be included in an application for provider approval where applicable. The information includes the applicant's details such as the full legal name and proposed trading name as an approved provider, the Australian Business Number, and details of any person with management or control of the provider (as defined in section 195F of the Family Assistance Administration Act).

Paragraph (j) requires the applicant to provide details of the working with children cards of individuals, as will be required under section 195D of the Family Assistance Administration Act if the applicant is granted approval.

Paragraph (k) specifies the type of evidence and background checks required to accompany the application in relation to each person with management or control of the provider (as described in section 195F of the Family Assistance Administration Act).

Paragraph (l) requires the applicant to declare whether there is a circumstance of the kind referred to in section 46 (Additional matters to take into account) of the Minister's rules.

Paragraph (n) specifies the details that must be included by the applicant in respect of each service that the applicant seeks to be added to the provider's approval. This includes the service's details and details of each person responsible for the day-to-day operation of the service. Paragraph (n) also requires the provider to conduct an assessment of all proposed FDC educators: in particular, whether they are a fit and proper person having regard to prior actions involving fraud or dishonesty and their capacity to comply with the family assistance law, taking into account their understanding of the family assistance law and commitment to ensuring obligations are complied with. For example, where the provider is aware that an FDC educator has a record of completing timesheets inaccurately, this may indicate that the educator is not a fit and proper person due to having a limited capacity to assist the provider in complying with requirements to report attendance accurately (see section 204B of the Family Assistance Administration Act). Before the provider can give such a declaration, it must be confident that all educators are fit and proper persons. As a result, the provider must not engage an FDC educator who cannot satisfy the provider of their standing as a fit and proper person. Giving false or misleading information under this requirement can be a serious offence under the *Criminal Code Act 1995* and the family assistance law.

Division 2 – Application to add or remove service

Division 2 relates to an approved provider's application to vary the provider's approval by adding or removing a service in the provider's approval, after the provider has obtained its

approval by application under section 194A of the Family Assistance Administration Act. In accordance with subsection 196A(3) of the Family Assistance Administration Act, the application to add or remove a service is taken not to have been made if it does not comply with subsection 196A(2) of that Act, including because it does not contain information prescribed by this Division of the Secretary's rules.

Section 7 specifies the information that must be contained in an application by an approved provider to add a service to a provider's approval under section 196A of the Family Assistance Administration Act. This includes the provider's details such as the unique provider approval number and the provider's name and contact details, and details of each service to be added to the provider's approval. Once the application is made containing all required information, the Secretary will have the capacity to approve or refuse the application under section 196B of the Family Assistance Administration Act.

Section 8 specifies the information that must be contained in an application by an approved provider to remove a service from a provider's approval under section 196A of the Family Assistance Administration Act. This includes the provider's details such as the unique provider approval number and the provider's name and contact details, and details of each service to be removed from the provider's approval. The application must also contain the reasons for requesting the removal. If the request is due to the provider selling the business, the provider must inform the Secretary of the new entity or body who has bought or intends to buy the business. A provider and service approval does not transfer to the new entity or body operating the service and the new entity or body must apply for a provider and service approval in its own right. Once the application is made containing all required information, the Secretary will have the capacity to approve or refuse the application under section 196C of the Family Assistance Administration Act. Where a provider's legal identity changes (for instance where a sole trader incorporates to form a company), the new legal entity must apply for new approval, and in respect of any services—and cannot rely on the approval given to the former provider.

Part 4 – Provider requirements

Division 1 – Complying written arrangements

Division 1 prescribes requirements for 'complying written arrangements' formed between a provider and an individual (including a partner of the individual). Importantly, the existence of a liability to pay for child care is a core requirement for eligibility for CCS and ACCS purposes (see paragraph 85BA(1)(b) of the Family Assistance Act). This liability must arise under a 'complying written arrangement', which is defined in subsection 200B(3) of the Family Assistance Administration Act to mean an arrangement that meets the requirements set out in this Division. Arrangements with individuals that do not meet the requirements set out in this Division are known as 'relevant arrangements' and different reporting obligations apply. The requirements in this Division also apply to arrangements that were in force immediately before the commencement day, and under which a child was enrolled for care within the meaning of the Family Assistance Administration Act as in force immediately before the commencement day (pre-commencement arrangements). The transition provision in item 6 in Part 2 of Schedule 4 to the Jobs for Families Act clarifies that any reference to a complying written arrangement also includes a pre-commencement arrangement. Therefore, subsection 200B(3) of the Family Assistance Administration Act is taken to mean that a pre-commencement arrangement is also subject to the prescriptions in this Division to be 'complying'. If either a pre-commencement or post-commencement arrangement is not

