

## **EXPLANATORY STATEMENT**

### **Issued by the authority of the Minister for Employment, Workforce, Skills, Small and Family Business**

#### ***A New Tax System (Family Assistance) Act 1999***

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

### **AUTHORITY**

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

Under subsection 33(3) of the Acts Interpretation Act, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke and amend or vary any such instrument.

### **PURPOSE AND OPERATION**

#### **Coronavirus response amendments**

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) to reduce the adverse impact on individuals and child care services due to COVID-19 in Australia. These amendments include:

- Providing an additional exemption from the requirement on services to enforce the payment of child care "gap fees" (the difference between the child care fees charged by the provider and an individual's entitlement to child care subsidy (CCS) in relation to those fees):
  - for Aboriginal and Torres Strait Islander children, and children with a higher risk of developing severe illness from COVID-19, who are not attending care;
  - where the service, or part of the service, closes to undertake an activity required by a government agency to respond to health risks associated with COVID-19;
  - where, despite the service's best endeavours, the service is unable to meet educator to child requirements prescribed by the Education and Care

Services National Law and therefore cannot provide care to a child, due to one or more educators being required to isolate or self-quarantine.

These amendments will provide fee relief to parents, as services will not be required to enforce the payment of gap fees for affected families where the child does not attend care due to the above reasons. The amendments also provide support for services, allowing them to receive a steady revenue stream through CCS when closed in instances where previously they were ineligible.

- Providing additional circumstances in which CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed, namely:
  - if the service is undertaking an activity required by a government agency to respond to health risks associated with COVID-19;
  - if the service cannot meet educator to child ratio requirements because its educators are required to isolate or self-quarantine by a health agency due to COVID-19.
- Providing an additional allocation of 59 allowable absence days for all absence days for the period between 1 January 2022 and 28 February 2022 for children attending services in all states and territories except Western Australia, and between 3 March 2022 and 30 April 2022 for children attending services in Western Australia, to help offset absence days taken due to children not attending care during the peak of the COVID-19 Omicron wave and ensure there is continued subsidised fee relief for families with children enrolled in child care. The period for Western Australia is the same number of days as the period for the other states and territories, but begins on a later date because Western Australia experienced the peak of the COVID-19 Omicron wave later than the other states and territories. This amendment will ensure families will not need to use up their existing allowable absence allocation if their children do not attend child care during the peak of the COVID-19 Omicron wave.
- Providing allowable absence days for all absence days prior to a child's first day or after their last attendance, where the absence occurs between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia). Ordinarily, families are not entitled to allowable absence days if the absence is before the first day of attendance or after the last day of attendance at the service. This amendment ensures that if a child is absent before their first session of care, or after their last actual attendance, in the period between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia), during the peak of the COVID-19 Omicron wave, families will be able to access allowable absence days and help ensure there is continued subsidised fee relief for families enrolled in child care.
- Providing that CCS is paid for absences up to six days prior to a child's first attendance, or six days after their last attendance, when the child or member of the

child's household is isolating due to COVID-19 for the period 1 December 2021 to 30 June 2022. This amendment will ensure fee relief is available to families impacted by isolation or self-quarantine requirements.

#### Local Area Emergency response measures

The Amendment Rules also amend the Principal Rules to reduce the impact on individuals and child care services in periods of local emergency occurring between 23 February 2022 and 30 June 2022. These amendments include:

- Providing additional allowable absence days for absences taken because a service is closed, or the child is unable to attend a sessions of care, during a period of local emergency. This amendment will ensure families will not need to use up their existing allowable absence allocation if they are prevented from attending a session of care due to a local emergency (such as flooding).
- Providing an additional exemption from the requirement on services to enforce the payment of gap fees where a child does not attend a session of care because a service is closed, or the child is unable to attend a sessions of care, due to a period of local emergency. This amendment will provide fee relief to parents, as services will not be required to enforce the payment of gap fees for affected families where the child does not attend care due to a local emergency.

The Amendment Rules provide for the making of business continuity payments, called the South East Queensland and NSW Flood Support Payments, to approved services affected by the floods that have impacted South East Queensland and New South Wales in February and March 2022. These amendments are intended to provide stable income for the child care sector, protecting their financial viability and allowing them to continue to operate into the future to support families' wellbeing.

The amount of the South East Queensland and NSW Flood Support Payments will be \$10,000, to be provided to services that are in areas where the Department has declared a Local Area Emergency, and are closed, or have had to reduce the number of children who can attend the service, for eight or more days due to the Local Area Emergency. In order to receive the South East Queensland and NSW Flood Support Payments, providers must comply with certain conditions. These include that they must not enforce the payment of gap fees for any children not attending care.

The South East Queensland and NSW Flood Support Payments will enable services to re-open as soon as possible, ensure parents can return to work and prevent disruptions to children attending child care. This payments will reduce financial pressure on services experiencing the immediate impact of the floods, assisting services to cover costs such as clean-up, and staff wages, while revenue is being impacted.

## Commonwealth-supported Early Years Education Program (EYEP) replication trial

The Commonwealth-supported EYEP replication trial replicates the EYEP model at four centre-based day care services, including a co-developed model of education and care for Aboriginal or Torres Strait Islander children in an Indigenous-specific site.

It is part of the Commonwealth Closing the Gap Implementation Plan measure that will contribute to Closing the Gap Outcomes 3 and 4 (preschool enrolment and school readiness), build the evidence base on what works in early childhood education and care (ECEC) for vulnerable and disadvantaged children and is expected to have positive impacts on developmental drivers of school readiness, including cognitive skills, resilience and socio-emotional development.

The EYEP model is a multi-disciplinary model of intensive ECEC, infant mental health and family support for highly vulnerable and disadvantaged children. The model is designed to redress harm and overcome trauma to support children's learning and development in partnership with their families. Children under three years of age are referred to the three-year program through child protection or family services and must meet two or more identified risk factors to participate.

Families and children receive a combination of high-quality education and care and wrap-around support, including access to infant mental health clinicians, family support practitioners, centre coordinators, pedagogical leaders and qualified early childhood teachers who are all employed within the Program.

The Amendment Rules also amend the Principal Rules to ensure the availability of Additional Child Care Subsidy (ACCS) (child wellbeing) to participants of the Commonwealth-supported EYEP replication trial. The Amendment Rules prescribe participation in the Commonwealth-supported EYEP replication trial as:

- a circumstance in which a child is taken to be at risk of serious abuse or neglect; and
- a circumstance for which an ACCS (child wellbeing) determination may be in place to up to 52 weeks.

As risk factors are assessed as part of acceptance into the Commonwealth-supported EYEP replication trial, frequent reassessment is not considered necessary. By deeming Commonwealth-supported EYEP replication trial participants to be 'at risk' and enabling eligibility determinations to be made every 52 weeks (as opposed to every 13 weeks), these amendments will support the Commonwealth-supported EYEP replication trial by providing certainty of ACCS (child wellbeing) for Commonwealth-supported EYEP replication trial participants, minimise administrative requirements, and address disincentives to participation in replication trial.

