

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. 7) Minister's Rules 2021

AUTHORITY

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) 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, 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

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

- Making provision for the weeks where services are in a COVID-19 hotspot, and the hotspot is for a period of 10 continuous weeks or more, to be disregarded for the purposes of calculating whether a child has not attended care for 14 weeks. These amendments are intended to ensure that enrolments do not cease during periods of extended lockdowns so that families can continue to have assurance that they can send their children to their child care service once the lockdown period ends and not be faced with a debt.
- Making provision for allowable absences in circumstances where an absence occurs after the day a child last attended care and before the child's enrolment with the service has ceased. This applies where the service was in a COVID-19 hotspot for a period of more than 7 continuous days. The amendments are intended to ensure that individuals and services do not incur a debt for sessions of care that occur during periods of lockdown that are after the last physical day of attendance before the child is unenrolled from the service.
- Extending COVID-19 relief measures that were previously only available where the relevant child care service was in a COVID-19 hotspot, to where the child care service is outside a COVID-19 hotspot but the normal place of residence of a customer of the

child care service is inside a COVID-19 hotspot. This will ease the financial burden on families who are unable to send their children to care due to restrictions that apply in relation to where they normally reside.

- Ensuring the continuation of viability support payments to outside school hours care services which are no longer in a COVID-19 lockdown, but which are in a local government area where primary school-aged children are not yet all allowed to return to school. This amendment recognises that outside school hours care services have been particularly affected by the COVID-19 pandemic, and that attendance is likely to continue to be significantly affected until children are back at school.
- Ensuring the continuation of viability support payments to other services in areas that are no longer in a COVID-19 hotspot, but where there are still State or Territory government directions or advice recommending against sending children, or certain categories of children, to child care.
- Amending the reference period for the purposes of the viability support payment for vacation care services for the fortnight overlapping with public school holidays. This amendment recognises that vacation care services receive much higher revenue during school holiday periods when they care for children for full days, rather than just a few hours before or after school.
- Extending allowable absences and the exemption from enforcing gap fees to services in areas that are no longer in a COVID-19 hotspot, but where there are still State or Territory government directions or advice in the period 10 October 2021 to 30 November 2021 recommending against sending children, or certain categories of children, to school or child care.

Each of these measures will provide financial relief to child care services and individuals using child care, who have been adversely affected by the COVID-19 pandemic.

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 – see <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/prime-ministers-exemption-covid-19-related-measures> (accessed as at 22 October 2021). The Amendment Rules fall under this category. The Office of Best Practice Regulation has confirmed that the Amendment Rules meet those exemption requirements.

COMMENCEMENT

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

However, 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.

Amendments to clauses 2.1 apply to sessions of care between 10 October and 30 November 2021. The changes to clause 2.1 allow providers to elect not to enforce gap fees that parents are liable to pay. This provides beneficial fee relief to parents. However, they do not require providers not to enforce gap fees. Providers are contractually entitled to collect gap fees and may choose to continue collecting them.

Amendments to clause 3.1, some of which have effect from 23 June 2021 and some from 10 October 2021, give parents access to additional allowable absences. This means that parents can continue receiving child care subsidy (CCS) even if they are not sending their child to care during periods during periods when there are State or Territory government advice or directions against certain children attending child care.

New clause 3.2 of Schedule 3 applies to sessions of care that occur on or after 12 July 2021. It has the effect that subparagraph 10(2)(b)(iii) does not apply to sessions of care that take place when a service, or the home of the individual eligible for CCS, is in a COVID-19 hotspot lasting more than 7 days. This means that from 12 July 2021, if a child has absences during a period when the service or the individual's home is in a hotspot before becoming unenrolled, those absences will be allowable, meaning the individual will still be eligible for CCS for the sessions. This will have a positive financial effect on those families.

The amendment to subclause 4.5(3) of Schedule 3, which applies to BCP fortnights on or after 23 August 2021, will mean certain providers are eligible for viability support payments for a longer period. This will have a positive financial effect on those providers.

The amendment to clause 4.6 will mean that outside school hours care services that offer vacation care will get a higher viability support payment for a BCP fortnight when overlapping with the public school holidays in a State or Territory, where the first day of the school holidays is on or after 23 August 2021. This is because their viability support payment for this fortnight will be based on their revenue during a previous school holiday period. These services open for longer hours during school holidays and therefore earn a higher revenue during this period.