written or complying, then it is a ‘relevant arrangement’ and an individual will not be eligible for CCS or ACCS on the basis of it due to paragraph 85BA(1)(b) of the Family Assistance Act.

Section 9 specifies the details that must be set out in writing in an arrangement between a provider and an individual in order for the arrangement to be a ‘complying written arrangement’ for the purposes of satisfying the definition under subsection 200B(3) of the Family Assistance Administration Act.

The details prescribed in section 9 reflect the ability for providers and individuals to tailor child care agreements to suit their particular needs. Basic administrative details are required, such as names, contact details and dates (in paragraphs (a) to (c)). Under paragraphs (d) and (e), a complying written arrangement is able to indicate the frequency and type of care that is proposed to be provided under the agreement. It is sufficient for an agreement to indicate routine, flexible or casual days, so long as the details about the routine or casual/flexible arrangements are clear to the parties. Under paragraph (f) fee information needs to be reflected by either reference to agreed dollar amounts for sessions of care, or by reference to external material (such as a fee schedule, website or as otherwise published by the provider) that the parties clearly understand may alter from time to time.

The details listed in this provision set out the minimum requirements for an arrangement to be a ‘complying written arrangement’. Where, however, a detail in an arrangement between a provider and an individual changes (whether or not that detail is prescribed in section 9) such that the details provided to the Secretary through an enrolment notice no longer reflect the underlying arrangement, the requirements in sections 200C and 200D of the Family Assistance Administration Act apply (requiring the updating of both the arrangement between the parties and the enrolment details that are notified to the Secretary). Importantly, it is intended that updating will only be required where there are ongoing and significant departures from the terms of an original agreement. In particular, where an original complying written arrangement reflects an agreement between an individual and a provider that certain details (such as usual fees or usual days of care) can vary within an agreed scope, and if the original enrolment notice reflects that agreed scope of variation, the provider will not need to provide an updated notice under section 200D where the variations to the care arrangements occur within that agreed scope.

For example, it is anticipated that it may be common for providers and individuals to, in addition to agreeing on some routine days and times, also agree that care can be provided on other days and times, depending on the needs of the family and availability of places (which it is understood may fluctuate over time). Use of additional care in this circumstance would not require a notice under section 200D, as it is within the agreed scope of variation, and does not reflect a significant and ongoing departure from the original arrangement.

In contrast, an enrolment update notice would be required under section 200D if, for example, a parent moves from part-time to fulltime work and changes their routine days of care accordingly, or the service increases the parent’s usual fee per session on an ongoing basis.

Note 1 of the provision clarifies that in addition to the requirements set out in section 11 of the Secretary’s rules, a ‘complying written arrangement’ must clearly establish a liability to pay for sessions of care in order for an individual to meet one of the requirements to be

eligible for CCS for a session of care, under paragraph 85BA(1)(b) of the Family Assistance Act.

Note 2 clarifies for purposes of satisfying the requirements of a 'complying written arrangement' the arrangement can either be in hardcopy (paper) form or in an electronic form (stored on a computer).

Division 2 – Requirement to give individuals statements of entitlement

Division 2 relates to the requirement to give individuals statements of entitlement in accordance with section 201D of the Family Assistance Administration Act, if the provider has been given a notice under subsection 67CE(4) of the Family Assistance Administration Act. A provider will be given such a notice whenever the Secretary makes a determination under section 67CD in relation to an individual's entitlement to be paid CCS or ACCS. This additional information contained in a statement of entitlement enables an individual who is entitled to a payment of CCS or ACCS to be informed on each fee reduction decision, the fees charged by the service, and how long care was provided to the individual's child and by whom.