## Amendments to appropriation

The Amendment Rules also make amendments to the Principal Rules by increasing the cap on the appropriation in section 233 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) for payments under the Community Child Care Fund (CCCF) Special Circumstances Grant Opportunity from \$4 million to \$22.4 million for the 2021-22 financial year, and prescribing the cap on the appropriation in section 233 of the Family Assistance Administration Act for payments under CCCF Special Circumstances Grant Opportunity of \$7.7 million for the 2022-23 financial year. The CCCF Special Circumstances Grant Opportunity provides financial support to services operating in or providing care for disadvantaged and vulnerable communities when an unforeseen event or circumstance puts these services at high risk of closure. The increase in the cap on appropriation for the 2021-22 financial year is required to support services impacted by the COVID-19 pandemic and recent flood events. The amendments ensure there is sufficient financial support for these services to stay open and for disadvantaged and vulnerable communities to have appropriate access to child care.

## REGULATORY IMPACT

### Part 1 and Part 4 amendments

A Prime Minister's exemption has been granted for all COVID-19 related measures where they have more than a minor regulatory impact – see <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/prime-ministers-exemption-covid-19-related-measures>.

### Part 2 amendments

The Office of Best Practice Regulation (OBPR) has advised no Regulatory Impact Statement (RIS) is required for the Amendment Instrument and assessed the Amendment Instrument as having a no more than minor regulatory impact (OBPR ID: OBPR22-01956).

### Part 3 amendments

## **Regulation Impact Statement**

Name of department/agency: Department of Education, Skills and Employment

OBPR Reference Number: ID 43833

Name of measure: Improving school readiness of Indigenous children: replicating the Parkville Institute Early Years Education Program

Summary of the policy and any options considered:

Funding of \$9 million to support the Commonwealth's investment towards the establishment of four replication sites for the Early Years Education Program (EYEP) with the aim of lifting school readiness and broader educational and health outcomes.

What are the regulatory impacts associated with this measure?

There are minimal regulatory impacts on participating services relating to this measure. The department will undertake a limited direct tender to engage a provider. The provider will establish an implementation hub, covering the four participating trial locations, that will have responsibility for governance, planning and coordination.

What are the regulatory costs/savings associated with this measure? Explain and quantify.

Participating services will incur no additional costs as all costs associated with this program will be met by department funding and co-investment secured by the contractor.

Communities will be assisted with any regulatory burdens associated with participation in the trial (e.g. the provider will help participants navigate the application processes for any child care subsidies etc)

Regulatory burden estimate (RBE) table

<u>Average annual regulatory costs (from business as usual)</u>				
<u>Change in costs (\$ million)</u>	<u>Business</u>	<u>Community organisations</u>	<u>Individuals</u>	<u>Total change in cost</u>
<u>Total, by sector</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

COMMENCEMENT

The Amendment Rules commence on the day after they are registered.

Some provisions of the Amendment Rules make separate provision for when they apply and will have application from a time before the Amendment Rules are registered.

Notably, all such provisions will have a beneficial effect on stakeholders, as explained below.

The amendments made to clauses 2.1 and 2.2 of Schedule 3 to the Principal Rules expand the instances where a provider is not required to comply with the obligation in section 201B of the Family Assistance Administration Act to enforce the payment of gap fees. Ordinarily, this obligation is enforceable as an offence or a civil penalty. The new amendments provide that for sessions of care occurring on a day between 27 January 2022 to 30 June 2022, services will not need to enforce payment of gap fees:

- where the child is an Indigenous child or has a higher risk of developing serious illness from COVID-19;
- where a service closes to undertake required activities in response to COVID-19 (such as a deep clean of the service); or
- where a service is unable to provide care due to not being able to make educator to child ratio requirements due to educators isolating.

Similarly, new section 54B provides that for sessions of care occurring on a day between 23 February 2022 and 30 June 2022, services will not need to enforce payment of gap fees where the service is closed, or the child cannot attend the session of care, because of a local emergency (for example, due to flooding).

These amendments are entirely beneficial as they enable, but do not require, services to provide fee relief to families that use child care services.

New clause 2.3 of Schedule 3 also prescribes that for the period 27 January 2022 to 30 June 2022, where a service does not have sufficient educators to meet the educator to child ratio requirements prescribed by the Education and Care Services National Law, due to educators having to isolate or self-quarantine due to COVID-19, as a circumstance when a service is exempt from enforcing payment of gap fees. This is also a beneficial amendment, as it enables, but does not require, services to provide fee relief to families whose children cannot attend child care due to educators unable to provide care due to isolation or self-quarantine requirements.

Amendments to paragraph 8(4B) of the Principal Rules also ensure that from 27 January 2022 to 30 June 2022, CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed, in the below circumstances:

- if the service is closed because it is undertaking an activity required by a government agency to respond to health risks associated with COVID-19;
- if the service is closed because it cannot meet educator to child ratio requirements because its educators are required to isolate or self-quarantine by a health agency due to COVID-19.

Amendments to clause 3.1 of Schedule 3 to the Principal Rules apply from 1 January 2022. These amendments provide families with additional allowable absences for absence days between 1 January 2022 and 28 February 2022, or 3 March 2022 and 30 April 2022 for services in Western Australia, to help offset absence days taken due to children not attending care during the peak of the COVID-19 Omicron wave and ensure there is continued subsidised fee relief for families with children enrolled in child care. The period for Western Australia is the same number of days as the period for the other states and territories, but starts at a later date because Western Australia is expected to experience the peak of the COVID-19 Omicron wave later than the other states and territories. This amendment will ensure families will not need to use up their existing allowable absence allocation if their children do not attend child care during the peak of the COVID-19 Omicron wave.

Similarly, new section 5C provides families with additional allowable absences for absence days between 23 February 2022 and 30 June 2022, for children who reside or are enrolled at a child care service in an area during a period of local emergency (for example, areas on the east coast of Australia that have been severely impacted by widespread flooding). This amendment will help offset absence days taken due to children not being able to attend

care during a period of local emergency and ensure families will not need to use up their existing allowable absence allocation if their children cannot attend child care due to the local emergency.

New subclauses 3.2(5) and (6) of Schedule 3 to the Principal Rules also apply from 1 January 2022. These amendments provide families with additional allowable absences where a child's enrolment commenced between 1 January 2022 and 28 February 2022 (or between 3 March 2022 and 30 April 2022 for children enrolled at a service in Western Australia). Ordinarily, families are not entitled to allowable absence days if the absence is before the first day of attendance or after the last day of attendance at the service. This amendment ensures that if a child has sessions before their first day of attendance, or after their last day of attendance at a service between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia), during the peak of the COVID-19 Omicron wave, families will be able to access allowable absence days and help ensure there is continued subsidised fee relief for families enrolled in child care.

New subclause 3.2(7) applies from 1 December 2021. New subclause 3.2(7) provides families with additional allowable absences where the absence occurs between 1 December 2021 and 30 June 2022 and occurs within six days before the child's first attendance or after the child's last attendance, and where the child is unable to attend care due to the child or member of the child's household having to isolate due to COVID-19. This ensures parents will continue to receive CCS even when the child is not attending care due to isolation requirements.

The Amendment Rules insert new Division 2 of Part 6 in the Principal Rules. This amendment provides for business continuity payments, known as the South East Queensland and NSW Flood Support payments, to be paid to providers whose services have been impacted by the flood events in New South Wales and South East Queensland in February and March 2022. The payments will apply to a period that begins on 23 February 2022 to 1 April 2022. This amendment will ensure providers that have experienced a material adverse financial impact due to the flood events are given financial support when they have had to close their services.

