Explanatory Statement

Child Care Subsidy Minister's Amendment (Building on the Child Care Package and Other Measures) Rules 2020

Purpose and Authority

The *Child Care Subsidy Minister's Amendment* (*Building on the Child Care Package and Other Measures*) *Rules 2020* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

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

In December 2019, the *Family Assistance Legislation Amendment (Building on the Child Care Package) Act 2019* (Building on the Child Care Package Act) amended the Family Assistance Act and *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act). Consequential amendments to the Principal Rules are required for some of the amendments to those Acts to take effect. The Amendment Rules also make a number of clarifying and technical amendments.

Schedule 1, Part 1 – amendments commencing day after registration

Rules in this schedule include:

- a definition for which state and territory government payments will be able to cover an individual's out-of-pocket fees without affecting that individual's Commonwealth child care subsidies. This will help ensure the cost of child care is not a barrier to vulnerable and disadvantaged children attending early childhood education and care;
- consequential amendments in relation to In Home Care to align the Principal Rules with the primary legislation as the Building on the Child Care Package Act incorporated In Home Care more fully into the primary legislation;
- the minimum operating requirements for
    - where a provider voluntarily suspends their approval for a period of time, and
    - clarifying providers' obligations in relation to working with children and police checks.

Schedule 1, Part 2 – amendment commencing 30 June 2020

The rule in this schedule will repeal the transitional backdating rule that was made to ensure continuity of Additional Child Care Subsidy (ACCS) (child wellbeing) payments for the period from 2 July 2018 and before 1 July 2019.

Schedule 1, Part 3 – amendment commencing 13 July 2020

The rule in this schedule will enable individuals in receipt of ABSTUDY to be eligible for ACCS (grandparent). This rule will commence on 13 July 2020 (being the first CCS fortnight to wholly occur in the 2020-21 financial year) to account for amendments being made to the Child Care Subsidy IT System to give operational effect to this provision.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Schedule 1, Part 4 – amendment commencing 21 September 2020 unless the Secretary nominates an earlier start date

The rule in this schedule will prescribe the circumstances in which Commonwealth child care subsidies can be paid where the child is absent before the first day or after the last day of physical attendance in an enrolment. This will ensure families are not unfairly disadvantaged by a rule intended to prevent the inappropriate use of absence provisions by some child care providers.

This rule will commence either on 21 September 2020 or an earlier date fixed by the Secretary by a notifiable instrument. This power has been included to account for amendments being made to the Child Care Subsidy IT payment System that may be available prior to 21 September 2020.

Schedule 2 – Repeal of the *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018*

Schedule 2 repeals the *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018* as the substantive contents of this instrument will now be incorporated into the Principal Rules by these Amendment Rules.

Commencement

The table in section 2 sets out when the Amendment Rules measures will commence. The table provides that:

- amendments under Schedule 1, Part 1 and Schedule 2 will commence after the day after registration;
- amendments under Schedule 1, Part 2 will commence on 30 June 2020;
- the amendment under Schedule 1, Part 3 will commence on 13 July 2020; and
- the amendment under Schedule 1, Part 4 will commence on 21 September 2020 or a day fixed by the Secretary by a notifiable instrument.

Consultation

The Early Childhood Education and Care Reference Group – Rules Working Group members were consulted on 17 January 2020 and 11 February 2020 and were generally supportive of measures. On 5 February 2020, a group of stakeholders were consulted specifically in relation to In Home Care related amendments and were supportive of those amendments.

Regulation Impact Statement

The proposed amendments do not significantly vary from what the Office of Best Practice and Regulation (OBPR) previously considered for the regulatory impacts of the changes in the Building on the Child Care Package Act, meaning that further regulatory consideration/impact was not required.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Abbreviations used in this Explanatory Statement

Amendment Rules means the *Child Care Subsidy Minister's Amendment (Building on the Child Care Package and Other Measures) Rules 2020*;

ACCS means Additional Child Care Subsidy;

Building on the Child Care Package Act means *Family Assistance Legislation Amendment (Building on the Child Care Package) Act 2019*;

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*;

Family assistance law means the Family Assistance Act and the Family Assistance Administration Act and relevant subordinate legislation made under either of those enactments;

IHC means in home care;

National Law means the *Education and Care Services National Law Act 2010* (VIC) (and equivalent legislation in other state and territory jurisdictions);

Principal Rules or Minister's 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); and

Secretary's Rules means the *Child Care Subsidy Secretary's Rules 2017* (being the rules made by the Secretary under subsection 85GB(2) of the Family Assistance Act).

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

DETAILED EXPLANATION OF PROVISIONS

Amendments relating to Child Care Subsidy payments

Prescribing third party payments

The amendments prescribe payments for the purpose of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act, which has the effect that such payments are not deducted for the purpose of determining the amount of an individual's hourly session fee, when determining the hourly rate of CCS the individual is entitled to. Such prescribed payments can partially or wholly cover the co-contribution amount that would otherwise be payable by those individuals.

The amendments prescribe certain State or Territory government payments that provide fee relief to families for the purpose of enabling disadvantaged or vulnerable children to participate in early childhood education and care.

Item 16 inserts a new section 15C, which prescribes certain third party payments for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act. Those are payments:

- by a State or Territory government or authority for the purpose of enabling disadvantaged or vulnerable children to participate in early childhood education and care

- to the approved provider of an approved child care service to reduce (wholly or in part) the amount that needs to be paid for care provided to that vulnerable child.

Previously, where a third party made a payment to a child care provider specifically to reduce the amount an individual is required to pay for a session of care, the provider must reduce the reported session fee by the payment amount. The Amendment Rule allows payments made by a State or Territory, or an authority of a State or Territory, to support a disadvantaged or vulnerable family to reduce (wholly or in part) their child care fee liabilities.

For example: Nikki receives financial assistance from the Queensland government through a specific program for her child Courtney to attend child care because Nikki has a current Australian Government Health Care Card. The Queensland government makes this payment directly to Nikki's child care provider. Nikki is charged $100 for a 10 hour session of care and the Queensland government program pays her child care provider $15 for that session of care on her behalf. Previously, Nikki's child care provider was required to reduce Nikki's child care fees by this payment before CCS was calculated. Under these amendments, the child care provider does not need to reduce the $100 fee and the Queensland government payment can cover Nikki's co-contribution amount.