New clause 5.1 applies to a week that includes 23 June 2021 or commences after 23 June 2021. It provides that if a service, or an eligible individual, is in a COVID-19 hotspot lasting more than 10 continuous weeks, those weeks are to be disregarded for the purposes of subsection 200B(1A) of the A New Tax System (Family Assistance) (Administration) Act 1999 (Family Assistance Administration Act). Usually, a child is unenrolled from a service if they do not attend care for 14 continuous weeks. Once the child is unenrolled from the service, there is no eligibility for CCS for sessions of care provided by that service, unless and until the child is re-enrolled. Clause 5.1 means that a child won't be unenrolled from the service if they fail to attend during a period when the service or the residence of the eligible individual is in a long term COVID-19 hotspot. This means that individuals eligible for CCS won't miss out on CCS for these sessions.

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. The Early Childhood Education and Care Reference Group consists of representatives of peak bodies within the early childhood education and care sector. Feedback from these consultation sessions has been taken into account in the development of the Amendment Rules. For example, the decision to extend relief to families living in hotspots but using services outside of hotspots was based on feedback from stakeholders, as was the decision to extend viability support payments for before and after school care providers until all children return to school on-site full-time.

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. 7) Minister's Rules 2021

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) Minister's Rules 2021* (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

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

- Making provision for the weeks where services are in a COVID-19 hotspot, and the hotspot is for a period of 10 continuous weeks or more, to be disregarded for the purposes of calculating whether a child has not attended care for 14 weeks. These amendments are intended to ensure that enrolments do not cease during periods of extended lockdowns so that families can continue to have assurance that they can send their children to their child care service once the lockdown period ends.
- Making provision for allowable absences in circumstances where an absence occurs after the day a child last attended care and before the child's enrolment with the service has ceased. This applies where the service was in a COVID-19 hotspot for a period of more than 7 continuous days. The amendments are intended to ensure that individuals and services do not incur a debt for sessions of care that occur during periods of lockdown that are after the last physical day of attendance before the child is unenrolled from the service.
- Extending COVID-19 relief measures that were previously only available where the relevant child care service was in a COVID-19 hotspot, to where the child care service is outside a COVID-19 hotspot but the normal place of residence of a customer of the child care service is inside a COVID-19 hotspot. This will ease the financial burden on families who are unable to send their children to care due to restrictions that apply in relation to where they normally reside.
- Ensuring the continuation of viability support payments to outside school hours care services which are no longer in a COVID-19 lockdown, but which are in a local government area where children are not yet all allowed to return to school. This amendment recognises that outside school hours care services have been particularly affected by the COVID-19 pandemic, and that they will continue to struggle financially while children are not all permitted to go to school.

- Ensuring the continuation of viability support payments to other services in areas that are no longer in a COVID-19 hotspot, but where there are still State or Territory government directions or advice recommending against sending children, or certain categories of children, to child care.
- Amending the reference period for the purposes of the viability support payment for vacation care services for the fortnight overlapping with public school holidays. This amendment recognises that vacation care services receive much higher revenue during school holiday periods when they care for children for full days, rather than just a few hours before or after school.
- Extending allowable absences and the exemption from enforcing gap fees to services in areas that are no longer in a COVID-19 hotspot, but where there are still State or Territory government directions or advice in the period 10 October 2021 to 30 November 2021 recommending against sending children, or certain categories of children, to child care.

Each of these measures will provide financial relief to child care services and individuals using child care, who have been adversely affected by the COVID-19 pandemic.

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.
- **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 are in the best interests of the child as maintaining the enrolments of children in child care services in COVID-19 hotspots will ensure that children who need child care will be able to return to continuous, high quality care as soon the COVID-19 hotspot status in their area is lifted.

The Amendment Rules also make amendments that will benefit the financial viability of child care services, as well as the affordability of child care services. This promotes the best interests of the child by ensuring that child care services can remain open, and continue to supply child care services, and that parents can continue to send their children to child care.

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 will ensure that families can benefit from subsidised sessions of care at child care services in COVID-19 hotspots for days after the child last physically attended care before their child's enrolment ceases.