These amendments are entirely beneficial as they provide financial benefits for child care users.

### CONSULTATION

The Department of Education, Skills and Employment (the Department) has been consulting regularly with stakeholders in the early childhood education and care sector through the Early Childhood Education and Care Reference Group and the Early Childhood Policy Group on COVID-19 issues to ensure the support was appropriately tailored. In particular, the Department consulted with the Western Australia Department of Communities to confirm the time period in which additional support would be made available in that jurisdiction.



The proposed support was welcomed by the sector and state and territory regulators. The Department also considered advice from the Australian Health Protection Principal Committee on COVID-19 safe practices in child care settings.

The Department engaged with the Early Childhood Education and Care Reference Group and representatives from state and territory governments regarding the Local Area Emergency response measures. Stakeholders were largely receptive to the proposed measures.

The Department consults regularly with Parkville Institute Ltd, which has responsibility for overseeing the delivery of the Commonwealth-supported EYEP replication trial at the four centre-based day care centres, to ensure ACCS arrangements support the EYEP replication trial objectives and support families' continued engagement with the trial.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Child Care Subsidy Amendment (Coronavirus, Local Area Emergencies and Other Measures)*

*Minister's Rules 2022*

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

#### Coronavirus response amendments

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) to reduce the adverse impact on individuals and child care services due to COVID-19 in Australia. These amendments include:

- Providing an additional exemption from the requirement on services to enforce the payment of child care “gap fees” (the difference between the child care fees charged by the provider and an individual’s entitlement to child care subsidy (CCS) in relation to those fees):
  - for Aboriginal and Torres Strait Islander children, and children with a higher risk of developing severe illness from COVID-19, who are not attending care;
  - where the service, or part of the service, closes to undertake an activity required by a government agency to respond to health risks associated with COVID-19;
  - where, despite the service’s best endeavours, the service is unable to meet educator to child requirements prescribed by the Education and Care Services National Law and therefore cannot provide care to a child, due to one or more educators being required to isolate or self-quarantine.

These amendments will provide fee relief to parents, as services will not be required to enforce the payment of gap fees for affected families where the child does not attend care due to the above reasons. The amendments also provide support for services, allowing them to receive a steady revenue stream through CCS when closed in instances where previously they were ineligible.

- Providing additional circumstances in which CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed, namely:
  - if the service is undertaking an activity required by a government agency to respond to health risks associated with COVID-19;

- if the service cannot meet educator to child ratio requirements because its educators are required to isolate or self-quarantine by a health agency due to COVID-19.
- Providing an additional allocation of 59 allowable absence days for all absence days for the period between 1 January 2022 and 28 February 2022 for children attending services in all states and territories except Western Australia, and between 3 March 2022 and 30 April 2022 for children attending services in Western Australia, to help offset absence days taken due to children not attending care during the peak of the COVID-19 Omicron wave and ensure there is continued subsidised fee relief for families with children enrolled in child care. The period for Western Australia is the same number of days as the period for the other states and territories, but begins on a later date because Western Australia experienced the peak of the COVID-19 Omicron wave later than the other states and territories. This amendment will ensure families will not need to use up their existing allowable absence allocation if their children do not attend child care during the peak of the COVID-19 Omicron wave.
- Providing allowable absence days for all absence days prior to a child’s first day or after their last attendance, where the absence occurs between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia). Ordinarily, families are not entitled to allowable absence days if the absence is before the first day of attendance or after the last day of attendance at the service. This amendment ensures that if a child is absent before their first session of care, or after their last actual attendance, in the period between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia), during the peak of the COVID-19 Omicron wave, families will be able to access allowable absence days and help ensure there is continued subsidised fee relief for families enrolled in child care.
- Providing that CCS is paid for absences up to six days prior to a child’s first attendance, or six days after their last attendance, when the child or member of the child’s household is isolating due to COVID-19 for the period 1 December 2021 to 30 June 2022. This amendment will ensure fee relief is available to families impacted by isolation or self-quarantine requirements.

#### Local Area Emergency response measures

The Amendment Rules also amend the Principal Rules to reduce the impact on individuals and child care services in periods of local emergency occurring between 23 February 2022 and 30 June 2022. These amendments include:

- Providing additional allowable absence days for absences taken because a service is closed, or the child is unable to attend a sessions of care, during a period of local emergency. This amendment will ensure families will not need to use up their

existing allowable absence allocation if they are prevented from attending a session of care due to a local emergency (such as flooding).

- Providing an additional exemption from the requirement on services to enforce the payment of gap fees where a child does not attend a session of care because a service is closed, or the child is unable to attend a sessions of care, due to a period of local emergency. This amendment will provide fee relief to parents, as services will not be required to enforce the payment of gap fees for affected families where the child does not attend care due to a local emergency.

The Amendment Rules provide for the making of business continuity payments, called the South East Queensland and NSW Flood Support Payments, to approved services affected by the floods that have impacted South East Queensland and New South Wales in February and March 2022. These amendments are intended to provide stable income for the child care sector, protecting their financial viability and allowing them to continue to operate into the future to support families' wellbeing.

The amount of the South East Queensland and NSW Flood Support Payments will be \$10,000, to be provided to services that are in areas where the Department has declared a Local Area Emergency, and are closed, or have had to reduce the number of children who can attend the service, for eight or more days due to the Local Area Emergency. In order to receive the South East Queensland and NSW Flood Support Payments, providers must comply with certain conditions. These include that they must not enforce the payment of gap fees for any children not attending care.

The South East Queensland and NSW Flood Support Payments will enable services to re-open as soon as possible, ensure parents can return to work and prevent disruptions to children attending child care. This payments will reduce financial pressure on services experiencing the immediate impact of the floods, assisting services to cover costs such as clean-up, and staff wages, while revenue is being impacted.

#### Commonwealth-supported Early Years Education Program (EYEP) replication trial

The Commonwealth-supported EYEP replication trial replicates the EYEP model at four centre-based day care services, including a co-developed model of education and care for Aboriginal or Torres Strait Islander children in an Indigenous-specific site.

It is part of the Commonwealth Closing the Gap Implementation Plan measure that will contribute to Closing the Gap Outcomes 3 and 4 (preschool enrolment and school readiness), build the evidence base on what works in early childhood education and care (ECEC) for vulnerable and disadvantaged children and is expected to have positive impacts on developmental drivers of school readiness, including cognitive skills, resilience and socio-emotional development.

The EYEP model is a multi-disciplinary model of intensive ECEC, infant mental health and family support for highly vulnerable and disadvantaged children. The model is designed to redress harm and overcome trauma to support children's learning and development in partnership with their families. Children under three years of age are referred to the three-year program through child protection or family services and must meet two or more identified risk factors to participate.

Families and children receive a combination of high-quality education and care and wrap-around support, including access to infant mental health clinicians, family support practitioners, centre coordinators, pedagogical leaders and qualified early childhood teachers who are all employed within the Program.

