



## Transition Payment Background

On 8 June 2020, the Government announced that the temporary Early Childhood Education and Care Relief Package (the 'Relief Package') and Exceptional Circumstance Supplementary Payment would cease on 12 July 2020. From 13 July 2020, the Government will resume the Child Care Subsidy (CCS) system and implement a transition measure.

From 13 July 2020, all approved providers will receive the Transition Payment for their approved child care services, instead of JobKeeper, for the period 13 July 2020 to 27 September 2020 (the 'Transition Period'). The weekly amount of the Transition Payment is equal to 25 per cent of the sum of all hourly fees charged (capped at the relevant CCS hourly rate cap) by the provider for sessions of care at its services during the reference fortnight, divided by two (to get a weekly amount). The reference fortnight is the fortnight that was used to calculate each service's baseline Relief Package payment. For most services, this fortnight commenced on 17 February 2020. If a different reference fortnight was used to calculate payments under the Relief Package, then the same reference fortnight will be used to calculate the Transition Payment. For a new service commencing care from 13 July 2020, a reference fortnight will be determined by the department based on the first two weeks of operation and an offer made following the period being determined. Further guidance on new services will be provided separately. For services delivering vacation care only, a tailored agreement will be provided separately, along with further guidance.

The grant amount takes into consideration that providers will be paid an extra week's 50 per cent business continuity payment in July 2020 at the end of the Relief Package to assist with cash flow (i.e. they will have received 15 payments for 14 weeks of Relief Package, the equivalent of two weeks' Transition Payments). In recognition of this, there will be no Transition Payments for the last two weeks of the grant agreement, being the weeks commencing 14 September 2020 and 21 September 2020. Subject to when a provider accepts the conditions of payment, the Transition Payment will be paid each week for 9 weeks from 13 July 2020.

To be eligible to receive the Transition Payment for a week, the provider must:

- be an approved provider under the family assistance law, and be approved in respect of the service,
- not receive JobKeeper on behalf of their employees working in the early childhood education and care services from 20 July 2020 (or, if the provider is a sole trader, not receive JobKeeper for themselves),
- not charge fees in the Transition Period that exceed the fees charged by the provider in the relevant reference period, and
- continue over the Transition Period to employ those employees of the approved early childhood education and care provider who were paid in the fortnight leading up to the end of the Relief Package, including those who worked, were on short-term leave, or who did not work but were paid JobKeeper, but excluding those on long term leave and contractors.

The provider must also be open and provide care for the usual hours of operation, unless the service is closed for at the direction of an appropriate authority, or in the case of a local emergency.

Further details of the Transition Payments, including the grant guidelines are available on the department's COVID-19 webpage <https://www.dese.gov.au/news/transition-arrangements-end-early-childhood-and-care-relief-package>.

To accept this offer and enter into an agreement with the Commonwealth, represented by the Department of Education, Skills and Employment, ABN 12 862 898 150 in relation to the Grant, sign this agreement and electronically submit the agreement by **Thursday 3 September 2020, otherwise this offer will lapse.**

Provided the electronically signed copy of the Grant Schedule is received by the Commonwealth by this date, this Grant Schedule and the *Commonwealth Grant Conditions* will form a legally enforceable agreement in relation to the Grant.

## Grant

The Grant is provided under section 85GA of the *A New Tax System (Family Assistance) Act 1999*.

The Commonwealth offers,

«**Provider\_Name**»

(ABN «**Provider\_ABN**»),

«**Legal\_Entity\_Address\_**»,

(the 'Grantee'), a grant under the Community Child Care Fund (CCCF) Special Circumstances Transition Payment (the 'Transition Payment') to support the move back to the Child Care Subsidy (CCS) for the service that you operate. The offer is for a grant calculated in accordance with the Community Child Care Fund Special Circumstances – Transition Payment Guidelines (the 'Guidelines') at <https://www.dese.gov.au/node/202>.

The amount of the Grant is determined in accordance with the Grant Guidelines and estimated to be a total for the Grantee, GST Exclusive, of «**Funding\_Amount**».

Details on the child care service covered under this grant agreement can be found in the Activity Schedule.

Subject to the Grantee's compliance with this Agreement, and continuing to meet the Eligibility Criteria in paragraph 2.2 of the Guidelines (also described above), the total Grant funding amount will be made at the service level to the bank account for each service where CCS is paid in nine weekly instalment payments of «**Weekly\_Funding\_Amount** ». (GST Exclusive).

The parties acknowledge and agree that they are each registered for GST purposes, have each quoted their Australian Business Number to the other and must notify the other of any changes in their GST status. The Commonwealth considers this transaction is consideration for the supply of child care and so GST-free.

The Guidelines will prevail over this Grant Schedule to the extent of any inconsistency.

## Grant Activity

The Grant is being provided as part of the transition from the ECEC Relief Package announced on 8 June 2020 with the resumption of CCS from 13 July 2020 and will be delivered through Community Child Care Fund (CCCF) Special Circumstances program.