They will also support the financial viability of services, mitigating the risk of child care services needing to close from the impact of COVID-19. This will ensure that high quality child care continues to be available to working parents after the COVID-19 pandemic.

Accordingly, these Amendment Rules will support children and families to continue to access and/or remain enrolled in quality child care.

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 promotes the right of the child to enjoy the highest standard of health by mitigating any financial pressure on parents to send children to care.

The Amendment Rules allow parents to continue to have access to child care subsidy (CCS) and fee relief by extending allowable absences and the exemption from the requirement to enforce the gap fee. This will mitigate financial pressure on parents who do not send their child back to care to maintain the enrolment or start receiving CCS again. It will allow parents to keep their children home from child care in line with public health advice without suffering financial loss.

Conclusion

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

Minister for Education and Youth, Alan Tudge

***Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) Minister's Rules
2021***

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 Response Measures No. 7) Minister's Rules 2021 (Amendment Rules).

Section 2: Commencement

2. The Amendment Rules commence on the day after they are registered. However, some provisions of the Amendment Rules make separate provision for when they apply, and will have application before the Amendment Rules are registered.
3. All such provisions will have a beneficial effect, as explained below.
4. Amendments to clause 2.1, effected by item 5 of the Schedule, apply to sessions of care between 10 October and 30 November 2021. The changes to clause 2.1 allow providers to elect not to enforce gap fees that parents are liable to pay. This provides beneficial fee relief to parents. However, they do not require providers not to enforce gap fees. Providers are contractually entitled to collect gap fees and may choose to continue collecting them.
5. Amendments to clause 3.1, some of which have effect from 23 June 2021 and some from 10 October 2021, made by items 6 and 7, give parents access to additional allowable absences. This means that parents can continue receiving CCS even if they are not sending their child to care during periods where public health advice against sending children to child care is in place.
6. New clause 3.2 of Schedule 3, inserted by item 3 of the Schedule, applies to sessions of care that occur on or after 12 July 2021. It has the effect that subparagraph 10(2)(b)(iii) does not apply to sessions of care that take place when a service, or the home of the individual eligible for child care subsidy (CCS), is in a COVID-19 hotspot lasting more than 7 days. This means that from 12 July 2021, if a child has absences during a period the service or the individual's principal place of residence is located in a hotspot before becoming unenrolled, those absences will be allowable, meaning the individual will still be eligible for CCS for those sessions of care. This will have a positive financial effect on families.
7. The amendment to subclause 4.5(3) of Schedule 3, inserted by item 10, which applies to BCP fortnights on or after 23 August 2021, will mean certain providers are eligible for viability support payments for a longer period. This will have a positive financial effect on those providers.

8. The amendment to clause 4.6, made by item 11, will mean that outside school hours care services that offer vacation care will get a higher viability support payment for a BCP fortnight overlapping with the public school holidays of the State or Territory where they are located, where the first day of the school holidays is on or after 23 August 2021. This is because their viability support payment for this fortnight will be based on their revenue during a previous school holiday period. These services open for longer hours during school holidays and therefore earn a higher revenue during this period.
9. New clause 5.1 is inserted by item 12 and applies to a week that includes 23 June 2021 or commences on or after 23 June 2021. It provides that if a service, or an eligible individual, is in a COVID-19 hotspot lasting more than 10 continuous weeks, those weeks are to be disregarded for the purposes of subsection 200B(1A) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act). Usually, a child is unenrolled from a service if they do not attend care for 14 continuous weeks. Once the child is unenrolled from the service, there is no eligibility for CCS for sessions of care provided by that service, unless and until the child is re-enrolled. Clause 5.1 means that a child won't be unenrolled from the service if they fail to attend during a period when the service or the residence of the eligible individual is in a long term COVID-19 hotspot. This means that individuals eligible for CCS won't miss out on CCS for these sessions.

Section 3: Authority

10. This provision provides that the Amendment Rules are made under 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: Title of Section

11. 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

Item 1

12. This item amends the definitions of “in a COVID-19 hotspot” and “in a restricted COVID-19 hotspot”. Previously, these terms were only used in relation to the location of a child care service. However, the Amendment Rules will extend COVID-19 related relief measures to individuals whose principal place of residence is

inside a COVID-19 hotspot, or restricted COVID-19 hotspot, but who use child care services outside of a COVID-19 hotspot. For example, this could occur if the individual lives in a border community.