The Amendment Rules also amend the Principal Rules to ensure the availability of Additional Child Care Subsidy (ACCS) (child wellbeing) to participants of the Commonwealth-supported EYEP replication trial. The Amendment Rules prescribe participation in the Commonwealth-supported EYEP replication trial as:

- a circumstance in which a child is taken to be at risk of serious abuse or neglect; and
- a circumstance for which an ACCS (child wellbeing) determination may be in place to up to 52 weeks.

As risk factors are assessed as part of acceptance into the Commonwealth-supported EYEP replication trial, frequent reassessment is not considered necessary. By deeming Commonwealth-supported EYEP replication trial participants to be 'at risk' and enabling eligibility determinations to be made every 52 weeks (as opposed to every 13 weeks), these amendments will support the Commonwealth-supported EYEP replication trial by providing certainty of ACCS (child wellbeing) for Commonwealth-supported EYEP replication trial participants, minimise administrative requirements, and address disincentives to participation in replication trial.

#### Amendments to appropriation

The Amendment Rules also make amendments to the Principal Rules by increasing the cap on the appropriation in section 233 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) for payments under the Community Child Care Fund (CCCF) Special Circumstances Grant Opportunity from \$4 million to \$22.4 million for the 2021-22 financial year, and prescribing the cap on the appropriation in section 233 of the Family Assistance Administration Act for payments under CCCF Special Circumstances Grant Opportunity of \$7.7 million for the 2022-23 financial year. The CCCF Special Circumstances Grant Opportunity provides financial support to services operating in or providing care for disadvantaged and vulnerable communities when an unforeseen event or circumstance puts these services at high risk of closure. The increase in the cap on appropriation for the 2021-22 financial year is required to support services impacted by the COVID-19 pandemic and recent flood events. The amendments ensure

there is sufficient financial support for these services to stay open and for disadvantaged and vulnerable communities to have appropriate access to child care.

### **Human rights implications**

The Amendment Rules engage the following human rights:

- **Article 3** of the *Convention on the Rights of the Child* (CRC) which recognises that in all actions concerning children, the best interests of the child shall be a primary consideration;
- **Article 18** of the CRC, which requires States Parties to take all appropriate measures to ensure that children of working parents can benefit from child care services and facilities; and
- **Article 24** of the CRC, which recognises the right of the child to the highest attainable standard of health.

#### Article 3 of the CRC

Article 3 of the CRC recognises that in all actions concerning children, including those undertaken by administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Amendment Rules make changes to the Principal Rules that will improve the affordability of child care services, for example, by expanding the circumstances where a service is not required to enforce the payment of gap fees and by providing for additional allowable absences during the COVID-19 Omicron wave, or during a period of local emergency in Australia. This promotes the best interests of the child by ensuring that child care services remain an affordable and viable option for parents. In addition, the amendments that expand fee relief are in the best interests of the child as they reduce the financial pressure on parents to send a child to child care in circumstances where the child cannot physically attend care or the COVID-19 pandemic means that there are health risks associated with attendance.

The Amendment Rules make changes to the Principal Rules that will support children at risk of serious abuse or neglect, who are enrolled at a service participating in the Commonwealth-supported EYEP replication trial, to maintain extended access to ACCS (child wellbeing). This promotes the best interests of the child by ensuring Commonwealth-supported EYEP replication trial participants, who are referred to the program through State Protection Authorities and meet identified risk factors of serious abuse or neglect have continuity in intensive high quality ECEC and wrap around supports through the program and access to ACCS (child wellbeing), as part of the replication trial.

### Article 18 of the CRC

Article 18 of the CRC, and particularly paragraph 3 of article 18, requires States Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

The Amendment Rules provide fee relief in the form of expanding the circumstances where a service is not required to enforce the payment of gap fees and providing for additional allowable absences, to ensure that families can benefit from subsidised sessions of care where the COVID-19 pandemic or a local emergency impacts a child's attendance at child care.

Accordingly, these Amendment Rules will support children and families to continue to be able to afford and access child care in a safe and sustainable manner.

### Article 24 of the CRC

Article 24 of the CRC recognises the right of the child to the enjoyment of the highest standard of health. In particular, paragraph 2 requires States Parties to take appropriate measures to combat disease, and to develop preventive health care.

To this end, the Amendment Rules promote the right of the child to enjoy the highest standard of health by mitigating financial pressure on parents to send children to care.

The Amendment Rules allow parents to continue to have access to CCS and fee relief by extending and expanding the exemption from the requirement to enforce the gap fee and providing for additional allowable absences. This will mitigate financial pressure on parents by allowing parents to keep their children home from child care in line with public health advice without suffering financial loss.

The Amendment rules will support children at risk of serious abuse or neglect, who are enrolled at a service participating in the Commonwealth-supported EYEP replication trial, maintain access to ACCS (child wellbeing). This promotes the right of the child to enjoy the highest standard of health by ensuring Commonwealth-supported EYEP replication trial participants, who are referred to the program through State Protection Authorities and meet identified risk factors of serious abuse or neglect have continuity in intensive high quality ECEC and wrap around supports, including infant mental health, through the program and access through ACCS (child wellbeing), as part of the replication trial.

### **Conclusion**

The Instrument is compatible with human rights because it promotes the protection of human rights.

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

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

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This is a formal provision specifying the name of the instrument as the *Child Care Subsidy Amendment (Coronavirus, Local Area Emergencies and Other Measures) Minister's Rules 2022* (Amendment Rules).

**Section 2: Commencement**

2. The Amendment Rules commence on the day after they registered.
3. Some provisions of the Amendment Rules make separate provision for when they apply and will have application from a time before the Amendment Rules are registered.
4. Notably, all such provisions will have a beneficial effect on stakeholders, as explained below.
5. The amendments made to clause 2.1 and 2.2 of Schedule 3 to the Principal Rules expand the instances where a provider is not required to comply with the obligation in section 201B of the Family Assistance Administration Act to enforce the payment of gap fees. Ordinarily, this obligation is enforceable as an offence or a civil penalty. The new amendments provide that for sessions of care occurring on a day between 27 January 2022 to 30 June 2022, services will not need to enforce payment of gap fees:
  - a. where the child is an Indigenous child or has a higher risk of developing serious illness from COVID-19;
  - b. where a service closes to undertake required activities in response to COVID-19 (such as a deep clean of the service); or
  - c. where a service is unable to provide care due to not being able to meet educator to child ratio requirements due to educators isolating.
6. These amendments are entirely beneficial as they enable, but do not require, services to provide fee relief to families that use child care services.
7. New clause 2.3 of Schedule 3 also prescribes that for the period 27 January 2022 to 30 June 2022, where a service does not have sufficient educators to meet the educator to child ratio requirements prescribed by the Education and Care Services National Law, due to educators having to isolate or self-quarantine due to COVID-19, as a circumstance when a service is exempt from enforcing payment of gap fees. This is also a beneficial amendment, as it enables, but does not require, services to provide fee relief to families whose children cannot attend child care due to educators unable to provide care due to isolation or self-quarantine requirements.