This calculation occurs as follows (for the purposes of illustrating this scenario the example excludes withholding amounts):

- $100 fee/10 hours = $10 hourly session fee
- Assuming Nikki's applicable percentage is 85 percent based on her combined annual family income, CCS entitlement for the session would be:
    - $10 hourly session fee x 85 per cent x 10 hours = $85
- This means Nikki has a co-contribution amount of $15 to pay her child care service for that session:

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

    - $100 fee – $85 CCS = $15
- The Queensland government payment can then be used to reduce Nikki's co-contribution amount:
    - $15 co-contribution amount – $15 Queensland government payment = $0

This amendment inserts a new section 15C which prescribes, by definition, particular payments made to families who have been identified by State and Territory governments as being disadvantaged or vulnerable. This will ensure that those families are able to receive the benefit of specific funding from a State or Territory government, and to ensure that, where appropriate, cost is not a barrier to the child accessing early childhood education and child care.

For the purposes new section 15C, children in vulnerable or disadvantaged circumstances would include, but not be limited to, children from families who have complex and multiple challenges, which adversely affect the child's social and developmental opportunities and outcomes. Challenges could include poverty, child neglect, a primary carer with a health or disability issue, and domestic violence or other traumas, where these factors have the effect of restricting the child's access to early education and child care.

Item 20 inserts new section 47A into the Principal Rules to make it a condition for continued approval that, where an individual receives a payment for the purposes of reducing their co-contribution amount, the provider must provide the individual with information about the effect of this payment. The department will make this information available for approved providers from the department. This will help ensure individuals have information available to them that explains why they have no or reduced child care costs and what will happen if the prescribed third party payment ceases.

Amendments relating to absences

Prescribed reasons for absences before first and after last physical attendance at session of care

Section 10 of the Family Assistance Act defines when a child care service provides a session of care to a child for the purposes of the Family Assistance Act and the Family Assistance Administration Act. This is relevant as CCS and ACCS are only payable in respect of sessions of care, so where CCS and ACCS are not payable in respect of a session of care which the child was enrolled in but did not attend, the child's parents or guardians may need to pay full fees for the session of care.

Subsection 10(1) provides that a session care is provided to a child if either:

- the child is enrolled for care by the service and the child *attends* the session of care or any part of it; or
- if the child does not attend any part of the session of care—the service is *taken to have provided* the session of care to the child under subsection 10(2) or (3).

Subsection 10(2) deals with when a child care service may be taken to have provided a session of care to a child in respect of an initial 42 days in a financial year where the child was enrolled for care on that day but did not attend – 'an **absence day'**.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Subparagraphs 10(2)(b)(ii) and (iii) have the effect that CCS is not payable in respect of any absence days that occur before a child physically attends the service for the first time, or after the child last physically attends the service, for the current enrolment period.

Subsection 10(3) deals with when a child care service may be taken to have provided a session of care to a child, where the child was enrolled for care on that day but did not attend, and there have already been 42 absence days for that child under subsection 10(2) – an '**additional absence day**'.

Subparagraphs 10(3)(c)(ii) and (iii) have the effect that CCS is not payable in respect of any additional absence days before a child physically attends the service for the first time, or after the child last physically attends the service, for the current enrolment period.

Subsections 10(2A) and (3A) enable the Principal Rules to prescribe circumstances in which subparagraph 10(2)(b)(ii) or (iii) and 10(3)(c)(ii) and (iii) respectively do not apply; that is, allow for absences days and additional absence days, before the child first attended care, and after the child last attended care where those circumstances occur.

Item 46 inserts a new section 5B, which is made for the purposes of subsection 10(2A) and (3A) of the Family Assistance Act and sets out the circumstances when subparagraphs 10(2)(b)(ii) and (iii) and 10(3)(c)(ii) and (iii) of that Act do not apply.

New subsection 5B(2) prescribes the relevant circumstances.

New subsection 5B(3) defines '**extended period'**, which is the limited time period within which the relevant circumstances under subsection 5B(2) must take place in. Each of the following periods are the extended period:

- the period beginning on the sixth day before the first day on which the child attends a session of care provided by the child care service and ending on that first attendance day (i.e. up to seven days, including any absences for sessions of care on the day the child first attends the service);
- the period beginning on the last day a child attends a session of care provided by the child care service to the child, whilst the child is still enrolled for care by the service, and ending on the sixth day after that last attendance day (i.e. up to seven days, including any absences for sessions of care on last day child attends the service).

The extended period in which the prescribed circumstances can apply is limited to a six day period on either side of the child's first day of attendance and last day of attendance. This limited time period is to ensure that while families are not unfairly disadvantaged where their child is unable to attend care due to an unavoidable or tragic incident, appropriate constraints are still put in place to mitigate the risk of this measure being exploited by unscrupulous child care services or individuals.

The prescribed circumstances at new subsection 5B(2) are:

- both:
    - the child is absent from a session of care on a day in the extended period because of a reason specified in subsection 10(4) of the Family Assistance Act. Such reasons are: the individual who cares for the child, the individual's partner or another person with whom the child lives is ill; the child is attending

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

preschool; alternative care arrangements have been made for the child on a pupil free day; or a reason prescribed by the Principal Rules applies; and

- if the reason for the child's absence is that the individual who cares for the child, the individual's partner or another person with whom the child lives is ill, and the absence is an additional absence day, a medical certificate must have been provided. However, if the absence is a prescribed absence, meaning the child has not used more than 42 absence days in a financial year, a medical certificate is not required;

- the child care service has changed ownership during the extended period. In such circumstances, the child's previous enrolment by the former owner of the service will be ceased, and a new enrolment for the child with the new owner will be created, although practically the child continues to attend care at the same service. As a consequence of the new enrolment for the child if, for example, the child is unable to attend a session of care at the start of the new enrolment due to illness, then technically this would be considered to be an absence before the child's first physical day of attendance under their new enrolment. Prescribing the circumstance of a change in ownership of a child care service is intended to address this issue to ensure a fairer outcome for parents and child care providers;

- the child care service closes during the extended period and the child attends another service of the approved provider. For example, the service might close due to building maintenance issues and the child care provider arranges alternate care arrangements for children at another of the provider's services. This would require a new enrolment for the child at a new service. However, if the child is absent at the start of this new enrolment, then technically this would be considered to be an absence before the child's first physical attendance at the service. By prescribing this circumstance, it will be fairer for parents and providers where the child has had to move services for reasons outside of their control;

- the family of the child experiences a tragedy within the period beginning 28 days before the day in the extended period on which the absence occurs.