13. This item makes a consequential change so that these terms can be used in relation to the location of an individual's principal place of residence.

Items 2 and 3

14. These items add a note to the end of section 5B of the Principal Rules to alert the reader that matters related to allowable absences for services in COVID-hotspots are set out in Part 3 of Schedule 3. They also rename the previous note as "Note 1" to enable the two notes to be distinguished.

Item 4

15. This item amends paragraph 2.1(4)(c) of Schedule 3 to the Principal Rules. Paragraph 2.1(4)(c) previously provided that providers were not required to enforce payment of hourly session fees for a session of care if, among other things, subclause (5) or (6) applied to the session of care. It now provides that providers are not required to enforce payment of hourly session fees if, among other requirements, subclause (5), (6), (7), (8), (9) or (10) applies to the session of care. Subclauses (7) to (10) are new and have been inserted by item 5.

Item 5

16. This item inserts new subclauses (7) to (10) into clause 2.1 of Schedule 3.
17. Subclause (7) applies if the Secretary has determined, under subsection 67CC(1) of the Family Assistance Administration Act, that an individual is eligible for CCS by fee reduction; and that individual has incurred a liability to pay for that session of care under a complying written arrangement; and that individual's principal place of residence is in a restricted COVID-19 hotspot or has been in a COVID-19 hotspot for eight or more days.
18. Effectively, this means that if the individual who would be eligible for CCS for the session of care normally lives in a restricted COVID-19 hotspot, or an area that has been in a COVID-19 hotspot for 8 days or more, and the child did not attend, the child care provider is not required to enforce payment of hourly session fees for that session of care. This is intended to provide fee relief to families living in COVID-19 hotspots who are unable to take their children to care, even though the child care service itself is not in a COVID-19 hotspot. If the child care service itself was in a COVID-19 hotspot, this fee relief would already be available under subclause (5) or (6).

19. Subclause (8) applies if the criteria in clause 4.5 of Schedule 3, other than subclause 4.5(5A), are met.
20. Previously, under clause 2.1, providers were only permitted to waive gap fees on days that the service was in a COVID-19 hotspot (and had been for more than seven continuous days) or in a COVID-19 restricted hotspot. Being in a COVID-19 hotspots is also an eligibility criterion for COVID-19 viability support payments. However, COVID-19 viability support payments are payable according to BCP fortnights, and it is not necessary for the service to be in a COVID-19 hotspot for the full period it is eligible to receive COVID-19 viability support payments.
21. The insertion of new subclause (8) has the effect that providers will be permitted not to enforce the payment of hourly session fees on all days they are receiving COVID-19 viability support payments, not only when they are in a COVID-19 hotspot. This also means that, as they are permitted not to enforce hourly session fees, they must not enforce hourly session fees as a condition of continued approval under clause 4.8(2) of Schedule 3. This reflects the policy that providers should not receive CCS, hourly session fees, and COVID-19 viability support payments for the same day, as this may be more than they would have received if they hadn't been in a COVID-19 hotspot.
22. Providers are not required to meet the eligibility criterion in subclause 4.5(5A) for clause 2.1(8) to apply, so there is no circularity. That is, subclause 4.5(5A) requires certain providers not to enforce gap fees if they are permitted to not enforce gap fees under clause 2.1.
23. Subclause (9) applies to sessions of care on days between 10 October and 30 November 2021. For outside school hours care services (other than vacation care only services), it applies if the service is in a local government area where not all primary school children are permitted to be at school on-site and full-time due to local government area wide directions or advice relating to the COVID-19 pandemic issued by the relevant State or Territory government.
24. This change will provide fee relief to these parents during the period to which those directions or that advice applies.
25. For all other types of service, subclause (9) applies to sessions of care between 10 October and 30 November if the service is in a local government area where not all children are permitted to attend child care due to local government area wide directions or advice relating to the COVID-19 pandemic issued by the relevant State or Territory government.
26. This amendment ensures that fee relief remains available during the period to which those directions or that advice applies.
27. Subclause (10) does the same as subclause (9), but where the individual's place of residence is in an area with restrictions, rather than the service. This ensures that the same fee relief is available in border communities, where an individual may live

in a local government area with restrictions but attend child care in a local government area without such restrictions.