Section 10 prescribes information that an approved child care provider must also provide in a statement of entitlement, in addition to those listed under subsection 201D(3) of the Family Assistance Administration Act. The statement, in respect of any sessions of care provided to a child by the service during a statement period, must include information such as details of each fee reduction decisions, amounts and hours of sessions of care, and details of the provider and service.

Paragraph (m) prescribes additional information to include regarding educators, if care was provided by a service that was not a centre-based day care service or an outside school hours care service during the statement period.

Division 3 – Requirement to make records

Division 3 relates to the requirement to make records under section 202A of the Family Assistance Administration Act, the failure of which results in an offence or a civil penalty liability.

Section 11 provides that an approved provider must make a written record of the information or events in relation to the matters prescribed under this provision, where the provider becomes aware of the matter and would not otherwise have a written record of the information or event.

Paragraph (a) requires recording the information or event relating to giving a notice to a State or Territory body under section 204K of the Family Assistance Administration Act regarding a child at risk of serious abuse or neglect. Where the notice is given in writing, the provider would already have a record of this matter. However, a notice given verbally will require the provider to make a record.

Paragraph (b) only applies to providers of FDC services where an educator provides care at premises other than the educator's residence, requiring an address and contact number of the premises.

Paragraph (c) requires making a written record of copies of the evidence and information provided with an application for approval, as referred to in paragraph 6(1)(k) of the Secretary's rules (in relation to police checks, financial viability and fit and proper person requirements of persons with management or control of a provider), and in subparagraph 6(1)(n)(vi) of the Secretary's rules (in relation to police checks of persons responsible for the day-to-day operation of a service). Note that under section 43 (Additional rules for provider eligibility) of the *Child Care Subsidy Minister's Rules 2017* (Minister's rules), the provider is also required to make written records of certain matters on an ongoing basis, for both approval purposes and as an ongoing condition for continued approval. The requirements specified in this Division are to be read in conjunction with those rules.

Paragraph (d) only applies to providers of FDC services, which are required to make a written record of any evidence or information produced to comply with subsection 43(4) of the Minister's rules (in relation to police checks and working with children checks of FDC educators) and produced to support any statements made about police checks and working with children checks in an application for approval.

Division 4 – Requirement to keep records

Division 4 relates to the requirement to keep certain records under section 202B of the Family Assistance Administration Act the failure of which results in an offence or a civil penalty liability. This Division therefore provides the necessary legislative support to sections 202A and 202B in the Family Assistance Administration Act to ensure the requirement to make and retain the appropriate documentary evidence is clear to approved providers. The records which must be made and kept by an approved provider also allow for an investigation or assessment of important matters or evidence that may affect the safety and care of children and an individual's receipt of fee reductions.

Section 12 prescribes matters to which related records must be kept by an approved provider. The matters include keeping records that are required to be made under paragraphs 11(1)(c) and (d) of the Secretary's rules relating to the various background checks.

Paragraph (c) requires keeping records of those created to comply with any requirements under section 204G of the Family Assistance Administration Act (requirements prescribed by Minister's rules in relation to children who are members of a prescribed class), specifically under section 8 of the Minister's rules (for instance, documentary evidence that a child is an 'eligible disability child' for an exemption to be applied must be kept by the provider).

Paragraph (d) requires the keeping of records about complaints made to the provider, or to any of the services of the provider, relating to compliance with the family assistance law. For example, where an individual has complained to the service that the service had submitted an attendance report for a day that is after the last day that the child attended the service, the provider must keep a record of the complaint.

Paragraphs (e) and (f) require keeping records in relation to any attendances and absences, including any evidence to demonstrate that a service can be taken to have provided a session of care in accordance with section 10 of the Family Assistance Act.

Paragraphs (h) and (i) require keeping statements of entitlement, and updated statements of entitlement, that providers must give to individuals under sections 201D and 201E respectively, and in accordance with Division 2 of the Secretary's rules.

Paragraph (j) requires keeping records of any other documentation required to be made to comply with a condition for continued approval set out in the Minister's rules. For example, where the provider makes a report to the regulator pursuant to subsection 49(5) (Additional conditions of approval) of the Minister's rules, the provider must keep a copy of the report. Also, where a provider is required to have insurance policies in place pursuant to subsection 49(8) of the Minister's rules, the provider must retain evidence of having the policy.