

# Explanatory Statement

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## ***Child Care Subsidy Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020***

### **Purpose and Authority**

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act).

Amongst other things, subsection 33(3) of the Acts Interpretation Act provides that a power to make an instrument of a legislative character (such as subsection 85GB(1) of the Family Assistance Act) includes a power to amend such an instrument.

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules).

In summary, the Amendment Rules build on and further safeguard the measures implemented through the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020*, by:

- providing that no Child Care Subsidy (CCS) and Additional Child Care Subsidy (ACCS) is payable for a session of care in circumstances where the approved provider of the approved child care service that provided that care has been receiving business continuity payments (BCP), or has otherwise charged fees during the period that BCP was payable under the Australian Government's Early Childhood Education and Care Relief Package
- imposing a condition for the continued approval of a provider under the family assistance law, that the provider not charge any fees for child care during the period of Early Childhood Education and Care Relief Package BCP
- impose a restriction on applications for approval of child care providers and services during the period of the Early Childhood Education and Care Relief Package BCP, recognising the impacts of the COVID-19 pandemic on the child care sector as well as the capacity for Government to engage in business as usual activities. In addition to this, the Early Childhood Education and Care Relief Package BCP period is designed to ensure the sustainability and longevity of the existing child care sector, without adding any additional resource constraints
- ensure that the *Community Child Care Fund – Special Circumstances* (CCCF-SC) program is prescribed in the Principal Rules for the purposes of the special appropriation in the family assistance law. This ensures that additional financial support continues to be available for the child care sector, in circumstances where that sector is experiencing increased hardship and financial distress due to natural disasters and emergency events, such as the COVID-19 event. This further ensures that families are able to continue to access quality child care by helping maintain sector sustainability and meet sector need.

These amendments are intended to ensure that, as part of the Early Childhood Education and Care Relief Package, child care providers are not able to charge fees and receive associated CCS during the period that BCP is payable. In combination with other financial assistance measures announced by the Government, including JobKeeper Payment, extension of absence days and

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CCCF-SC, the Early Childhood Education and Care Relief Package BCP has been structured to ensure the viability of the early childhood education and care sector in circumstances where the COVID-19 pandemic has resulted in decreases in enrolments and a drop in fee revenue for services.

BCPs are made to providers to give a guaranteed income stream, based on a reference period, with providers also able to access supplementary payments in exceptional circumstances as detailed in the *Early Childhood Education and Care Relief Package Payment Conditions* document. Further, families are offered free child care to encourage them to maintain their enrolments with services and to provide financial assistance to families. Therefore, CCS and ACCS must not be payable due to the stated aim of Government that there are no fees to subsidise.

These amendments acknowledge and are intended to cater for dynamic circumstances during the COVID-19 pandemic, and ensure fee-relief for families. The measures are temporary, only applying to the period in respect of which services are eligible for Early Childhood Education and Care Relief Package BCP.

### **Commencement**

The Amendment Rules commence on the day after the Rules are registered on the Federal Register of Legislation.

### **Consultation**

The measures in the Amendment Rules are in response to stakeholder feedback to concerns raised by the sector about the viability and impending crisis being faced in relation to the COVID-19 pandemic. The Department of Education, Skills and Employment has been consulting weekly with stakeholders in the early childhood education and care sector through the Early Childhood Education and Care Reference Group on COVID-19 issues.

### **Regulation Impact Statement**

A Prime Minister's exemption has been granted for all COVID-19 related measures where they have more than a minor regulatory impact.

## Abbreviations used in this Explanatory Statement

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**ACCS** means Additional Child Care Subsidy.

**Amendment Rules** means the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020*.

**BCP** means business continuity payment.

**CCCF-SC** means the *Community Child Care Fund – Special Circumstances* program.

**CCS** means Child Care Subsidy.

**Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*.

**Family Assistance Administration Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

**Principal Rules** means the *Child Care Subsidy Minister's Rules 2017* (being the rules made by the Minister under subsection 85GB(1) of the Family Assistance Act).