28. The term “local government area”, as used in this item, is also intended to include the Australian Capital Territory, although in that Territory there is a single level of government that deals both with issues that would be dealt with by a State or Territory government elsewhere, and issues that would be dealt with by local government elsewhere.

Item 6

29. Item 6 inserts new subclause (2A) into clause 3.1. Clause 3.1 provides for “allowable absences”, that is, days when the provider will be taken to have provided a session of care although the child has not physically attended that session of care. Clause 3.1 previously set out one circumstance when allowable absences were available, but is being amended to set out three such circumstances.

Item 7

30. This item amends clause 3.1 of Schedule 3 to the Principal Rules to provide for three circumstances when allowable absences are available.
31. Previously, subclause 3.1(3) provided for allowable absences where the child care service is in a COVID-19 hotspot and has been, or will be, in that particular COVID-19 hotspot for a period of more than 7 continuous days.
32. This item amends subclause 3.1(3) so that allowable absences are also available where the Secretary has determined, under subsection 67CC(1) of the Family Assistance Administration Act, that an individual is eligible for CCS by fee reduction; and that individual or their partner has incurred a liability to pay for the session of care under a complying written arrangement; and that individual’s principal place of residence is in a COVID-19 hotspot and has or will be in that particular COVID-19 hotspot for a period of more than 7 days. In effect, this means that if the individual who would be eligible for CCS for that session of care lives in an area that is in a COVID-19 hotspot lasting more than 7 days, that individual can access allowable absences, even if they use a child care service not in a COVID-19 hotspot.
33. This will primarily assist families living in border communities, who may cross between different local government areas to attend child care. It will ensure that families who live in a COVID-19 hotspot, but use child care services outside of a COVID-19 hotspot, receive the same relief available under the Principal Rules when the child care service is in a COVID-19 hotspot.
34. In addition, allowable absences are available where new subclauses 3.1(4) or (5) apply.

35. Subclause (4) applies to sessions of care on days between 10 October and 30 November 2021 if, for outside school hours care services (other than vacation care only services), the service is in a local government area where not all primary school children are permitted to be at school on-site and full-time due to local government area wide directions or advice relating to the COVID-19 pandemic issued by the relevant State or Territory government, and that advice is in effect for 7 continuous days or more.
36. This change will provide fee relief to these parents during the period to which those directions or that advice applies.
37. For all other kinds of service, subclause (4) applies to sessions of care between 10 October and 30 November if the service is in a local government area where not all children are permitted to attend child care due to local government area wide directions or advice relating to the COVID-19 pandemic issued by the relevant State or Territory government, and those directions or that advice is in effect for 7 continuous days or more.
38. This amendment ensures that fee relief remains available during the period to which those directions or that advice applies.
39. Subclause (5) does the same as subclause (4), but where the individual's place of residence is in an area with restrictions, rather than the service. This ensures that the same fee relief is available in border communities, where an individual may live in a local government area with certain rules or restrictions but attend child care in a local government area without such restrictions.
40. The term "local government area", as used in this item, is also intended to include the Australian Capital Territory, although in that Territory there is a single level of government that deals both with issues that would be dealt with by a State or Territory government elsewhere, and issues that would be dealt with by local government elsewhere.

Item 8

41. This item inserts new clause 3.2 into Part 3 of Schedule 3 to the Principal Rules.
42. Subparagraph 10(2)(b)(iii) of the Family Assistance Act states that a child care service is taken to have provided a session of care to a child on a day (also known as an allowable absence) 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.
43. Subsection 10(2A) of the Family Assistance Act states that the Principal Rules may prescribe circumstances in which subparagraph 10(2)(b)(iii) does not apply.
44. Clause 3.2 prescribes three circumstances in which subparagraph 10(2)(b)(iii) does not apply. The first circumstance is where that child care service has been in a

COVID-19 hotspot for a period of more than 7 continuous days, and the day is on or after 12 July 2021.