The Grant Activity for this grant is the continuing delivery of child care services from 13 July 2020 to 27 September 2020, that comply with Family Assistance Law, from the eligible services operated by «**Provider\_Name**».

The Grantee must agree to make available to the Commonwealth relevant records relating to fees, JobKeeper and staffing levels in order to demonstrate that these conditions have been met.

If requested by the Commonwealth, the Grantee must provide a signed statement that meets the requirements of clause 5 of the *Grant Agreement Conditions*.

## Governing law

This Agreement is governed by the law of the Australian Capital Territory.

## Record Keeping

The Grantee agrees to maintain records under clause 7 of the *Commonwealth Grant Conditions* for three years after completing the Grant Activity.

## *Opportunity through learning*

## Commonwealth Grant Conditions

### 1. Undertaking the Grant Activity

The Grantee agrees to use the Grant and undertake the Grant Activity in accordance with this Agreement.

### 2. Acknowledgements

The Grantee agrees to acknowledge the Commonwealth's support in any material published in connection with this Agreement and agrees to use any form of acknowledgment the Commonwealth reasonably specifies.

### 3. Notices

The Grantee agrees to promptly notify the Commonwealth of anything reasonably likely to affect the performance of the Grant Activity, including any actual, perceived or potential conflict of interest which could affect the Grantee's performance of this Agreement and to take action to resolve the conflict.

### 4. Payment of the Grant

4.1 The Commonwealth agrees to pay the Grant to the Grantee in accordance with this Agreement.

4.2 The Grantee agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this Agreement.

4.3 If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

4.4 If at the commencement of the Agreement the Grantee is not registered for GST and during the term of the Agreement the Grantee becomes, or is required to become, registered for GST, the Grantee agrees to notify the Commonwealth in writing within 7 days of becoming registered for GST.

### 5. Spending the Grant

The Grantee agrees to spend the Grant for the sole purpose of undertaking the Grant Activity, and to provide a statement, in the form required by the Commonwealth and signed by the Grantee, verifying that the Grant Activity has been undertaken and the Grant was spent in accordance with this Agreement.

### 6. Repayment

If any of the Grant amount has been spent other than in accordance with this Agreement or on expiration or termination of this Agreement is additional to the requirements of the Grant Activity, the Grantee agrees to repay that amount to the Commonwealth, unless the Commonwealth agrees in writing otherwise.

### 7. Record keeping

The Grantee agrees to maintain records of the performance of the Grant Activity for the period specified in the Grant Schedule and to make them available to the Commonwealth on request.

### 8. Continuing to meet obligations for approval and eligibility

8.1 The Grantee, and all Services of the Grantee, must comply with all conditions for continued approval in Part 8 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

8.2 The Grantee must at all times during the Transition Period satisfy the eligibility criteria of the Grant Guidelines.

### 9. Provider not to be paid JobKeeper

9.1 It is a condition of receiving an instalment of the Grant in relation to a period that the Grantee is not paid an amount of JobKeeper payment in relation to that period for an individual who is not an eligible employee or eligible business participant of the Grantee.

9.2 In this clause 9 'JobKeeper payment', 'eligible employee' and 'eligible business participant' have the meaning given by the [Coronavirus Economic Response Package \(Payments and Benefits\) Rules 2020](#) (as amended from time to time).

### 10. The employment guarantee

10.1 The Grantee agrees to continue the employment of those employees of the approved child care service who were working or being paid JobKeeper in the employee guarantee fortnight (the fortnight 29 June to 12 July 2020 for all services except vacation care only services, or the relevant vacation care fortnight) over the Transition Period. This means the Grantee will not terminate the employment of such employees without reasonable justification. For the purposes of this clause 'reasonable justification' includes matter such as serious misconduct and loss of an essential qualification, but does not include genuine redundancy.

10.2 The Grantee agrees to offer employees covered by the employment guarantee in clause 10.1 more than one shift during the transition period.

10.3 An individual is to be included as an employee for the purposes of clause 10.1 where the Grantee paid the employee salary or wages and who worked any hours in the employment guarantee fortnight, plus any employees on short term leave, plus any JobKeeper recipients who did not work during that fortnight. Contractors and employees on long term leave are not counted as an employee for the purposes of clause 10.1.

10.4 Nothing in this clause 10 precludes the provider from taking action necessary to comply with the law.

#### **11 Fee Guarantee**

11.1 The Grantee agrees not to charge fees in the period commencing on 13 July 2020 and ending on 27 September 2020 that exceed the fees charged by the provider in the reference fortnight.

11.2 The Grantee agrees not to charge higher administrative fees than it charged in relation to the reference fortnight or add new administrative fees that were not listed in a family's Complying Written Arrangement in the reference fortnight.