# Detailed Explanation of Amendments

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## Preliminary

Sections 1 to 4 of the Amendment Rules are formal provisions providing for the name, commencement, authority etc. for the instrument.

**Section 1** states the name of the instrument as the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020*.

**Section 2** provides for the Amendment Rules to commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3** states that the Amendment Rules are made under the Family Assistance Act.

**Section 4** provides that the Principal Rules are amended as set out in the Schedule to the Amendment Rules.

## Schedule 1

### **Restriction on payment of CCS and charging of fees**

Subparagraph 85BA(1)(c)(iii) of the Family Assistance Act enables the Principal Rules to prescribe circumstances in which CCS (and as a result, ACCS) is not payable for a session of care.

**Item 1** inserts new paragraphs (h) and (i) into subsection 8(1) of the Principal Rules, which sets out circumstances for the purposes of subparagraph 85BA(1)(c)(iii) of the Family Assistance Act.

New paragraph (h) provides that no CCS is payable for a session of care in circumstances where the approved provider of the approved child care service that provided that care was paid an amount of BCP in relation the service under the Early Childhood Education and Care Relief Package BCP in Division 2 of Part 6 of the Principal Rules.

In addition, paragraph (i) provides that no CCS is payable for a session of care in circumstances where the provider of the service charged a fee for the session of care contrary to the new section 47AA of the Principal Rules – that is, during the period that the Early Childhood Education and Care Relief Package BCP was in operation.

These paragraphs will ensure that approved providers are not able to receive CCS or ACCS during the same period that providers are eligible for BCP, to reduce the risk of any doubling-up of payments of public funding and to further ensure the implementation of the Early Childhood Education and Care Relief Package.

In addition, **item 5** inserts a new condition for the continued approval of a provider under section 195E of the Family Assistance Administration Act in Division 5 of Part 4 of the Principal Rules. The new section 47AA provides that the provider must not charge any fees for child care during the period that the Early Childhood Education and Care Relief Package BCP is in

operation. This further ensures that a provider is not able to charge families fees for child care during the period that provider is eligible for BCP.

### **Restriction on applications for approval**

**Item 3** replaces subsection 41(1) and inserts new subsection 41(1A) in the Principal Rules. These amendments provide that, during the period of the Early Childhood Education and Care Relief Package BCP (6 April 2020 to 28 June 2020, inclusive), applications for provider approval, and applications to add or remove services from provider approval, will be taken not to have been made.

**Items 2 and 4** are consequential amendments to item 2, replacing the heading of section 41 of the Principal Rules and ensuring that subsection 41(2) of the Principal Rules correctly cross-references new subsection 41(1A).

These amendments to section 41 of the Principal Rules recognising the impacts of the COVID-19 pandemic on the child care sector as well as the capacity for Government to engage in business as usual activities. In addition to this, the Early Childhood Education and Care Relief Package BCP period is designed to ensure the sustainability and longevity of the existing child care sector, without adding any additional resource constraints.

Existing subsection 41(2) in the Principal Rules has been retained, to ensure that in exceptional circumstances and where there is urgent need, there is capacity to process an application for approval. This ensures that where sector need justifies an application for approval, it can continue to be processed.

### **Special appropriation for CCCF-SC**

Section 233 of the Family Assistance Administration Act generally provides that payments made under the family assistance law are supported by special appropriation. However, subsection 233(2) expressly excludes from the special appropriation any grant payments made under section 85GA of the Family Assistance Act unless those grant payments are prescribed in the Principal Rules.

**Item 6** inserts a new Part 8 and section 78 into the Principal Rules, to ensure that the CCCF-SC program is prescribed in the Principal Rules for the purposes of the special appropriation in the family assistance law. This ensures that additional financial support continues to be available for the child care sector, in circumstances where that sector is experiencing increased hardship and financial distress due to natural disasters and emergency events, such as the COVID-19 event.

# Statement of Compatibility with Human Rights

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

## ***Child Care Subsidy Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020***

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 Amendment (Coronavirus Response Measures No. 3) Minister's Rules 2020* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules).