New subsection 5B(4) provides non-exhaustive examples of when the ***family of the child experiences a tragedy***. These are:

- an immediate family member of the child experiences a serious injury or illness or dies. An immediate family member is intended to refer only to the child's parents and siblings. A reference to a serious injury or serious illness is intended to encompass injuries or illnesses which result in hospitalisation or serious medical intervention, such as a broken limb or other critical or life threatening illnesses or injuries such as heart attack, stroke, cancer and paralysis;

- an individual who cares for the child ceases to be a member of a couple, including because the individual's marriage, de facto relationship or registered relationship has ended. The reference to the 'individual who care for the child' is intended to refer to the child's parents or legal guardians. It is not intended to refer to a person who cares for the child on an ad hoc or infrequent basis such as a baby sitter or child care educator;

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

- the child, an individual who cares for the child or an immediate family member is the victim of a serious crime; or domestic violence. As above, the reference to an immediate family member is intended to refer only to the child's parents and siblings. A serious crime is intended to refer to crimes that are of a serious enough nature to be reported to the police. Examples include assault and robbery;

- an event has occurred that has resulted in the child's principal home being lost or sustaining major damage. The reference to child's principal home is to the home of the child's parents or legal guardians that the child lives at 50 per cent or more of the time. For example, if the child's parents are divorced and he or she lives with one parent 60 per cent of the time and the other parent 40 per cent of the time, the home the child lives at 60 per cent of the time is his or her principal home. Principal home does not include the home of the child's other relative, such as the child's grandparent, unless that relative is the child's legal guardian, whom the child lives with. Examples of events which results in a home being lost or sustaining major damages include: bush fires, floods and house fire. The reference to an event resulting in 'major damage' is intended to encompass events which result in the house being unsafe to live in. General plumbing, electrical or building maintenance issues are not intended to be encompassed.

Notably, the circumstances set out in subsection 5A(4) are not exhaustive. However, the intention is that the term 'family of the child experiences a tragedy' should be interpreted in an objective manner to ensure the appropriate use of this measure.

Amendments relating to absences for when a service is closed

Section 85BA of the Family Assistance Act sets out the circumstances in which an individual is eligible for CCS for a session of care provided by an approved child care service. Subparagraph 85BA(1)(c)(iii) allows the Minister to make rules that prescribe circumstances where an individual is not eligible for the session of care.

Item 6 repeals paragraph 8(1)(g) of the Principal Rules and substitutes with a new paragraph 8(1)(g) that stipulates that where the session of care is taken to have been provided on a day covered by subsection 8(4B), the individual is not eligible for CCS.

Item 9 inserts subsections 8(4B) and 8(4C) into the Principal Rules to clarify what the 'day' specified in paragraph 8(1)(g) is.

The insertion of subsection 8(4B) into the Principal Rules provides that absences are not payable (because an individual is not eligible for CCS) where the service is closed (except for public holidays and local emergencies). This aligns with current policy guidance to child care providers and services around when an absence may be validly claimed where a service is closed.

The insertion of subsection 8(4C) into the Principal Rules provides that where a service is closed on a public holiday and one or more consecutive days (disregarding Saturday and Sunday), then absences are not payable (because an individual is not eligible for CCS).

To illustrate –

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Where a service is closed due to a public holiday, for example Anzac Day on 25 April, any absences submitted for that day would be payable:

Mon	Tue	**Wed***	Thur	Fri
23	24	**25**	26	27

Absence not payable on a public holiday

However, if the service is also closed on either side of 25 April (i.e. Tuesday 24 April or Thursday 26 April, or both days), the absence on the public holiday is not payable:

Mon	Tue	**Wed**	*Thur***	Fri
23	24	**25**	*26*	27

* **bold** indicates the public holiday

***italics* indicates that the service was closed that day

Another example for the Christmas period is set out below:

Mon	**Tue**	**Wed**	*Thur*	*Fri*	*Sat*	*Sun*	*Mon*	**Tue**	Wed
24	**25**	**26**	*27*	*28*	*29*	*30*	*31*	**1**	2

Where a service closes for the whole Christmas period, that is, Christmas Day to New Year's Day (inclusive), the public holidays on Christmas Day (25 December), Boxing Day (26 December) and New Year's Day (1 January), absences would not be payable and nor would any consecutive days that are not public holidays (i.e. 27, 28, and 31 December, with Saturday 29 December and Sunday 30 December being disregarded).

Amendments relating to Additional Child Care Subsidy payments

Amendments relating to ACCS (transition to work)

Section 85CK of the Family Assistance Act sets out the eligibility requirements that must be met for an individual to be eligible for ACCS (transition to work) for a session of care provided by an approved child care service to a child. Paragraph 85CK(1)(c) enables additional eligibility requirements to be prescribed by the Principal Rules.

Section 13 of the Principal Rules sets out the prescribed additional eligibility requirements for the purpose of paragraph 85CK(1)(c). One of the prescribed requirements is the "activity requirements", set out in subsection 13(2) of the Principal Rules. To meet this requirement, the individual must meet at least one of: the "study requirements", the "job search requirements"; or the "work/training requirements".

The study requirements are set out at subsection 13(7) of the Principal Rules. Subparagraph 13(7)(c)(iii) currently refers to "an occupation listed on the Skills Shortage List".

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

The Skills Shortage List has been superseded by the *Ratings Summary—Labour Market Analysis of Skilled Occupations* as the key source of information from the Australian Government about occupational skill shortages.

Item 12 amends subparagraph 13(7)(c)(ii) to omit the reference to the "Skills Shortage List" and replace it with a reference to the "the list known as the *Ratings Summary—Labour Market Analysis of Skilled Occupations* (prepared by the Department, and as existing from time to time)" to ensure that the correct and updated skills shortage list is referred to.

The *Ratings Summary—Labour Market Analysis of Skilled Occupations* is updated on a six monthly basis. The six monthly updates ensure that it contains accurate and contemporary information about the occupational skills shortages in Australia, which benefits industry, employers and job seekers. The *Ratings Summary—Labour Market Analysis of Skilled Occupations* is a publicly available document that can be readily accessed, free of charge, in its most up-to-date form, on the Department's website.

Subsection 85GB(2A) of the Family Assistance Act allows documents to be referenced in the Principal Rules as in force or existing from time to time.

Item 13 inserts a note to the end of subsection 13(7) which states that the *Ratings Summary—Labour Market Analysis of Skilled Occupations* could in 2020 be viewed on the Department's website (http://www.education.gov.au).