8. Amendments to paragraph 8(4B)(b) of the Principal Rules also ensure that from 27 January 2022 to 30 June 2022, CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed, in the below circumstances:
  - a. if the service is closed because it is undertaking an activity required by a government agency to respond to health risks associated with COVID-19;
  - b. if the service is closed because it cannot meet educator to child ratio requirements because its educators are required to isolate or self-quarantine by a health agency due to COVID-19.
9. Amendments to clause 3.1 of Schedule 3 to the Principal Rules apply from 1 January 2022. These amendments provide families with additional allowable absences for absence days between 1 January 2022 to 28 February 2022, or 3 March 2022 to 30 April 2022 for services in Western Australia, to help offset absence days taken due to children not attending care during the peak of the COVID-19 Omicron wave and ensure there is continued subsidised fee relief for families with children enrolled in child care. The period for Western Australia is of the same duration, but commences later than the period in the other states and territories because Western Australia is expected to experience the peak of the COVID-19 Omicron wave later than the other states and territories. This amendment will ensure families will not need to use up their existing allowable absence allocation if their children do not attend child care during the peak of the COVID-19 Omicron wave.
10. New subclause 3.2(5) of Schedule 3 to the Principal Rules also applies from 1 January 2022. These amendments provide families with additional allowable absences for absence days in the period between 1 January 2022 and 28 February 2022 (or between 3 March 2022 and 30 April 2022 for children enrolled at a service in Western Australia) for absence days that occur before the first day of attendance or after the last day of attendance at the service. Ordinarily, families are not entitled to allowable absence days if the absence is before the first day of attendance or after the last day of attendance at the service. This amendment ensures where such an absence day occurs between 1 January 2022 and 28 February 2022 (or 3 March 2022 and 30 April 2022 for services in Western Australia), during the peak of the COVID-19 Omicron wave, families will be able to access allowable absence days and help ensure there is continued subsidised fee relief for families enrolled in child care.
11. New subclause 3.2(6) applies from 1 December 2021. New subclause 3.2(6) provides families with additional allowable absences where the absence occurs between 1 December 2021 and 30 June 2022 and occurs within six days before the child's first attendance or after the child's last attendance, and where the child is unable to attend care due to the child or member of the child's household having to isolate due to COVID-19. This ensures parents to continue to receive CCS even when the child is not attending care due to isolation requirements.

12. These amendments are entirely beneficial as they provide financial benefits for child care users.

### **Section 3: Authority**

13. This provision provides that the Amendment Rules are made under section 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act), which allows the Minister to make rules required or permitted to be prescribed by either the Family Assistance Act or the Family Assistance Administration Act.

### **Section 4: Schedules**

14. This section provides that the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) are amended as set out in the Schedule to the Amendment Rules.

## **SCHEDULE 1 – Amendments**

### **Part 1 – Coronavirus response amendments**

#### **Item 2**

15. Paragraph 8(1)(g) and subsection 8(4B) of the Principal Rules provides that CCS is not payable for a session of care that was not provided because a service is closed, unless an exception applies. This item amends subsection 8(4B) of the Principal Rules to add new exceptions.
16. CCS will be payable for a session of care that occurred between 27 January 2022 and 30 June 2022 where the service is closed:
  - a. to conduct an activity required by a government agency to deal with COVID-19 health risks (for example, undertaking a deep clean of the service)
  - b. because it does not have sufficient educators to meet the educator to child ratio requirements as prescribed in the Education and Care Services National Law, due to one or more of its educators having to isolate or self-quarantine due to COVID-19.
17. The effect of these amendments is that CCS will be payable for sessions of care that the service would otherwise have provided if it was not closed, or if one or more of its educators were not required to isolate or self-quarantine due to COVID-19. The amendments clarify when CCS is payable in respect of COVID-19 service closures, helping services remain financially viable and providing fee relief to parents.

### Items 1, 3 and 5

18. Subsection 201B(1A) of the Family Assistance Administration Act allows the Minister's rules to prescribe particular events or circumstances in which a provider is not required to take reasonable steps to enforce payment of gap fees.
19. The amendments made by Items 1, 3 and 5 add a new exemption that allows services to not enforce payment of gap fees for children who are at higher risk of severe illness from COVID-19, or if they are Indigenous children.
20. Currently, paragraph 2.1(4)(c) of Schedule 3 to the Principal Rules specifies that one of the conditions that must be met for a service to be exempted from enforcing the payment of gap fees, under the general COVID-19 pandemic exemption, is that subclause 2.1(5), (6), (7), (8), (9), (10), (11), (12) or (13) applies to the session of care.
21. Item 5 inserts subclause 2.1(14), which provides that where the session of care occurs on a day between 27 January 2022 and 30 June 2022, the service will be exempt from enforcing payment of gap fees if the child is Indigenous or has a higher risk of developing serious illness from COVID-19 due to a medical condition or disability as certified by a medical practitioner.
22. Item 1 inserts a definition of "Indigenous child" into section 4 of the Principal Rules. "Indigenous child" is defined to mean "a child who is an Aboriginal person or a Torres Strait Islander within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*." The *Aboriginal and Torres Strait Islander Act 2005* defines an "Aboriginal person" as a person of the Aboriginal race of Australia and "Torres Strait Islander" as a descendant of an indigenous inhabitant of the Torres Strait Islands.
23. Item 3 is a technical amendment to add a reference in paragraph 2.1(4)(c) to include the new condition for not enforcing payment of gap fees.

### Item 4

24. Currently paragraph 2.1(11)(a) provides that outside school hours services are exempt from enforcing payment of gap fees between 1 December 2021 and 30 June 2022 if there is a government agency direction or advice that applies to all primary public schools in a geographic area providing that not all primary public school children are permitted to attend school on-site and full-time. Paragraph 2.1(11)(b) provides that services that are not outside school hours services are exempt from enforcing payment of gap fees between 1 December 2021 and 30 June 2022 if there is a government agency direction or advice that applies to all services in the area providing that not all children are permitted to attend child care.
25. Item 4 amends paragraph 2.1(11)(b) to also apply to outside school hours services to ensure those services are not required to enforce payment of gap fees for care where access to child care is restricted by government direction due to COVID-19. Previously, outside school hours services were only exempt from the requirement to

enforce payment of gap fees when there was a government direction to restrict access to full-time, on-site schooling that applied to all primary public schools in their area, due to COVID-19. This amendment will ensure outside schools hours services will now also be exempt from the requirement to enforce payment of gap fees where access to child care is restricted by government direction due to COVID-19. This provides fee relief for parents and helps maintain enrolments, ensuring services' financial viability.

#### Items 6 and 7

26. Clause 2.2 of Schedule 3 to the Principal Rules provides the circumstances where a service is exempt from enforcing payment of gap fees when the service is closed.
27. Item 7 adds a new subparagraph 2.2(1)(a)(vi) to add an additional circumstance, which is when the service must close in order to undertake an activity required by a government agency in response to COVID-19 health risks. For example, a government agency may require the service to conduct a deep clean, and the service may need to close for a brief period to do this. The amendment requires the service to close for a reasonable period. That is, the service should not remain closed for longer than necessary to undertake the required activity.
28. This amendment ensures services have the option to not collect payment of gap fees from parents when the service is closed for this reason.
29. Item 6 is a technical amendment that removes the word "and" from subparagraph 2.2(1)(a)(v).

#### Item 8

30. Subparagraph 2.2(1)(a)(i) of Schedule 3 to the Principal Rules provides that there is an exemption from enforcing payment of gap fees when a service is closed in accordance with government agency advice or requirements due to the COVID-19 pandemic.
31. Item 8 inserts new paragraph 2.2(1)(d) to make it a condition that the service must retain a copy of the relevant advice or requirement to close. This amendment helps to ensure that services are closing in appropriate circumstances based on government advice or requirements.