11.3 In this clause, 'reference fortnight' has the meaning given under the Grant Guidelines.

#### **12. Dispute resolution**

12.1 The parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

12.2 The parties agree to continue to perform their respective obligations under this Agreement where a dispute exists.

12.3 The procedure for dispute resolution does not apply to action relating to termination or urgent litigation.

#### **13. Access/Monitoring/ inspection**

13.1 The Grantee agrees to give the Commonwealth, including the Department of Education, Skills and Employment and the Australian Taxation Office, or any persons authorised in writing by the Commonwealth:

- (a) access to premises where the Activity is being performed and/or where Material relating to the Activity is kept within the time period specified in a Commonwealth notice; and
- (b) permission to inspect and take copies of any Material relevant to the Activity.

13.2 The Auditor-General and any Information Officer under the *Australian Information Commissioner Act 2010* (Cth) (including their delegates) are persons authorised for the purposes of clause 13.1.

13.3 This clause does not detract from the statutory powers of the Auditor-General or an Information Officer (including their delegates).

#### **14. Termination for default**

14.1 The Commonwealth may terminate this Agreement by notice where it reasonably believes the Grantee:

- (a) has breached this Agreement; or
- (b) has provided false or misleading statements in their application for the Grant; or
- (c) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

14.2 The Commonwealth will not be required to make any further payments of the Grant after the termination of the Agreement.

#### **15. General provisions**

15.1 A party is not by virtue of this Agreement an employee, agent or partner of the other party.

15.2 This Agreement may only be varied by the parties' signed written agreement.

15.3 Clauses 5 (Spending of the Grant), and 6 (Repayment) survive the expiry or termination of this Agreement.

15.4 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

15.5 This Agreement may be executed by the Commonwealth by way of electronic signature.

15.6 This Agreement may only be accepted and executed by the Grantee in the manner of acceptance described in the Grant Schedule, or such alternative method as notified by the Commonwealth to the Grantee in writing.

15.7 Each individual executing this Agreement on behalf of any party expressly represents and warrants that he/she has authority to execute the Agreement and bind that party to this Agreement.

15.8 Expressions used in this agreement that are defined in Family Assistance Law have the same meaning as in Family Assistance Law unless a contrary intention appears.

15.9 The Grantee warrants that the list of services in the Commonwealth's Grant offer (Activity Schedule) is a complete and accurate list of approved services for the provider. Without derogation from the providers obligations under Family Assistance Law, the provider will notify the Commonwealth as soon as practicable if the provider stops operating a child care service.

#### **16. Change of ownership**

16.1. If a service changes ownership during the course of the grant agreement period the Grantee is responsible for informing the new owner of the grant agreement and obligations, and transferring any payments made to the former owner to the new owner, until arrangements can be made to commence payment to the new owner.

16.2 Transition payments payable to providers during the transition period will be adjusted in accordance with the guidelines to account for the transfer of services between providers (such as sale of a service by one provider to another).

16.3 Any adjustment providers may make in transfer agreements for transition payments payable in respect transferred services before the day the provider approvals are varied, is a private commercial matter and the Commonwealth will not engage in any disputes between providers about such matters.

## Signatures

### Executed as an agreement:

«Provider\_Name»

(ABN «Provider\_ABN»)

«Legal\_Entity\_Address\_»,

(the 'Grantee') agrees to use the Grant to undertake the Grant Activity in accordance with this Grant Schedule and the enclosed *Commonwealth Grant Conditions*, which together form the Agreement between the Grantee and the Commonwealth in relation to the Grant.

### Instruction for grantees:

- You agree you are a person who is authorised to enter a legal arrangement with the Commonwealth on your organisation's behalf.

As a person who is authorised to enter a legal arrangement with the Commonwealth on your organisation's behalf, you acknowledge to be eligible to receive the Transition Payment in respect of a service, the provider must:

- be an approved provider under the family assistance law, and be approved in respect of the service;
- not receive JobKeeper on behalf of their employees working in the early childhood education and care services from 20 July 2020 (or, if the provider is a sole trader, not receive JobKeeper for themselves);
- not charge fees in the Transition Period that exceed the fees charged by the provider in the relevant reference fortnight; and
- continue the employment of those employees of the service who were working or being paid JobKeeper in the employee guarantee fortnight (within the meaning of clause 10 of the Commonwealth Grant Conditions).

### Grantee:

Signature: [DocuSign signature option]

Signatory: [Mandatory text field]

Position title: [Mandatory text field]

Date: [populated field]

By entering your name and signing:

- you are signing this Agreement electronically, which is the legal equivalent of your ink signature on this Agreement;
- you entering a binding contract (the Agreement); and
- you agree to the terms and conditions of the Agreement for yourself and also on behalf of any other person included in the transaction.

### Commonwealth:

Signed for and on behalf of the Commonwealth of Australia as represented by the Department of Education, Skills and Employment

## Activity Schedule

<b>CRN</b>	«Service_CRN»
<b>Service Name</b>	«Service_Name»
<b>Service Address</b>	«Service_Address»
<b>Weekly Funding</b>	«Service_Weekly_Funding_Amount»
<b>Total Service Funding</b>	«Service_Funding_Amount»