45. The second circumstance is where an individual with a subsection 67CC(1) determination and with a liability to pay for the session has a principal place of residence within a COVID-19 hotspot, and their residence has been or will be in the hotspot for a period of more than 7 continuous days, and the day is on or after 12 July 2021.
46. The second circumstance is intended to assist families living in border communities, who may move between different local government areas to take their children to child care. For example, it's possible that a family residing in a COVID-19 hotspot might use a child care service outside the hotspot. This means that without this second circumstance, the family would not be able to access the same relief, even though they will face similar obstacles to taking their children to care.
47. The effect of this amendment is that families will be eligible for CCS on allowable absence days and therefore will not incur a debt where:
 - a child has previously attended care at the service; and
 - the service reports absences for eligible sessions of care for the child while the service or the eligible individual's place of residence is in the COVID-19 hotspot for a period of more than 7 continuous days; and
 - the child's enrolment ceases before the child attends care again.
48. The third circumstance is where the first or second circumstance previously applied, that is, the service or the individual's principal place of residence was previously in a hotspot for a period of more than 7 continuous days, and the day is during the period of 28 days after the last day the service or the individual's principal place of residence was in the COVID-19 hotspot.
49. This circumstance will give families a grace period where they are not comfortable taking their child back to child care immediately after the hotspot status in their region is lifted. From the lifting of the hotspot, providers will be required to enforce payment of hourly gap fees, so families will have to start paying for sessions of care again. However, if the family decides not to take their child back to care, they may unenroll and any absences incurred while they were in a hotspot or during the following 28 days will not result in a debt arising.

Item 9

50. This item amends paragraphs (b) and (c) of the definition of "start day" in clause 4.2 of Schedule 3 to the Principal Rules. This is a consequential amendment because of the amendment to subclause 4.5(3), made by item 10.

Item 10

51. This item amends subclause 4.5(3) of Schedule 3 to the Principal Rules so that viability support payments can be made for a longer period.
52. Previously, subclause 4.5(3) had the effect that a child care service was only eligible for a viability support payment for a BCP fortnight if the child care service was in a COVID-19 hotspot for at least one day in a BCP fortnight. This was to ensure that viability support payments were available when, due to COVID-19, attendance was likely to be low.
53. However, according to roadmaps out of lockdown released by several States and Territories, it is now possible that restrictions on primary school children attending school, and children attending child care, will remain after the area is no longer in a COVID-19 hotspot. Accordingly, it is likely that attendance may remain low even after a service is no longer in a COVID-19 hotspot.
54. For an outside school hours care service, other than a vacation care only service, that has previously been in a lockdown, it will continue to be eligible if it is in a local government area for which not all public primary school children are permitted to go to school on-site and full-time, under local government area wide State or Territory government direction or advice, as a result of the COVID-19 pandemic. The directions or advice must have been in place since the time the service ceased being in a hotspot or earlier. That is, if there is a gap between the hotspot and the local government area wide directions or advice, there will be no eligibility for viability support payments during the period of the schools restrictions that does not overlap with, or immediately follow, a period of COVID-19 hotspot.
55. If students are attending school virtually from their own homes, they are unlikely to attend outside school hours care in the mornings and afternoons, so viability support payments will continue until all students are permitted to attend school on-site.
56. The term “local government area” is also intended to include the Australian Capital Territory, although in that Territory there is a single level of government that deals both with issues that would be dealt with by a State or Territory government elsewhere, and issues that would be dealt with by local government elsewhere.
57. The term “full-time” is used to mean attendance Monday to Friday, or the days the school would usually open for students. This term is necessary as certain States have released roadmaps out of COVID-19 that allow different primary school children to attend school on different days. For example, the Victorian roadmap has a phase where Prep students will attend Monday to Wednesday, Years 1, 2, 5 and 6 will attend Thursday and Friday, and Years 3 and 4 will attend Tuesday and Wednesday. Before and after school care services would still be eligible for payments during this period. It is only when all students are permitted to attend Monday to Friday that eligibility to financial viability payment would cease.

