



Child Care Subsidy Amendment (Coronavirus, Local Area Emergencies and Other Measures) Minister's Rules 2022

I, Stuart Robert, Minister for Employment, Workforce, Skills, Small and Family Business, make the following rules.

Dated 23 March 2022

Stuart Robert
Minister for Employment, Workforce, Skills, Small and Family Business

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1 Name

This instrument is the *Child Care Subsidy Amendment (Coronavirus, Local Area Emergencies and Other Measures) Minister's Rules 2022*.

2 Commencement

- (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	The day after the instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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 Authority

This instrument is made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Child Care Subsidy Minister's Rules 2017

Part 1—Coronavirus response amendments

1 Section 4

Insert:

Indigenous child means a child who is an Aboriginal person or a Torres Strait Islander within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*.

2 After subparagraph 8(4B)(b)(iv)

Insert:

- ; or (v) if the day is between 27 January 2022 and 30 June 2022—the service is undertaking an activity required by a health agency to respond to health risks associated with COVID-19; or
- (vi) if the day is between 27 January 2022 and 30 June 2022—the service does not have sufficient educators to meet the educator to child ratio requirements prescribed by the Education and Care Services National Law because one or more of its educators are required to isolate or self-quarantine by a health agency due to COVID-19.

3 Paragraph 2.1(4)(c) of Schedule 3

Omit “(12) or (13)”, substitute “(12), (13) or (14)”.

4 Paragraph 2.1(11)(b) of Schedule 3

Omit “if the service is not a service mentioned in paragraph (a)—”.

5 At the end of clause 2.1 of Schedule 3

Add:

- (14) This subclause applies to a session of care on a day between 27 January 2022 and 30 June 2022 if:
 - (a) a medical practitioner has certified that, on that day, the child has a medical condition or disability that makes the child at higher risk of developing serious illness from COVID-19; or
 - (b) the child is an Indigenous child.

6 Subparagraph 2.2(1)(a)(v) of Schedule 3

Omit “and”

7 At the end of paragraph 2.2(1)(a) of Schedule 3

Add:

- (vi) the service, or part of the service, is closed for a reasonable period in order for the service to undertake an activity required by a

government agency to respond to health risks associated with COVID-19; and

8 At the end of subclause 2.2(1) of Schedule 3

Add:

- ; and (d) if subparagraph (a)(i) applies—the service retains a copy of the government agency advice or requirement to close as a result of the COVID-19 pandemic.

9 Subparagraph 2.2(2)(b)(i) of Schedule 3

Repeal the subparagraph, substitute:

- (i) the last day on which a circumstance in subparagraph (1)(a) applies; and

10 At the end of Part 2 of Schedule 3

Add:

2.3 Exemption from enforcing payment of hourly session fees—services reduce care provided due to educators isolating

Conditions

- (1) For the purposes of paragraph 201B(1A)(c) of the Family Assistance Administration Act, the conditions are that:
- (a) the service has used its best endeavours to ensure there are sufficient educators at the service to comply with the educator to child ratio requirements prescribed by the Education and Care Services National Law; and
 - (b) despite the endeavours described in paragraph (a), the service does not have sufficient educators to provide care for the child because one or more educators are required to isolate or self-quarantine by a government agency; and
 - (c) if the service is an FDC service or an IHC service, the Secretary has not, since 2 July 2018, made a cancellation decision under section 195H or Division 4 of Part 8 of the Family Assistance Administration Act (other than a decision under section 197C) in relation to the child care service or the approved provider of the child care service.

Period

- (2) For the purposes of paragraph 201B(1A)(b) of the Family Assistance Administration Act, the period is the period beginning on 27 January 2022 and ending on 30 June 2022.

11 Clause 3.1 of Schedule 3 (heading)

After “COVID-19 hotspots”, insert “and for certain periods of high COVID-19 case numbers”.

12 Subclause 3.1(2A) of Schedule 3

Omit “(6) or (7)”, substitute “(6), (7), (8) or (9)”.