Amendments relating to ACCS (child wellbeing)

Subsection 204K(1) of the Family Assistance Administration Act sets out reporting requirements that apply to approved providers that give a certificate under section 85CB of the Family Assistance Act in respect of a child whom the provider considers to be at risk of serious abuse or neglect (**ACCS (child wellbeing) certificate**). Specifically, subsection 204K(1) requires providers, no later than six weeks after the ACCS (child wellbeing) certificate takes effect, to give an appropriate State/Territory support agency notice that the provider considers the child is or was at risk of serious abuse or neglect. Under the *Family Assistance Legislation Amendment (Building on the Childcare Package) Act 2019*, references to "appropriate State/Territory body" were replaced with references to "appropriate State/Territory support agency".

Item 33 amends subsection 54(5) to replace the reference to "appropriate State/Territory body" with "appropriate State/Territory support agency". This amendment merely updates the terminology used in the Minister's rule for consistency with the terminology used in the primary legislation.

Amendments relating to ACCS (grandparent) – prescribing ABSTUDY as a recognised payment for ACCS (grandparent) eligibility

Subsection 85CJ(1) of the Family Assistance Act sets out the eligibility requirements that must be met for an individual to be eligible for ACCS (grandparent) for a session of care provided by an approved child care service to a child.

These requirements include, at paragraph 85CJ(1)(d), that at the start of the CCS fortnight in which the session of care is provided the individual or the individual's partner is receiving a payment of a type listed in subparagraphs 85CJ(1)(d)(i) to (vi). The types of payments listed

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

include social security pensions, social security benefits and service pensions. Subparagraph 85CJ(1)(d)(vi) also enables a payment to be prescribed by the Principal Rules.

Item 45 of the Amendment Rules inserts a section 12A, which prescribes for the purposes of subparagraph 85CJ(1)(d)(vi), a payment made under the ABSTUDY scheme to the extent that it provides means tested allowances.

A payment under the ABSTUDY scheme is not a social security benefit or social security payment under the *Social Security Act 1991*, despite it providing means tested financial assistance to students and apprentices. The inclusion of an ABSTUDY payment, to the extent that it provides a means tested allowance, as a prescribed payment under the Principal Rules is intended to ensure that ABSTUDY recipients are not precluded from eligibility for ACCS (grandparent) on account of receiving ABSTUDY rather than another payment which *is* classed as a social security benefit or social security payment.

Application, transitional and savings provisions for ACCS-related amendments

Item 42 inserts a new Division 1 - Amendments made by the Child Care Subsidy Minister's Amendment (Building on the Child Care Package and Other Measures) Rules 2020, Part 6A - Application, savings and transitional provisions.

New section 60A sets out the definition that are relevant to the new Division 1 of Part 6A.

New section 60B provides that the amendments of subsection 13(7) (transition to work—study requirements) by the Amendment Rules, apply in relation to the first CCS fortnight to occur wholly after the commencement day, and each later CCS fortnight.

The above amendment affects individuals' eligibility for ACCS (transition to work). Applying the amendments with effect from the first CCS fortnight to occur wholly after the commencement day, will enable individuals' entitlements to CCS and ACCS to be calculated more neatly and in a manner consistent with the legislative framework, which is based on CCS fortnights.

Amendments relating to In Home Care

Eligibility criteria for IHC

Section 85BA of the Family Assistance Act sets out criteria for CCS eligibility for a session of care. This includes, at paragraph 85BA(1)(e), a power allowing the Minister to prescribe additional eligibility criteria for CCS for a prescribed child care service type. Where the Minister prescribes additional eligibility criteria under 85BA(1)(e), it is a condition of eligibility that the Secretary determine such those criteria are met.

Item 10 of the Amendment Rules inserts new Division 1AA – Requirements for eligibility for kinds of approved child care services into the Principal Rules. The new Division 1AA contains section 8AA, which sets out the requirements that must be met by an individual in order to be eligible to receive CCS for a session of care that is provided by an approved IHC service. Those requirements are that:

- the individual can demonstrate no other kinds of approved care are suitable or available; and

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

- at least one of the following:
    - the parents or carers of the child work non-standard or variable hours;
    - the parents or carers of the child are geographically isolated from other types of approved child care;
    - the family has challenging or complex needs.

The primary purpose of this amendment is to enable targeted eligibility for IHC to be prescribed and clarified in the Principal Rules, and to enable an assessment of whether individuals meet that eligibility criteria to occur, generally prior to such individuals accessing IHC.

A decision regarding an individual's eligibility for CCS, including any finding about whether the individual meets the eligibility for IHC as prescribed under new section 8AA, is subject to internal and external merits review provisions under the family assistance law.

Requirements that must be met for eligibility for a session of care provided by an In Home Care service

Section 85ECA of the Family Assistance Act precludes CCS eligibility for a session of care provided by an IHC service unless any requirements prescribed by the Minister's rules are met. Section 85ED of the Family Assistance Act precludes CCS eligibility for a session of care provided to a child if that child is a member of a class prescribed by the Minister's rules.

Item 14 of the Amendment Rules relies on a combination of the rulemaking powers under sections 85ECA and 85ED to repeal and substitute a new Division 5, Requirements for eligibility for in home care. The amended division sets out a range of eligibility requirements that must be met in order for CCS to be payable in in respect of a session of care provided by an IHC service.

New subsection 15A(1) of Division 5 provides that where there are multiple children being cared for by an IHC service in a session of care, the approved provider of the IHC service or the eligible individual must nominate a child (or children) in respect of whom CCS or ACCS is to be paid (subsection 15A(1)). Subsection 15A(2) further operates to prescribe, for the purposes of section 85ED of the Family Assistance Act, that CCS will not be payable for a session of care for any child who is not the 'nominated child' as set out in subsection 15A(1). **Item 2** inserts a definition for 'multiple child session of care' to mean a session of care provided by an in home care service to more than one child, for the purposes of new section 15A of the Principal Rules.

In effect, section 15A operates to ensure that the hourly rate cap specified for in home care services in subclause 2(3) of Schedule 2 to the Family Assistance Act applies in respect of a maximum of 1 child for care provided to up to 5 children during the same session of care in the same home, and a maximum of 2 children if the care is provided to 6 to 10 children.

Furthermore, the figures and calculations in the Note and Examples accompanying section 15A have been updated to reflect the new hourly rate cap for IHC.