#### Item 9

32. This item amends subparagraph 2.2(2)(b)(i) of Schedule 3 to the Principal Rules to provide an end date for the period that services are exempt from enforcing payment of gap fees when the service closed in accordance with government agency advice or requirements due to the COVID-19 pandemic.

33. Subparagraph 2.2(2)(b)(i) currently specifies one of the two possible end dates of the relevant period. That end date is the last day in the period that the government agency (including a health agency) advises or requires the child care service, or the part of the child care service, to be closed.
34. This item replaces this possible end date with “the last day on which a circumstance in subparagraph (1)(a) applies” so the period of the exemption aligns with the expanded circumstances listed in subparagraph (1)(a) as amended by item 7.

#### Item 10

35. This item adds a new clause 2.3 of Schedule 3 to set out the circumstances where services are exempt from enforcing payment of gap fees because there are insufficient educators at the service to provide care to the child.
36. New clause 2.3 provides that where a service does not have sufficient educators to provide care for the child because one or more educators must isolate or self-quarantine in accordance with government requirements, the service is not obliged to collect gap fees from parents. Services are required to use their best efforts, for example engaging relief staff or amending staff rosters to cover additional hours, to ensure there are sufficient educators to provide care to all children at the centre and meet educator to child ratios.
37. The amendment ensures that services are not obliged to collect gap fees from parents in circumstances where services are unable to provide care to the child due to educators having to isolate or self-quarantine due to government requirements in relation to COVID-19.
38. New subclause 2.3(2) provides that this period of exemption applies from 27 January 2022 to 30 June 2022.
39. It remains a condition of eligibility for CCS, under paragraph 85BA(1)(b) of Family Assistance Act, that an individual, or the individual’s partner, has incurred a liability to pay for the session of care under a complying written arrangement. Whether an individual, or the individual’s partner, has incurred a liability to pay for a session of care by a service that is closed will depend on the terms of the complying written arrangement and the Australian Consumer Law.

#### Items 11 and 14

40. Part 3 of Schedule 3 to the Principal Rules prescribes the circumstances, for the purposes of subparagraph 10(2)(c)(ii) and subsection 10(2AA), that a session of care will be taken to be provided to a child.
41. Items 11 and 14 amend the headings to clause 3.1 and 3.2 to reflect the changes to these clauses, which provide extra allowable absences “for certain period of high COVID-19 case numbers”.

### Items 12 and 13

42. These amendments provide families with additional allowable absences for absence days between 1 January 2022 to 28 February 2022, or 3 March 2022 to 30 April 2022 for services in Western Australia, to help offset absence days taken due to children not attending care during the peak of the COVID-19 Omicron wave and ensure there is continued subsidised fee relief for families with children enrolled in child care.
43. Under subsection 10(2) of the Family Assistance Act, a child who does not attend any part of the session of care of care (i.e. is absent), may be eligible for CCS for that absence if they have not exceeded their allocation of allowable absence days for the year or if a reason prescribed the Minister's rules applies to the absence.
44. *Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) Minister's Rules 2021* prescribed an extra 10 allowable absence days for the 2021-22 financial year, in addition to the existing 42 allowable absence days to help offset absence days taken as a result of the impact of COVID-19.
45. These amendments will provide for additional allowable absence days, in addition to the current 52 allowable absence days, for absences during the peak of the COVID-19 Omicron wave in Australia.
46. Item 13 inserts new subclauses 3.1(8) and (9) into the Principal Rules. New subclause 3.1(8) provides for additional allowable absences for a day that falls between 1 January 2022 and 28 February 2022 for services not located in Western Australia. New subclause 3.1(9) provides for additional allowable absences for a day that falls between 3 March 2022 and 30 April 2022 for services located in Western Australia.
47. The period for Western Australia differs from the other states and territories because Western Australia is expected to experience the peak of the COVID-19 Omicron wave later than the other states and territories.
48. Item 12 is a technical amendment to add reference to subclauses 3.1(8) and (9) as new circumstances where an absence will be counted as an allowable absence.

### Item 15

49. Subparagraph 10(2)(b)(ii) of the Family Assistance Act provides that a child care service is taken to have provided a session of care to a child on a day (on which the child did not attend the session of care) if the day is not before the day the child first attended a session of care provided by the service. Subparagraph 10(2)(b)(iii) provides that a child care service is taken to have provided a session of care to a child on a day if the day is not after the last day the child attended a session of care by a child care service before the child ceased to be enrolled for care by the service.
50. This item adds further circumstances in which, for the purposes of subsection 10(2A) of the Family Assistance Act, subparagraph 10(2)(b)(ii) or (iii) of that Act does not

apply. The amendments expand the circumstances in which families can use allowable absences before their first day or after their last day of attendance.

51. The expanded circumstances include:
  - a. if the service is located in Western Australia, where the absence day (whether before the first day of attendance or after their last day of attendance) occurs between 3 March 2022 and 30 April 2022;
  - b. if the service is not located in Western Australia, where the absence day (whether before the first day of attendance or after their last day of attendance) occurs between 1 January 2022 and 28 February 2022;
  - c. between 1 December 2021 and 30 June 2022, where the absence occurs within six days of the child's first attendance day or last attendance day, and the child or a member of the child's immediate household is required to isolate or self-quarantine by a health agency because of COVID-19.
52. These amendments ensure that where the child does not attend child care during the peak of the COVID-19 Omicron wave in Australia or where the child is unable to attend child care because they or a member of their household is isolating, CCS will still be paid for these absences.

#### Item 16

53. Subsection 200B(1A) provides that the Minister's rules may prescribe circumstances in which one or more weeks covered wholly or partly by a period of emergency or disaster are not to be counted towards the 14 weeks after the child last attended a session of care at the service, which would ordinarily result in the child ceasing to be enrolled.
54. Currently, paragraph 5.1(1) of Schedule 3 to the Principal Rules provides that a circumstance in which a week does not count towards the 14 weeks since the child last attended a session of care includes any week in a period of at least 10 continuous weeks, where a service is in a "COVID-19 hotspot for a period beginning on or after 23 June 2021".
55. Item 16 amends paragraph 5.1(1)(a) of Schedule 3 to provide that the service is in a "COVID-19 hotspot for a period between 23 June 2021 and 30 June 2022". This amendment provides an end date to this measure, as Government policy is that there will be no more Commonwealth-declared "COVID-19 hotspots" after 80 per cent vaccination coverage is reached within a state or territory.

## **Part 2 – Local area emergency amendments**

### **Items 17 and 18**

56. Items 17 and 18 move the definition of ‘period of local emergency’, which previously appeared in section 6 of the Principal Rules, to the Definitions section of the Principal Rules.
57. Where the Department decides that a period of local emergency exists for a local government area, it may publish this on the Department’s website and in communications with the sector. This practice provides certainty for the sector that the rules relating to periods of local emergency apply. Item 17 adds a note to the definition of ‘period of local emergency’ to describe this practice.

### **Item 19**

58. Item 19 amends the heading to section 5B of the Principal Rules, to clarify that the section relates to days on which sessions of care are taken to be provided when there are “absences before child’s first attendance or after child’s last attendance”.

