

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Secretary of the Department of Education**

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

***Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025***

### **AUTHORITY**

The *Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025* (Amendment Rules) are made under subsection 85GB(2) 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, amend, or vary any such instrument.

### **PURPOSE AND OPERATION**

The Amendment Rules amend the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to require a provider's application under section 194A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act) for approval for the purposes of the family assistance law to include a Statement of Tax Record (STR) issued by the Australian Taxation Office (ATO). This requirement will apply to applications from prospective providers made on or after 1 April 2025.

For a new provider to be granted approval for the purposes of the family assistance law in respect of one or more child care services, the provider must be a fit and proper person to be involved in the administration of child care subsidy (CCS) and additional child care subsidy (ACCS) (paragraph 194C(b) of the Administration Act). In determining whether a provider is a fit and proper person, the Secretary must have regard to (among other things) any non-compliance by the provider with a law of the Commonwealth or a State or Territory (paragraphs 194E(1)(a) of the Administration Act).

An STR issued by the ATO indicates whether the provider has had or not had a satisfactory engagement with the Australian tax system. Accordingly, the requirement for new child care provider applicants to provide an STR with their application provides relevant evidence to assist in assessing whether providers are fit and proper persons.

## **IMPACT ANALYSIS**

The Office of Impact Analysis (OIA) has advised that the proposed amendments are assessed as being reasonable and proportionate and therefore a detailed policy impact analysis is not required (OIA reference: OIA24-08564).

## **COMMENCEMENT**

The Amendment Rules will commence on 1 April 2025.

## **CONSULTATION**

The Department of Education (the Department) undertook consultation with the Early Childhood Education and Care Reference Group (ECECRG) in November 2024. The ECECRG membership is comprised of key stakeholders with representation across the breadth of the child care sector. The ECECRG provided their support for the new requirements relating to STRs.

In 2022, the ECECRG were engaged to seek support and volunteers to participate in a trial to assess the benefits and feasibility of using the STR as a suitability and integrity risk assessment tool in the administration of CCS. The trial included feedback surveys from trial participants that provided valuable insights relating to processes, technical challenges and communication strategies.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### *Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025*

The *Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025* (the 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 Instrument amends the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to require a provider's application under section 194A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act) for approval for the purposes of the family assistance law to include a Statement of Tax Record (STR) issued by the Australian Taxation Office (ATO). This requirement will apply to applications from prospective providers made on or after 1 April 2025.

For a new provider to be granted approval for the purposes of the family assistance law in respect of one or more child care services, the provider must be a fit and proper person to be involved in the administration of child care subsidy (CCS) and additional child care subsidy (ACCS) (paragraph 194C(b) of the Administration Act). In determining whether a provider is a fit and proper person, the Secretary must have regard to (among other things) any non-compliance by the provider with a law of the Commonwealth or a State or Territory (paragraphs 194E(1)(a) of the Administration Act).

An STR issued by the ATO indicates whether the provider has had or not had a satisfactory engagement with the Australian tax system. Accordingly, the requirement for new child care provider applicants to provide an STR with their application provides relevant evidence to assist in assessing whether providers are fit and proper persons.

#### **Human rights implications**

The Instrument engages the following rights:

- the rights of parents and children in **articles 3 and 18** of the *Convention on the Rights of the Child* (CRC).

#### Rights of parent and children

Article 3 of the CRC states 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.

Article 18 of the CRC 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 Instrument promotes the rights of parents and children by strengthening the existing requirement for a new provider to be a fit and proper person in order to be granted approval for the purposes of the family assistance law and therefore be able to administer CCS and ACSS. In particular, an STR issued by the ATO indicates whether the provider has had or not had a satisfactory engagement with the Australian tax system. Accordingly, it will inform the Secretary's consideration as to the provider's non-compliance with Commonwealth, State or Territory Laws.

#### Conclusion

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

**Secretary of the Department of Education, Tony Cook PSM**

## ***Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025***

### **EXPLANATION OF PROVISIONS**

#### **Section 1: Name**

1. This is a formal provision specifying that the name of the instrument is the *Child Care Subsidy Amendment (Application for Approval) Secretary's Rules 2025* (Amendment Rules).

#### **Section 2: Commencement**

2. This section provides that the Amendment Rules will commence on 1 April 2025.

#### **Section 3: Authority**

3. This section provides that the Amendment Rules are made under the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act). Specifically, subsection 85GB(2) of the Family Assistance Act enables the Secretary to make, by legislative instrument, rules (referred to as the Secretary's Rules) prescribing matters: (a) required or permitted by the Family Assistance or the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) to be prescribed by the Secretary's Rules; or (b) necessary or convenient to be prescribed for carrying out or giving effect to certain provisions of the Family Assistance Act and the Family Assistance Administration Act. The Family Assistance Administration Act permits the Secretary's Rules to prescribe certain matters relating to the approval of providers of child care services for the purposes of the family assistance law.

#### **Section 4: Schedules**

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

### **SCHEDULE 1 –AMENDMENTS**

#### ***Child Care Subsidy Secretary's Rules 2017***

##### **Item 1: Section 6**

5. Item 1 renumbers existing section 6 of the Principal Rules as subsection 6(1). This amendment is consequential to the amendment in item 2.

## Item 2: At the end of section 6

6. Item 2 adds a new subsection (2) at the end of section 6 of the Principal Rules.
7. Section 6 of the Principal Rules prescribes information that must be contained in an application by a provider under section 194A of the Family Assistance Administration Act for approval for the purposes of the family assistance law in respect of one or more child care services that the provider operates or proposes to operate. Relevantly, under subsection 194A(1) of the Family Assistance Administration Act, any of the following (a 'provider') may apply to be approved: an individual, a body corporate, a partnership, an entity or body prescribed by the Minister's Rules.
8. In addition to the information required to be included in an application under current section 6 of the Principal Rules, new subsection 6(2) introduces new requirements relating to the provision of Statements of Tax Record (STRs). Specifically:
  - a. if the provider is a partnership, an application must include separate STRs issued by the Australian Taxation Office (ATO) to the partnership and each of the partners (paragraph 6(2)(a));
  - b. if the provider is applying in their capacity as a trustee of a trust, an application must include separate STRs issued by the ATO to the trustee and the trust (paragraph 6(2)(b));
  - c. if the provider is neither a partnership nor applying in their capacity as a trustee of a trust, an application must include an STR issued to the provider by the ATO (paragraph 6(2)(c)). Effectively, this requirement applies to all other types of providers that may apply for approval under subsection 194A(1) of the Family Assistance Administration Act, namely individuals, bodies corporate and entities or bodies prescribed by the Minister's Rules, which are not applying in the capacity as trustee.
9. In all instances, the STRs included in an application must have a date of issue no more than 30 days before the date of the application.
10. For clarity, the Note under new subsection 6(2) explains what providers new paragraph 6(2)(c) applies to.
11. The new requirements relating to STRs only apply to new providers seeking approval for the purposes of the family assistance law, not to existing providers seeking to add new child care services to their approval (noting that these are separately dealt with by section 196A of the Family Assistance Administration Act and section 7 of the Secretary's Rules).

## Item 3: At the end of the instrument

12. Item 3 inserts new Part 5 into the Primary Rules. Part 5 will set out transitional and application provisions relating to the Primary Rules, including new section 14, which relates to the application of changes made by the Amendment Rules. Section 14 has

the effect the amendments to section 6 in Schedule 1 to the Amendment Rules apply to applications for approval under section 194A of the Family Assistance Administration Act made on or after 1 April 2025. A note has also been added to make it easier for readers to identify the amendments affected by the application provision in section 14.