Section 15B of Division 5 prescribes further requirements that must be met for an individual to be eligible for a session of IHC. These include:

- where a session of care is provided to more than one child, *all children* must be from the same family;

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

- where a session of care is provided to more than one child, the approved provider must ensure that for each 5 children provided with the care, no more than 4 children are of preschool age or under;
- that a session of care provided by an IHC service must be provided in the home of the individual who is eligible for CCS (i.e., the family home), except where the Secretary determines there are exceptional circumstances exempting this requirement from being met;
- that an IHC educator must not provide care to a child related to the educator or otherwise bring a child related to the educator to a session of in home care provided to other children.

These prescribed requirements will ensure the integrity of the administration of IHC by only permitting CCS to be paid for sessions of IHC in circumstances where critical elements relating to the provision of that care by IHC services are met. These requirements have been prescribed to also reflect important child safety obligations imposed on approved providers under the Education and Care Services National Law, whose requirements IHC services are generally exempt from under that law.

Item 15 repeals the old section 15B of the Principal Rules (as the provision has been amended and moved to another part of the Principal Rules). **Items 21 and 24** are consequential amendments to current section 48A of the Principal Rules arising from the introduction of new sections 15A and 15B.

Allocation of places for In Home Care

Section 198A of the Family Assistance Administration Act allows the Minister to prescribe certain rules in relation to the allocation of child care places to approved child care services (the allocation rules), including:

- which child care services are subject to the allocation rules (paragraph 198A(c)); and
- what constitutes a child care place in respect of a specified class of approved care services paragraph 198A(ba)

Items 27 and 28 amend section 49A of the Principal Rules to add a subsection which provides that for the purposes of paragraph 198A(c) of the Family Assistance Administration Act, an approved child care service that is an in home care service is subject to the allocation rules.

Item 29 inserts new section 49AA which defines, for the purposes of paragraph 198A(ba) of the Family Assistance Administration Act, what a 'child care place' is in respect of an approved in home care service. A 'full-time place' for the purposes of IHC is equivalent to 35 hours of subsidised care provided to a child per week. New section 49AA also makes clear that for the purposes of allocating places to an IHC service, it is possible to allocate a fraction of a full-time place. This definition of a child care place for IHC accords with guidance already set out in the IHC National Guidelines and IHC Handbook and reflects that, unlike other care types, IHC is an administratively capped program with 3200 places nationally.

Item 31 amends section 49C of the Principal Rules to clarify that the maximum number of places that can be allocated to all in home care services nationally is 3200 full-time equivalent places. The amendment also inserts a definition of full-time equivalent, for the purposes of this provision, to mean 35 hours of care per week for a child.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Other technical amendments for In Home Care

Item 1 updates the definition of IHC service to denote that the term is short for 'in home care service'. This definition has been amended because in home care is now a care type mentioned in the table in subclause 2(3) of Schedule 2 of the Family Assistance Act with its own CCS rate cap, and the pre-existing definition of IHC service is no longer required.
Item 7 amends subsection 8(4A) to add 'and' to the end of paragraphs (a) and (b) of the subsection. This ensures that all the matters set out in that subsection must be met in order to make out an exception to the application of paragraph 8(1)(ea) of the Principal Rules, which provides that no-one is eligible for a session of care where it is provided by an IHC educator to children who are in one of the relationships with the IHC educator, or the IHC educator's partner set out in that paragraph.

Item 8 amends subsection 8(4A) of the Principal Rules to include foster relationships to the existing list of relationships in paragraph 8(4A)(d). This amendment ensures that where a child is under the guardianship of a foster parent, they will be able to be cared for by certain members of their extended 'foster family' (such as foster grandparents, uncles, aunts and cousins) if those family members are IHC educators, and as long as the other criteria in subsection 8(4A) are also met. This will ensure that vulnerable and disadvantaged children living with a foster family in very remote areas, and who cannot reasonably access other IHC educators, may be provided with sessions of IHC for which CCS is payable.

Amendments relating to ensuring the integrity of child care subsidy system

Setting minimum operating periods for providers whose approvals are subject to voluntary suspensions

Section 195C of the Family Assistance Administration Act states that it is a condition for continued approval of an approved provider that each child care service of the provider operates for a minimum period.

The minimum period, as specified in subsection 195C(2), is 48 weeks per year, or if the service is an outside school hours care service, 7 weeks per year. Subsection 195C(3) allows the Minister, by Minister's rule, to prescribe a different minimum operating period to that specified in subsection 195C(2). Additionally, subsection 195C(4) permits the Secretary to determine an alternative minimum period for a service if the Secretary is satisfied that it is appropriate for the service to operate for a shorter period because special circumstances affect a service.

Item 19 inserts a new section 46A into the Principal Rules, which prescribes an alternative minimum period for the operation of a child care service for the purpose of subsection 195C(3) in circumstances where the provider's approval (in respect of one or more services) has been suspended by request of the provider under subsection 197AA(3) of the Family Assistance Administration Act. The purpose of the new section 46A is to alleviate the minimum operating period requirements for services that have been granted a voluntary suspension.

Subsection 46A(2) prescribes that where a service is not an outside school hours care service, the minimum period of operation for the service for a year is nil if the period of suspension that occurs in the year is more than 48 weeks. Otherwise, where a service is not an outside school hours care service, the minimum period of operation for the service for a year is 48 weeks less the period of suspension that occurs in the year.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Subsection 46A(3) stipulates that for an outside school hours care service, if the period of suspension that occurs in the year is more than 5 weeks, the minimum period of operation for the service for that year is nil. An outside school hours care service that only provides care during school holiday weeks has a maximum of 12 weeks in which to meet the required minimum operating period of 7 weeks (except in unusual situations where a school is closed for more than 12 school holiday weeks). A suspension period of more than five weeks would make it impossible for an outside school hours care service to meet the minimum period of 7 weeks in the year in which the suspension occurs (as specified in paragraph 195C(2)(b)).

Strengthening and clarifying working with children and police check requirements

The Building on the Child Care Package Act made various changes section 195D of the Family Assistance Administration Act, including:

- updating the language from 'a working with children card' to a working with children check'; and
- requiring that individuals who are providing care on behalf of the provider hold current working with children checks.

The Principal Rules are being amended to ensure consistency with, and provide for the implementation of these legislative amendments.

The Family Assistance Administration Act establishes (at 194C) provider eligibility rules that a provider must meet in order to be approved. Paragraph 194C(f) gives the Minister power to prescribe additional provider eligibility rules by the Minister's rules.