### **Item 20**

59. Item 20 adds new section 5C into the Principal Rules to provide additional allowable absences for absence days taken between 23 February 2022 and 30 June 2022, when the service that the child attends is closed during a period of local emergency, or the child cannot attend the session of care during the local emergency (for example, the child may be prevented from attending the child care service due to widespread flooding affecting the area).

### **Items 21, 22, 23 and 24**

60. Items 21, 22, 23 and 24 are technical amendments that are required as a result of adding new section 54B into Division 1A of Part 5 of the Principal Rules.

### **Item 25**

61. Item 25 adds new section 54B into the Principal Rules to provide that for the period between 23 February 2022 to 30 June 2022, a service is exempt from enforcing payment of gap fees when the child did not attend any part of a session of care because the service, or part of the service, is closed as a direct result of a period of local emergency, or a child did not attend a session of care as a direct result of a



period of local emergency. The amendment ensures that services will not be obligated to collect gap fees from parents in these circumstances.

62. For example, these circumstances might include where:
  - a. A child might not be able to attend because they are unable to travel to the service;
  - b. A child might not be able to attend because the service had to temporarily reduce the number of children it provides care to as a result of the period of local emergency. (Note: Under section 175 of the Education and Care Services National Law, a provider must notify the Regulatory Authority of the State or Territory of any incident that requires the provider to close, or reduce the number of children attending, the service for a period.)

#### Item 26

63. Part 4 provides for a one off, business continuity payment of \$10,000 (called the South East Queensland and NSW Flood Support payment) to providers of child care services that closed for 8 or more consecutive days commencing on a day the service would normally open, or any 8 or more total days (whether consecutive or not) on which they would ordinarily provide care, during the Local Area Emergency, as a consequence of the impacts of the flood events in New South Wales and South East Queensland in February and March 2022. For example, for a service that normally operates on weekdays (and closes weekends and public holiday), the first day of the period of 8 or more consecutive days must commence on a weekday (other than a public holiday), but the remaining days may include weekends and public holidays.
64. These payments will ensure providers receive immediate relief for such services, and will assist services with immediate operational costs such as temporary premises, clean up, repairs, replacement of equipment, or wages for affected staff. A provider will only be eligible for one South East Queensland and NSW Flood Support payment per service, subject to the provider and service meeting the requirements in Division 2 to Part 6 of the Principal Rules.
65. Section 205C of the Family Assistance Administration Act provides for business continuity payments to be made to approved child care providers whose services have been adversely financially impacted by the emergency or disaster. Section 205C provides that additional eligibility criteria (if any), the period for which the emergency business continuity payments are payable, and the amount of the business continuity payments (or the way in which they are calculated) will be set out in the Minister's rules. Section 205C also provides that an 'emergency or disaster' includes an emergency or disaster prescribed by the Minister's rules.
66. Item 26 adds new Division 2 to Part 6 of the Principal Rules to provide for the making of emergency business continuity payments to approved child care providers affected by a period of local emergency.

67. New section 60A defines 'Local Area Emergency' as 'the period of local emergency that has been the emergency or disaster situation declared by the Department for certain local government areas and that occurs in the period in section 60D.' Section 60D prescribes a period beginning on 23 February 2022 and ending on 1 April 2022, which corresponds with a period beginning on the first day of the Local Area Emergency declarations in relation to the flood events that began in February. It also includes a note providing that in 2022, a list of Local Area Emergencies declared by the Department could be viewed on the Department's website. New section 60A also defines 'South East Queensland and NSW Flood Support payment' as a business continuity payment under section 205C of the Family Assistance Administration Act that is payable in accordance with Division 2.
68. New section 60B provides the purpose of Division 2 is to set out the matters in relation to the South East Queensland and NSW Flood Support payments for providers whose services are located in areas affected by a period of local emergency. New subsection 60B(2) prescribes the emergency that was the subject of the Local Area Emergency as an emergency or disaster, for the purposes of paragraph 205C(2)(a) of the Family Assistance Administration Act.
69. New section 60C provides the eligibility criteria for the South East Queensland and NSW Flood Support payment.
70. First, the provider must make an application for the South East Queensland and NSW Flood Support payment, in the form and manner determined by the Secretary, on or before 30 April 2022.
71. Second, the service must be closed or have reduced the number of children attending the service due to the Local Area Emergency. Services that closed before the Local Area Emergency are not eligible.
72. For example, the service could be closed due to flood-related reasons such as flood damage to buildings that have resulted in the premises becoming unsafe for children, or the inability to meet educator to child ratio requirements (as required under the Education and Care Services National Law) due to educators being prevented from traveling to work.
73. However, a service that closed in January 2022 (before a Local Area Emergency) to undertake renovations would not be eligible, even where the Local Area Emergency may have delayed its reopening.
74. A service may be required to reduce the number of children attending for example where:
  - a. one or more rooms in the service have been closed due to flood damage or safety concerns, including where the service cannot meet the required educator to child ratios as required under the Education and Care Services National Law;
  - b. an educator at a family day care service has to close for eight or more days due to flooding at the premises where care is usually provided;

- c. an In Home Care educator cannot provide care for eight or more days due to flooding (e.g. in a family's home) and is unable to arrange alternative care that has been approved by the Department.
- 75. Third, the service must be closed or have reduced the number of children attending the service:
  - a. for eight or more consecutive days, commencing on a day the service normally operate, during the Local Area Emergency; or
  - b. any eight or more days (whether consecutive or not) on which the service would ordinarily operate, during the Local Area Emergency.
- 76. Although the period of eight consequence days must commence on a day the service normally operates, the remainder of the eight days may include days the service does not normally operate, such as weekends or public holidays.
- 77. This period of eight or more days must be during the Local Area Emergency and fall between 23 February 2022 and 1 April 2022. A service's ordinary operating hours are a matter notified to the Secretary under section 55 of the Principal Rules. Where a service has closed or reduced the number of children attending the service, it must report the incident that caused the closure or reduction in number of children attending, to the State Regulatory Authority under Regulation 175 of the Education and Care Services National Regulations.
- 78. Fourth, the provider did not enforce payment of gap fees in relation to each of the sessions of care that a child did not attend but would otherwise have been provided, during the period that the service is closed or reduced the number of children attending the service.
- 79. Fifth, the provider has agreed to provide priority access to families impacted by the Local Area Emergency. For example, a provider would need to provide priority access to families impacted by the flooding, such as families that temporarily relocate from the area but wish to resume child care at the service in the future.
- 80. New section 60D prescribes the period to which the South East Queensland and NSW Flood Support payment relates. This period is the period between 23 February 2022 and 1 April 2022. The start date, 23 February 2022, corresponds with the first day of the Local Area Emergency declarations in relation to the flood events that began in February.
- 81. New section 60E prescribes the amount of \$10,000 as the amount of the South East Queensland and NSW Flood Support payment.
- 82. The new South East Queensland and NSW Flood Support payments will support services by providing immediate financial relief and assist services in reopening after being affected by severe flooding. These amendments are intended to provide stable income for the child care sector, protecting their financial viability and allowing them to continue to operate into the future to support families' wellbeing.
- 83. The South East Queensland and NSW Flood Support Payments will enable services to re-open as soon as possible, ensure parents can return to work and prevent

disruptions to children's attendance at child care. The payments will reduce financial pressure on services experiencing the immediate impact of the floods, assisting services to cover costs such as clean-up, and staff wages, while revenue is being impacted.