In summary, the Amendment Rules build on and further safeguard the measures implemented through the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020*, by:

- providing that no Child Care Subsidy (CCS) and Additional Child Care Subsidy (ACCS) is payable for a session of care in circumstances where the approved provider of the approved child care service that provided that care has been receiving business continuity payments (BCP), or has otherwise charged fees during the period that BCP was payable under the Australian Government's Early Childhood Education and Care Relief Package
- imposing a condition for the continued approval of a provider under the family assistance law, that the provider not charge any fees for child care during the period of Early Childhood Education and Care Relief Package BCP
- impose a restriction on applications for approval of child care providers and services during the period of the Early Childhood Education and Care Relief Package BCP, recognising the impacts of the COVID-19 pandemic on the child care sector as well as the capacity for Government to engage in business as usual activities. In addition to this, the Early Childhood Education and Care Relief Package BCP period is designed to ensure the sustainability and longevity of the existing child care sector, without adding any additional resource constraints
- ensure that the *Community Child Care Fund – Special Circumstances* (CCCF-SC) program is prescribed in the Principal Rules for the purposes of the special appropriation in the family assistance law. This ensures that additional financial support continues to be available for the child care sector, in circumstances where that sector is experiencing increased hardship and financial distress due to natural disasters and emergency events, such as the COVID-19 event. This further ensures that families are able to continue to access quality child care by helping maintain sector sustainability and meet sector need.

These amendments are intended to ensure that, as part of the Early Childhood Education and Care Relief Package, child care providers are not able to charge fees and receive associated CCS during the period when those providers are receiving BCP. In combination with other financial

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assistance measures announced by Government, including CCCF-SC, BCP has been structured to ensure that providers can remain sustainable in circumstances where the COVID-19 pandemic has resulted in decreases in enrolments and drop in fee revenue for services. BCP payments are made to providers to give a guaranteed income stream, instead of fee revenue. Further, families are offered free child care to encourage them to maintain their enrolments with services and to provide financial assistance to families. Therefore, CCS and ACCS must not be payable due to the stated aim of Government that there are no fees to subsidise. These amendments acknowledge and are intended to cater for dynamic circumstances during the COVID-19 pandemic, and ensure fee-relief for families. The measures are temporary, only applying to the period in respect of which services are eligible for Early Childhood Education and Care Relief Package BCP.

### **Analysis of human rights implications**

The Amendment Rules engage Articles 3, 19 and 27 of the *Convention on the Rights of the Child* (CRC).

**Article 3** of the *Convention on the Rights of the Child* (CRC) recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. **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. **Article 27** of the CRC recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, social and moral development. Article 27 also requires States Parties to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, where required, provide material assistance and support programmes.

Early childhood education and child care play a vital role in the development of Australian children and the rights of the child listed above are fundamentally engaged by the family assistance law generally in facilitating access to subsidised child care. Moreover, children's preparation for school and access to this care is also one of the most effective early intervention strategies to break the cycle of poverty.

The Amendment Rules build on and further safeguard the measures implemented through the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020*, in order to support children and families to continue to access and/or remain enrolled in quality child care during the COVID-19 event and ensure business continuity for child care providers.

The Amendment Rules further ensure the stated aims of the Government's child care package during the COVID-19 event by putting in place measures that ensure child care providers will not charge fees for the provision of child care, thereby ensuring fee-relief for families.

With respect to the amendments restricting applications for approval of child care providers and services, the amendments do not interfere with the existing operation of subsection 41(2) of the Principal Rules, which enables in exceptional circumstances (and where there is urgent need), the processing of applications for approval. This ensures that where sector need justifies an application for approval, it can continue to be processed. In addition to this, the amendments are for a time limited period during the Early Childhood Education and Care Relief Package BCP.

Further to this, the Amendment Rules ensure that additional financial support continues to be available for the child care sector, in circumstances where that sector is experiencing increased hardship and financial distress due to natural disasters and emergency events, such as the COVID-19 event, through the CCCF-SC program.

## **Conclusion**

The Amendment Rules are compatible with human rights.

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Minister for Education