

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Education and Youth

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

#### **Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2021**

##### **AUTHORITY**

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2021* (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 1901*, 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 Minister's Rules 2017* (Principal Rules).

The Amendment Rules extends a measure to support approved providers and families in response to the COVID-19 pandemic, by allowing providers to waive "gap fees" for child care services that have been directed to close, until 30 June 2021.

##### **REGULATORY IMPACT**

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

##### **COMMENCEMENT**

The Amendment Rules commence retrospectively on 31 January 2021. The amendments are beneficial, extending the period for which providers are permitted (but not required) to waive the child care "gap fees", from 31 January 2021 to 30 June 2021.

The amendments do not affect a person's rights so as to disadvantage them, nor impose liabilities on a person in respect of anything they have done or omitted to do before the Amendment Rules are made. Accordingly, subsection 12(2) of the *Legislation Act 2003* does not prevent the instrument's retrospective application.

## **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 on COVID-19 issues.

## 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 Response Measures No. 2) Minister's Rules 2021

The Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2021 (the Amendment Rules) 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 Amendment Rules**

The Amendment Rules extends a measure to support approved providers and families in response to the COVID-19 pandemic, by allowing providers to waive "gap fees" for child care services that have been directed to close, until 30 June 2021.

#### **Human rights implications**

The Amendment Rules engage the following 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 19** of the CRC requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.
- **Article 27** of the CRC recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, social and moral development. Article 27 also requires States Parties to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, where required, provide material assistance and support programmes.

#### How the Amendment Rules engage articles 3, 19 and 27 of the CRC

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

Accordingly, these Amendment Rules which will support children and families to continue to access and/or remain enrolled in quality child care. In particular, the Amendment Rules will extend a measure that permits child care providers waive child care "gap fees" (the difference between the fees charged and the amount of child care subsidy payable on those

fees) when their services have had to close due to the COVID-19 pandemic, from 31 January to 30 June 2021.

### **Conclusion**

The Amendment Rules are compatible with human rights because they promote the protection of human rights.

**Minister for Education and Youth, Alan Tudge**

**CHILD CARE SUBSIDY AMENDMENT (CORONAVIRUS RESPONSE MEASURES No. 2)**  
**MINISTER'S RULES 2021**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This is a formal provision specifying the name of the instrument.

**Section 2: Commencement**

2. Section 2 provides that the Amendment Rules are taken to have commenced on 31 January 2021.

**Section 3: Authority**

3. The Amendment Rules are made under the Family Assistance Act.

**Section 4: Schedules**

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

**Schedule 1 – Amendments**

**Extension of period during which providers can waive gap fees for services**

5. Subsection 201B(1A) of the *A New Tax System (Family Assistance) Administration Act 1999* (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 so-called child care "gap fees" (the difference between the child care fees charged by the provider and an individual's entitlement to CCS in relation to those fees).
6. Section 54A of the Principal Rules permitted providers, up until 31 January 2021, to not recover gap fees for a service where the service was closed because a health agency had advised or required the service to close as a result of the COVID-19 pandemic.
7. As a consequence of the continuing COVID-19 pandemic, the Australian Government understands there may be ongoing potential for ad hoc lockdown restrictions, which

may impact attendance at child care services. Nevertheless, it is important that services that are able to maintain enrolments so that when they are able to reopen, care can continue to be provided. Charging of gap fees for absences while service is closed might incentive families to cancel enrolments. To assist child care services and the families until 30 June 2021, all child care providers will be able to waive gap fees for child care where the service has closed because of health agency advice.

8. Item 1 amends subparagraph 54A(4)(b)(ii) to extend the period for which a provider is not required to take reasonable steps under section 201B of the Family Assistance Administration Act to recover gap fees for all services that are closed because a health agency has advised or required the service to close as a result of the COVID-19 pandemic, from 31 January 2021 to 30 June 2021.
9. This amendment is intended to provide further business continuity for the child care sector and will further enable child care services to provide fee relief to families during the COVID-19 pandemic. As the COVID-19 pandemic makes it difficult for parents to continue paying their child care fees, this amendment will enable child care providers to waive parents' gap fees during periods where the service is closed.