13 At the end of clause 3.1 of Schedule 3

Add:

- (8) This subclause applies to a day between 1 January 2022 and 28 February 2022 if the service is not located in Western Australia.
- (9) This subclause applies to a day between 3 March 2022 and 30 April 2022 if the service is located in Western Australia.

14 Clause 3.2 of Schedule 3 (heading)

After “COVID-19 hotspots”, insert “and for certain periods of high COVID-19 case numbers”.

15 At the end of clause 3.2 of Schedule 3

Insert:

- (5) The circumstance is:
 - (a) the absence occurs:
 - (i) where the service is located in Western Australia—on a day between 3 March 2022 and 30 April 2022; or
 - (ii) otherwise—on a day between 1 January 2022 and 28 February 2022.
- (6) The circumstance is:
 - (a) on that day, the child or another member of the child’s household is required to isolate or self-quarantine by a health agency because of COVID-19; and
 - (b) where the absence occurs before the day the child first attended a session of care provided by the service (the *first attendance day*):
 - (i) the absence is on a day between 1 December 2021 and 30 June 2022; and
 - (ii) the absence occurs in the period beginning on the sixth day before the first attendance day and ending on the first attendance day; and
 - (c) where the absence occurs after the last day the child attended a session of care provided by the service before the child ceased to be enrolled for care by the service (the *last attendance day*):
 - (i) the absence is on a day between 1 December 2021 and 30 June 2022; and
 - (ii) the absence occurs in the period beginning on the last attendance day and ending on the sixth day after the last attendance day.

Note: For when a child is enrolled, see section 200B of the Family Assistance Administration Act.

16 Paragraph 5.1(1)(a) of Schedule 3

Omit the paragraph, substitute:

-
- (a) a service is in a COVID-19 hotspot for a period between 23 June 2021 and 30 June 2022; and

Part 2—Local Area Emergency response measures

17 Section 4 (definition of *period of local emergency*)

Repeal the definition, substitute:

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

- (a) an event has occurred which:
- (i) affects a widespread area; and
 - (ii) has a severe impact on the lives of a significant number of the inhabitants of the area; and
 - (iii) prevents, or may prevent, children from attending the service, or may make such attendance hazardous; or

Note: Where the Department decides that a period of local emergency exists for a local government area, it may list the period of local emergency on its website as a Local Area Emergency. A list of emergencies declared by the Department could in 2022 be viewed on the Department’s website.

- (b) a disaster declaration (however described) is made by a state emergency service, the police, or another Commonwealth, State or Territory agency and the disaster prevents, or may prevent, children from attending the service, or may make attendance hazardous;

but does not include the period between the day the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) Minister’s Rules 2021* commence and 30 June 2022 where the event, disaster declaration, or emergency declaration relates to the COVID-19 pandemic.

Note: Schedule 3 sets out the temporary measures relating to the COVID-19 pandemic.

18 Subsection 6(2) (definition of *period of local emergency*)

Repeal the definition.

19 Section 5B (at the end of the heading)

Add “—absences before child’s first attendance or after child’s last attendance”.

20 At the end of section 5B

Add:

5C Days on which sessions of care are taken to be provided—periods of local emergency

For subparagraph 10(2)(c)(ii) of the Family Assistance Act, the conditions referred to in subsection 10(2AA) of that Act are met in the following circumstances:

- (a) the day is between 23 February 2022 and 30 June 2022; and
- (b) either:
- (i) the service is closed during a period of local emergency; or
 - (ii) the child cannot attend the session of care during a period of local emergency.

21 Division 1A of Part 5 (after the heading)

Insert:

This division sets out, for the purposes of subsection 201B(1A) of the Family Assistance Administration Act, circumstances in which a provider is not required to take reasonable steps under section 201B of that Act to ensure an individual pays the provider an amount under that section for sessions of care provided by a service to a child in a week.

22 Subsection 54A(1)

Repeal the subsection.