These additional eligibility rules are prescribed by section 43 of the Principal Rules. They include a requirement to obtain police checks for certain categories of people (persons with management or control, family day care educators and in-home care educators). The police check must be undertaken no more than 6 months before the date of the application for provider approval.

The Principal Rules are being amended to impose additional obligations on providers to obtain police checks whenever they engage categories of people (persons with management or control, persons with responsibility for day-to-day operation of the service, family day care educators and in-home care educators).

Item 18 repeals section 43 of the current Principal Rules and substitutes a new section 43, which prescribes additional criteria that a provider must satisfy to be approved for the purposes of the family assistance law for the purposes of paragraph 194C(f) of the Family Assistance Administration Act.

Subsection 43(2) imposes requirements in respect of persons with management or control of the provider. Persons with management or control of the provider is defined in section 194F of the Family Assistance Administration Act and includes the provider's board and executive, a person with significant control or influence over the activities of the body, and persons responsible for day-to-day operations. The provider is required to ensure that each person with management or control of the provider:

- Paragraph (a) – holds a current working with children check

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

- Paragraph (b) – had a national police check carried out no more than 6 months before the person commenced to hold that position
- Paragraph (c) – unless the person is responsible for the day-to-day operation of a service of the provider, has the following checks carried out:
    - for individuals – a *National Personal Insolvency Index check* and an Australian Securities and Investments Commission (ASIC) *personal name extract search*;
    - for corporations – an Australian Securities and Investments Commission (ASIC) current and history company extract search
- Paragraph (d) – if the person is responsible for the day-to-day operation of a service of the provider and the person becomes responsible for the day-to-day operation of another service of the provider – has a national police check carried out no more than 6 months before the person commenced to hold that other position.

Subsection 43(3) imposes requirements in respect of family day care (FDC) educators. Those requirements are that the provider must ensure that each FDC educator:

- Paragraph (a) – holds a current working with children check
- Paragraph (b) – had a national police check carried out no more than 6 months before the person commenced to hold that position
- Paragraph (c) – if the FDC educator becomes an FDC educator with another FDC service of the provider – has a national police check carried out no more than 12 months before the person commenced to hold that other position.

Subsection 43(4) imposes requirements in respect of in-home care (IHC) educators. Those requirements are that the provider must ensure that each IHC educator:

- Paragraph (a) – holds a current working with children check
- Paragraph (b) – had a national police check carried out no more than 6 months before the person commenced to hold that position
- Paragraph (c) – if the IHC educator becomes an IHC educator with another IHC service of the provider – has a national police check carried out no more than 12 months before the person commenced to hold that other position.

Subsection 43(5) requires a provider to provide written evidence of check required under section 43 upon request.

Items 34 and 35 amend the provider notification requirements in items 10 and 17 of the table in section 55 to complement the changes to section 43 of the Principal Rules. These amendments reflect the change in terminology from working with children 'card' to 'check'.

Defining 'ceases to operate'

Section 197H of the Family Assistance Administration Act provides that the Secretary must cancel the approval of an approved provider where the provider ceases to operate any child care service. Section 197J of the Family Assistance Administration Act similarly provides that the Secretary must vary the approval an approved provider to remove a service if the provider ceases to operate the service. Both sections 197H and 197J provide that 'ceases to operate' has the meaning given by the Minister's rules.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Item 4 inserts new sections 7A and 7B, which define 'ceases to operate' for the purposes of 197H and 197J.

The Secretary has an existing power under section 197F of the Family Assistance Administration Act to cancel a provider's approval where the provider fails to provide care for 3 continuous months. The new subsection 7A(1) enables the Secretary to cancel a provider's approval where the Secretary is satisfied that the provider does not intend to resume providing child care, without waiting 3 months to lapse.

New paragraphs 7A(1)(b) to (e) address various circumstances where the provider ceases to exist, such as registration of a corporation, dissolution of a partnership, or death of an individual.

Subsection 7A(2) displaces subsection 601AH(5) of the Corporations Act, which provides that if a deregistered company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. This has the effect that where a provider has its provider approval cancelled upon being deregistered, it will not automatically have that approval restored upon being reinstated, but must instead make a new application for provider approval. This enables the Secretary to assess, amongst other things, the provider's suitability to operate a child care centre.

Paragraph 7A(1)(f) allows the Secretary to cancel a provider's approval if the Secretary is satisfied that the provider no longer directly controls, manages, directs the provision of care. This is intended to ensure that the provider that has been approved to operate child care services, is actually the operator of those services.

Subsection 7B provides equivalent provisions to paragraphs 7A(1)(a) and 7A(1)(f) for the cancellation of a service where the service ceases to provide care or the provider ceases to manage or direct the service. Because a service is not required to be a separate entity, paragraphs 7A(1)(b) to (e) have been replicated in relation to services.

Streamlining factors to be taken into account in compliance actions

Subsection 52(3) of the Principal Rules sets out the matters the Secretary must take into account in deciding whether to impose a sanction. These matters include whether the behaviour was an isolated incident or part of pattern of behaviour, whether the behaviour resulted in overpayments etc.

Item 32 amends subsection 52(3) of the Principal Rules to remove paragraph (f) (whether the provider's non-compliance is minor or serious in nature) from the matters that the Secretary must take into account in deciding whether or not to impose a sanction. This paragraph is being removed because it largely reflects a conclusion based on the other factors set out in the rest of subsection 52(3).

Miscellaneous technical amendments

Incorporating the Session of Care Determination into Principal Rules

Section 9 of the Assistance Act is a power for the Minister to define the term 'session of care', which are periods of child care in respect of which the following child care payments are able to be made under the Assistance Act:

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

- CCS under section 85BA;
- ACCS (child wellbeing) under section 85CA;
- ACCS (temporary financial hardship) under section 85CG;
- ACCS (grandparent) under section 85CJ; and
- ACCS (transition to work) under section 85CK.

An individual may only be eligible for CCS, and an approved child care provider may only be eligible for ACCS (child wellbeing), in respect of the provision of a session of care by an approved child care service.

The *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018 (the Determination)* previously defined what constitutes a session of care. To reduce the number of legislative instruments on the Child Care Subsidy, the session of care determination is to be incorporated into the Minister's Rules and the Determination revoked.

Item 3 inserts a new section 5A to the Principal Rules that prescribes what constitutes a session of care for the purposes of subsection 9(1) of the Family Assistance Act. The new subsection 5A(2) provides that a session of care is the minimum period of time that a provider charges a fee for providing child care.