58. This provision is designed to capture whole local government areas where children are not all attending school on-site and full-time due to a State or Territory government direction or advice. This would capture both State or Territory government positions that are reflected in delegated legislation, administrative powers, and policy or advice, as long as they apply across the local government area. If an individual school decides, or is directed, to close due to COVID-19 pandemic risk, this would not be captured, as the direction or advice must apply on a local government area wide basis. Similarly, if schools in a local government area closed (or closed to certain categories of children) for reason unrelated to the COVID-19 pandemic, this would not be captured.
59. For vacation care services and services other than outside school hours care services that have previously been eligible for viability support payments under paragraph 4.3(3)(a), they will continue to be eligible if they are located in a local government area for which not all children are permitted to attend child care due to local government area wide direction or advice relating to the COVID-19 pandemic issued by the relevant State or Territory government. The directions or advice must have been in place since the time the service ceased being in a hotspot or earlier. That is, if there is a gap between the hotspot and the local government area wide directions or advice, there will be no eligibility for viability support payments during the period of the schools restrictions that does not overlap with, or immediately follow, a period of COVID-19 hotspot.

Item 11

60. This item adds new subclauses (4) and (5) into clause 4.6 of Schedule 3 to the Principal Rules. The effect of this change is to increase the amount of viability support payment for vacation care services for the fortnight the overlaps with the first day of a school holiday period.
61. Subclause (4) provides that, despite subclause (2), if the service provides vacation care, and the first day of school holidays falls within the BCP fortnight, the amount of a COVID-19 viability support payment for that BCP fortnight is 40 per cent of the amount worked out under subsection (5).
62. The amount worked out under subsection (5) is the sum of the reference hourly fees for all sessions of care provided by the service during the 14 days beginning the first Monday of the most recent school holidays for public schools in the State or Territory in which the service is located for which the service was not in a COVID-19 hotspot on any day during those school holidays.
63. An outside school hours care service that operates before and after school care during school term and vacation care during the school holidays will have a much higher revenue during school holidays than during school term. This is because vacation care operates all day, whereas before and after school care only operate a

few hours each per day. This amendment means that those services will receive a higher viability support payment for a fortnight that overlaps with school holidays. This higher payment will be more commensurate with the amount of revenue they are likely to have lost due to the COVID-19 pandemic during the school holiday period.

Item 12

64. This item inserts a new Part 5 and clause 5.1 at the end of Schedule 3 to the Principal Rules.
65. Paragraph 200B(1)(b) of the Family Assistance Administration Act sets out the circumstances during which a child ceases to be enrolled for care at a service. Subparagraph 200B(1)(b)(iii) states that a child ceases to be enrolled at a service if 14 weeks have passed since the child last attended any of the service's sessions of care.
66. Subsection 200B(1A) permits the Principal Rules to prescribe circumstances in which one or more weeks covered wholly or parts by a period of emergency of disaster are to be disregarded for the purposes of subparagraph 200B(1)(b)(iii).
67. Clause 5.1 prescribes two relevant circumstances for which weeks are to be disregarded in counting towards whether 14 weeks have passed since a child last attended care at a service. The first circumstance, in subclause 5.1(1), is that the service is in a COVID-19 hotspot, and has been, or will be, in a COVID-19 hotspot for a period of at least 10 continuous weeks. If so, any week covered by the period the service is in the COVID-19 hotspot is to be disregarded.
68. The second circumstance, in subclause 5.1(2), is where there is an individual who is eligible for CCS for fee reduction under subsection 67CC(1) of the Family Assistance Administration Act, that individual or their partner has incurred a liability to pay for sessions of care during that week under a complying written arrangement, and that individual's principal place of residence is in a COVID-19 hotspot, and has been, or will be, in a COVID-19 hotspot for a period of at least 10 continuous weeks. If so, any week covered by the period the individual's principal place of residence is in the COVID-19 hotspot is to be disregarded.
69. The effect of this amendment is that, where a service or an individual's place of residence has been in a COVID-19 hotspot for at least 10 continuous weeks, then all of the full weeks in which the service or place of residence has been in the COVID-19 hotspot are to be disregarded for the purposes of counting whether 14 weeks have passed since the child last attended care. This will help to ensure that the enrolments of children are not automatically cancelled due to non-attendance at child care services during extended lockdowns. If enrolments were cancelled under subparagraph 200B(1)(b)(iii), individuals would not be eligible for sessions of care at that service until they were re-enrolled. This amendment will prevent enrolments

ceasing where the child has been unable to attend due to a local COVID-19 hotspot, and ensure children stay enrolled in care and parents do not miss out on CCS.