### **Part 3 – Commonwealth-supported Early Years Education Program (EYEP) replication trial**

84. The Commonwealth-supported EYEP replication trial replicates the EYEP model at four centre-based day care services, including a co-developed model of education and care for Aboriginal or Torres Strait Islander children in an Indigenous-specific site.. The Commonwealth, along with philanthropic and State government partners, will provide funding for the establishment, operation and evaluation of four EYEP replication sites over four years as part of a time-limited replication trial to improve the evidence base on intensive ECEC interventions and transform lifetime trajectories for participating children experiencing significant disadvantage.
85. It is part of the Closing the Gap Implementation Plan measure that will contribute to Closing the Gap Outcomes 3 and 4 (preschool enrolment and school readiness), build the evidence base on what works in early childhood education and care (ECEC) for vulnerable and disadvantaged children and is expected to have positive impacts on developmental drivers of school readiness, including cognitive skills, resilience and socio-emotional development.
86. The EYEP model is a multi-disciplinary model of intensive early childhood education and care, infant mental health and family support for highly vulnerable and disadvantaged children. The model is designed to redress harm and overcome trauma to support children's learning and development in partnership with their families. Children under three years of age are referred to the three-year program through child protection or family services and must meet two or more identified risk factors to participate.
87. Families and children receive a combination of high-quality education and care and wrap-around support, including access to infant mental health clinicians, family support practitioners, centre coordinators, pedagogical leaders and qualified early childhood teachers who are all employed within the Program.
88. The Amendment Rules also amend the Principal Rules to ensure the availability of Additional Child Care Subsidy (ACCS) (child wellbeing) to participants of the Commonwealth-supported EYEP replication trial. The Amendment Rules prescribe participation in the Commonwealth-supported EYEP replication trial as:
  - a. a circumstance in which a child is taken to be at risk of serious abuse or neglect; and
  - b. a circumstance for which an ACCS (child wellbeing) determination may be in place to up to 52 weeks.

89. As risk factors are assessed as part of acceptance into the Commonwealth-supported EYEP replication trial, frequent reassessment is not considered necessary. By deeming Commonwealth-supported EYEP replication trial participants to be ‘at risk’ and enabling eligibility determinations to be made every 52 weeks (as opposed to every 13 weeks), these amendments will support the Commonwealth-supported EYEP replication trial by providing certainty of ACCS (child wellbeing) for Commonwealth-supported EYEP replication trial participants, minimise administrative requirements, and address disincentives to participation in replication trial.
90. One of the conditions of eligibility for ACCS (child wellbeing) is that either of the following is in effect in relation to the child for the week in which the session of care is provided:
- a. a certificate given by the provider under section 85CB of the Family Assistance Act that they consider the child is or was at risk of serious abuse or neglect on a day (an at risk day); or
  - b. a determination made by the Secretary under section 85CE of the Family Assistance Act that a child is or was at risk of serious abuse or neglect.
91. Subsection 85CA(4) of the Family Assistance Act provides that the Minister’s rules may prescribe circumstances in which a child is or is not taken to be at risk of serious abuse or neglect.

#### Items 27 and 28

92. Item 27 inserts new paragraph 10(j) into the Principal Rules. New paragraph 10(j) prescribes that a child is enrolled at one of the four services participating in the Commonwealth-supported EYEP replication trial will be taken to be “at risk” for the purposes of ACCS (child wellbeing). New paragraph 10(j) will ensure that children who participate in the EYEP replication trial are deemed to be “at risk” and therefore automatically eligible for ACCS (child wellbeing).
93. This amendment will allow providers, for the purposes of section 85CB of the Family Assistance Act, to issue certificates that they consider the child is or was at risk of serious abuse or neglect on a day, and for the Secretary, for the purposes of section 85CE of the Family Assistance Act, to determine that children participating in the Commonwealth-supported EYEP replication trial are eligible for ACCS (child wellbeing) because the Minister’s rules prescribe this as a circumstance in which the child is taken to be at risk of serious abuse or neglect.
94. Item 28 inserts new paragraph 11B(c) to prescribe a circumstance for extending the maximum period when an ACCS (child wellbeing) certification and/or determination can be in place, from 13 weeks to up to 52 weeks. That circumstance is where the child is enrolled at one of the four services participating in the Commonwealth-supported EYEP replication trial.

95. New paragraphs 10(j) and 11B(c) will apply from between 1 July 2022 to 30 June 2026, which is the period the Commonwealth-supported EYEP replication trial will run.
96. This amendment provides certainty for providers and children participating in the Commonwealth-supported EYEP replication trial to have access to ACCS to support program retention at the four services participating in the trial. This amendment supports the measure set out in the Commonwealth's Closing the Gap Implementation Plan to build the evidence base on the impact of intensive ECEC and wraparound models for vulnerable and disadvantaged children.

#### **Part 4 – Amendments to appropriation**

##### **Items 29 and 30**

97. Subsection 233(1) 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.
98. Subsection 233(3) provides that if any grant payments are prescribed in the Minister's Rules in accordance with subsection 233(2) of the Family Assistance Administration Act, the Minister must also prescribe the total amount that may be paid by special appropriation in respect of a financial year for all of those grant payments.
99. Subsection 233(5) provides that the Minister may also prescribe the total amount that may be paid in respect of a specific grant payment prescribed by the Minister's Rules.
100. Items 29 and 30 amend subsections 78(4) and (5) of the Principal Rules respectively, to increase the appropriation cap for 2021-22 from \$4 million to \$22.4 million. This is to provide additional financial support to the early childhood education and care sector in response to the significant impacts of the COVID-19 pandemic and flood emergency on services, which has led to an increased number of applications for the Community Child Care Fund (CCCF) Special Circumstances Grant Opportunity . The CCCF Special Circumstances Grant Opportunity helps services operating for a disadvantaged or vulnerable community remain open when they are otherwise at a high risk of temporary or permanent closure due to financial viability issues resulting from an unforeseen event or circumstance, such as the COVID-19 pandemic.

##### **Item 31**

101. As set out above, subsection 233(3) of the Family Assistance Administration Act provides that if any grant payments are prescribed in the Minister's Rules in accordance with subsection 233(2) of that Act, the Minister must also prescribe the total amount that may be paid by special appropriation in respect of a financial year for all of those grant payments.
102. Subsection 233(5) provides that the Minister may also prescribe the total amount that may be paid in respect of a specific grant payment prescribed by the Minister's Rules. Section 78 of the Minister's Rules currently prescribes payments made for the purposes of an agreement under the CCCF Special Circumstances Grant Opportunity.
103. This item adds new subsections 78(6) and (7) to the Principal Rules to prescribe the appropriation cap for agreements under the CCCF Special Circumstances Grant Opportunity in 2022-23 as \$7.7 million.
104. This will provide support to services operating for a disadvantaged or vulnerable community by helping them remain open when they are otherwise at a risk of temporary or permanent closure, ensuring disadvantaged and vulnerable communities have access to child care services.