Under section 10 of the Assistance Act, a service provides a session of care if the child attends any part of the part of the session of care, or does not attend any part of the session of care, but is taken to have attended under the absence provisions (sub-sections 10(2), (3)). The minimum period prescribed under subsection 5A(2) allows calculation of subsidy entitlements where the child attends only part of the session of care, or was absent from the session of care.

The new subsection 5A(2) specifies the maximum length of time for a session of care and when a session is treated as having occurred.

Subsection 6(2) of the current *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018* provides that a genuine legal liability must arise in respect of the fee for a session of care. This requirement is already contained in paragraph 85BA(1)(b) of the Assistance Act and accordingly, subsection 6(2) of the current *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018* will not be carried across to the Minister's Rules.

Schedule 2 repeals the *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018*, which is now redundant as the matters that were provided for in that instrument are now dealt with the Minister's Rules.

Updating requirements relating to working with children checks

The safety of children is of paramount importance. Section 195D of the Family Assistance Administration Act ensures that this principle is clearly and unambiguously expressed in the Family Assistance Law. Section 195D imposes stringent requirements on approved providers to ensure that care is only ever provided in a safe setting, by individuals who hold a current 'working with children check', rather than a 'working with children card'.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Item 5 repeals and substitutes paragraph 8(1)(c) of the Principal Rules to accurately reflect the language of the primary legislation, which now refers to 'working with children checks', not 'working with children cards'. Additionally, approved providers are no longer required to give the Secretary details of working with children cards, but must instead inform the Secretary if there is a change in the status of an individual's working with children check (as referred to in item 17 of section 55 of the Principal Rules).

Various technical amendments and repeals of transitional provisions

Item 11 of the Amendment Rules amends paragraph 13(6)(a) of the Principal Rules to substitute the reference to 'the Department of Human Services' with 'Services Australia'. This amendment is necessary as, with effect from 1 February 2020, the Department known as Services Australia (formerly known as the Department of Human Services) was established as a new Executive Agency, within the Social Services Portfolio.

Item 17 amends paragraph 16A(4)(b) of the Principal Rules to correct a cross-referencing error in the definition of a 'relevant period'.

Items 22 and 25 amend subsection 48A(8) and paragraph 48A(10)(c), respectively, of the Principal Rules by replacing the words '*Guidelines* published in December 2018' with '*Guidelines,* as existing from time to time'. This is to ensure that the Principal Rules do not need to be updated each time the National In Home Care Guidelines are updated, noting that the document is publicly available on the department's website.

Items 23 and 26 repeals and substitutes the note to subsections 48A(8) and 48A(10) of the Principal Rules by removing any reference to the department's previous website, which is no longer current.

Item 30 amends subsection 49B(2) of the Principal Rules by changing 'the Department of Education and Training' to simply 'the Department' to reduce the need to update the department's to reflect future name changes. Under rules of interpretation, the Department is taken to be the department that from time-to-time administers the legislation that enables the rules.

Items 36, 37, 38 and 40 omit the word 'service' and substitute this with the word 'provider' in sections 57, 59 and 60 of the Principal Rules, wherever occurring. The purpose of this amendment is to align the terminology of the Principal Rules with the primary legislation. **Items 39** and **41** amends subsections 59(1) and 60(1) of the Principal Rules to clarify that business continuity payments are received (and not received) by the *provider* in respect of a child care service.

Division 4A of Part 7 of the Principal Rules reflected a transitional measure which modified section 85CE of the Family Assistance Act by allowing the Secretary to make a determination that a child was at risk of serious abuse or neglect on a day before 1 July 2019, without the approved child care provider that provided care to the child on that day having to apply for such a determination within 28 days of the day of the care. However, Division 4A of Part 7 was drafted without any clear 'end date', which meant that the Secretary's discretionary power could be exercised indefinitely as long as the Secretary was satisfied 'that a child was at risk of serious abuse or neglect' on a day before 1 July 2019 and care has been provided.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Item 44 repeals Division 4A of Part 7 of the Principal Rules to clearly define the transitional period of the modification to section 85CE of the Family Assistance Act and ensure that, moving forward, applications for 'backdated' determinations of ACCS do not have to be determined by the Secretary. This item also repeals Division 7 of Part 7 of the Principal Rules, which reflected transitional measures that have been moved into section 195D of the Family Assistance Administration Act through the Building on the Child Care Package Act and is therefore no longer required.

Repealing transitional provision relating to debt

Section 67 of the Principal Rules prescribes that for a debt arising from overpayments made before the commencement day (being 2 July 2018), a debt arising (and as owed by either an operator or an individual) in relation to overpayments of child care benefit (CCB) or child care rebate (CCR) may also be recovered as if the debt was a debt of CCS or ACCS.

Subsection 67(2) clarifies that a CCB or CCR debt arising after the commencement day, or that is still unpaid on the commencement day, may be recovered by reducing payments of CCS and ACCS (to offset the debt).

Subsection 67(3) states that sections 71E and 71F of the Family Assistance Administration Act apply in relation to a debt of CCR and CCB that arises after the commencement day, or that is still unpaid on the commencement day, as if references to CCS or ACCS were references to CCB or CCR, and references to a provider were references to the relevant operator.

Section 71E enables the Secretary to determine that a debt owed by a provider is instead owed by individual in circumstances where the individual is at fault for the provider's debt (such as where a false or misleading statement of the individual resulted in the provider debt).

Section 71F states that a debt owed by an individual is instead owed by the provider in circumstances where the provider is at fault for the individual's debt (such as where a false or misleading statement of the provider resulted in the individual's debt).

Item 43 repeals subsection 67(3) as this provision is not being, and will not be, utilised for the purpose of applying sections 71E and 71F of the Family Assistance Administration Act in relation to a CCB or CCR debt that arises after the commencement date, or was still unpaid on the commencement date.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Statement of Compatibility with Human Rights

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

Child Care Subsidy Minister's Amendment (Building on the Child Care Package and Other Measures) 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 Minister's Amendment (Building on the Child Care Package and Other Measures) Rules 2020* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

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

In December 2019, the *Family Assistance Legislation Amendment (Building on the Child Care Package) Act 2019* (Building on the Child Care Package Act) amended the Family Assistance Act and *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistant Administration Act). There are several consequential amendments that need to be made to the Principal Rules for several of the amendments in this Act to take effect. The Amendment Rules also make a number of clarifying and technical amendments.