23 Subsection 54A(2)

Omit “that Act”, substitute “the Family Assistance Administration Act”.

24 Subsections 54A(2), (3) and (4)

Renumber as subsections (1), (2) and (3).

25 At the end of section 54A

Add:

54B Exemption for periods of local emergency

- (1) For the purposes of paragraph 201B(1A)(a) of the Family Assistance Administration Act, the circumstance is that the child did not attend any part of the session of care:
 - (a) because the service, or part of the service, that would have provided the session of care is closed as a direct result of a period of local emergency; or
 - (b) as a direct result of a period of local emergency.
- (2) For the purposes of paragraph 201B(1A)(b) of that Act, the period is between 23 February 2022 to 30 June 2022.

26 At the end of Part 6

Add:

Division 2—South East Queensland and NSW Flood Support payments

60A Definitions

In this Division:

Local Area Emergency means a period of local emergency that has been declared by the Department for certain local government areas and that occurs in the period in section 60D.

Note: A list of Local Area Emergencies declared by the Department could in 2022 be viewed on the Department's website.

South East Queensland and NSW Flood Support payment means a business continuity payment under section 205C of the Family Assistance Administration Act that is payable in accordance with this Division.

60B Purpose

- (1) This Division sets out matters in relation to business continuity payments under section 205C of the Family Assistance Administration Act to certain approved providers whose services are located in areas where a Local Area Emergency has been declared by the Department.

Emergency or disaster

- (2) For the purposes of paragraph 205C(2)(a) of the Family Assistance Administration Act, the emergency that was the subject of a Local Area Emergency is prescribed.

60C Eligibility criteria

- (1) For the purposes of paragraph 205C(1)(c) of the Family Assistance Administration Act, a provider is eligible for a ***South East Queensland and NSW Flood Support payment*** in relation to a service if the provider and the service meet the criteria in subsections (2) to (6).
- (2) The provider must make an application, in the form and manner determined by the Secretary, on or before 30 April 2022.
- (3) The service is closed, or has reduced the number of children attending the service, as a result of a Local Area Emergency.
- (4) The service is closed, or has reduced the number of children attending the service, for:
 - (a) a period of eight or more consecutive days commencing on a day on which the service would ordinarily be open; or
 - (b) a total of any eight or more days on which the service would ordinarily be open,during the Local Area Emergency.
- (5) Where paragraph 54B(1)(a) applies, the provider did not enforce payment of hourly sessions fees for each of the sessions of care that a child did not attend.
- (6) The provider has agreed to provide priority access to families impacted by the Local Area Emergency.

60D Period

For the purposes of paragraph 205C(1)(d) of the Family Assistance Administration Act, the period beginning on 23 February 2022 and ending on 1 April 2022 is prescribed.

60E Payment amount

For the purposes of paragraph 205C(1)(e) of the Family Assistance Administration Act, the amount of \$10,000 is prescribed.

Part 3—Commonwealth-supported Early Years Education Program replication trial

27 At the end of section 10

Add:

- ; or (j) for the period between 1 July 2022 to 30 June 2026—where the child is enrolled at one of the four services participating in the Commonwealth-supported Early Years Education Program replication trial.

28 At the end of section 11B

Add:

- ; or (c) for the period between 1 July 2022 to 30 June 2026—the child is enrolled at one of the four services participating in the Commonwealth-supported Early Years Education Program replication trial.

Part 4—Amendments to appropriation

29 Subsection 78(4)

Omit “\$4 million”, substitute “\$22.4 million”.

30 Subsection 78(5)

Omit “\$4 million”, substitute “\$22.4 million”.

31 At the end of section 78

Insert:

- (6) For subsection 233(3) of the Family Assistance Administration Act, the total amount that may be paid in respect of 2022-23 is \$7.7 million.
- (7) For subsection 233(5) of the Family Assistance Administration Act, the total amount that may be paid in respect of 2022-23 is \$7.7 million.