Schedule 1, Part 1 – amendments commencing day after registration

Rules in this schedule include:

- a definition for which state and territory government payments will be able to cover an individual's out-of-pocket fees without affecting that individual's Commonwealth child care subsidies. This will help ensure the cost of child care is not a barrier to vulnerable and disadvantaged children attending early childhood education and care;
- consequential amendments in relation to In Home Care to align the Principal Rules with the primary legislation as the Building on the Child Care Package Act incorporated In Home Care more fully into the primary legislation;
- the minimum operating requirements for
    - where a provider voluntarily suspends their approval for a period of time, and
    - clarifying providers' obligations in relation to working with children and police checks.

Schedule 1, Part 2 – amendment commencing 30 June 2020

The rule in this schedule will repeal the transitional backdating rule that was made to ensure continuity of Additional Child Care Subsidy (ACCS) (child wellbeing) payments for the period from 2 July 2018 and before 1 July 2019.

Schedule 1, Part 3 – amendment commencing 13 July 2020

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

The rule in this schedule will enable individuals in receipt of ABSTUDY to be eligible for ACCS (grandparent). This rule will commence on 13 July 2020 (being the first CCS fortnight to wholly occur in the 2020-21 financial year) to account for amendments being made to the Child Care Subsidy IT System to give operational effect to this provision.

Schedule 1, Part 4 – amendment commencing 21 September 2020 unless the Secretary nominates an earlier start date

The rule in this schedule will prescribe the circumstances in which Commonwealth child care subsidies can be paid where the child is absent before the first day or after the last day of physical attendance in an enrolment. This will ensure families are not unfairly disadvantaged by a rule intended to prevent the inappropriate use of absence provisions by some child care providers.

This rule will commence either on 21 September 2020 or an earlier date fixed by the Secretary by a notifiable instrument. This power has been included to account for amendments being made to the Child Care Subsidy IT payment System that may be available prior to 21 September 2020.

Schedule 2 – Repeal of the *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018*

Schedule 2 repeals the *Child Care Subsidy (What Constitutes a Session of Care) Determination 2018* as the substantive contents of this instrument will now be incorporated into the Principal Rules by these Amendment Rules.

Analysis of human rights implications

The Amendment Rules implement some of the policy objectives of the Building on the Child Care Package Act. The Building on the Child Care Package Act did not represent a material departure from the overall policy objectives of the measures introduced in the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

The Amendment Rules engage many of the human rights which were analysed for passage of the Building on the Child Care Package Act, which are set out below.

The Amendment Rules engage the following rights:

- Articles 2, 3, 18, and 27 of the *Convention on the Rights of the Child* (CRC);
- Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- Article 2, 16, 26 of the *International Covenant on Civil and Political Rights* (ICCPR).

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Rights of parents and child

Article 3(1) of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 3(3) requires institutions and services responsible for the care of children to conform to standards established by competent authorities, particularly in the areas of safety and health.

Article 18(2) requires States Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children

Article 18(3) 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.

Article 27 of the CRC requires that States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The Amendment Rules support one of the primary objectives of the child care package and Building on the Child Care Package Act – to support families to access quality child care. Early learning and child care plays a vital role in the development of Australian children. Their 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 are supporting this objective by enabling state and territory third party payments to cover some or all of the co-contribution of the cost of child care for disadvantaged and vulnerable families. Given that even a small co-contribution to child care fees can be a barrier to some families accessing child care, the Amendment Rules promote access to quality early childhood education and child care for disadvantaged and vulnerable families.

Right to work and social security

Article 9 of the ICESCR recognises the right of everyone to social security. Under the child care package, families who meet basic eligibility criteria are entitled to Commonwealth child care subsidies so long as they meet (or are exempt from) an activity test and their combined annual income is less than $352,453. Additionally, children at risk of serious abuse or neglect, grandparents in receipt of income support payments, families experiencing temporary financial hardship and families transitioning from income support to work are eligible for further support through the Commonwealth's ACCS that ensures children in these families have access to adequate child care.

The Amendment Rules will help ensure families can access Commonwealth child care subsidies up to seven days before/after the child's first/last day of care in limited circumstances, for example where the child is sick. This ensures families are not unfairly disadvantaged and can access subsidies in these legitimate circumstances.

The Amendment Rules also contains amendments to more fully incorporate In Home Care into the Family Assistance Law. In Home Care is a care type available to families where other care options are not available or appropriate. Inserting the In Home Care eligibility requirements into

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

the Principal Rules provides more transparent access to this care type and ensures that vulnerable children and families can benefit from appropriately tailored care arrangements.

The Amendment Rules also support this objective by enabling ABSTUDY recipients to be eligible for ACCS (grandparent) (so long as they meet the other eligibility criteria). This will help remove barriers for individuals receiving such payments to be able to access further Commonwealth assistance.

Right to equality and non-discrimination

The Amendment Rules support the purpose and ethos of Articles 2, 16 and 26 of the ICCPR and Article 2 of the CRC, which is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons.

In particular, Article 2 of the CRC provides that every child has the right to equal treatment, without discrimination of any kind, irrespective of the social origin, property, disability, birth or other status of the child or the child's parents or guardian.

Article 2 of the ICCPR provides that States Parties must undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, without distinction of any kind, such as social origin, birth or other status.

Article 16 of the ICCPR requires that everybody shall have the right to recognition everywhere as a person before the law.

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, States Parties are required to ensure that the law prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as social origin, birth or other status.

The Amendment Rules support families in disadvantaged or vulnerable circumstances, who through the assistance of state and territory governments, will to continue to be able to afford to pay for their children to access early childhood education and care. This facilitates an equal opportunity to access quality education and care arrangements for such children.

Conclusion

The Amendments Rules are compatible with human rights. The Amendment Rules implement a number of measures in the Building on the Child Care Package Act, and improve on the child care package through minor policy refinements and clarifications. There are no material departures from the overarching policy objectives of the measures introduced in the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*. The child care package advanced human rights under the CRC, ICESCR and ICCPR by providing greater access to financial assistance for vulnerable and disadvantaged families, and improving access to a flexible and quality child care system. The measures in the Amendment Rules continue to advance these rights by making this scheme more transparent for families, and more efficient for the Commonwealth to administer.

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246

Dan Tehan
Minister for Education

Authorised Version Explanatory Statement registered 12/03/2020 to F2020L00246