

EXPLANATORY STATEMENT

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

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) Minister's Rules 2021

AUTHORITY

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) 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 and restrictions in Australia. These amendments include:

- The provision of 10 extra allowable absence days for the 2021-22 financial year, in addition to the current 42 days, in response to COVID-19. The allocation of extra allowable absence days is intended to help offset absence days taken as a result of the impact of COVID-19, and so help ensure continued subsidised fee relief for families with children enrolled in approved child care.
- Extending and/or aligning the end date of the periods for which the COVID-19 related exemption from enforcing the payment of session fees and provision of additional allowable absences apply, to 30 June 2022. This will ensure that fee relief continues to be in place while Australia emerges from the COVID-19 pandemic.
- Expanding the existing exemption from enforcing the payment of hourly session fees where a service is advised or required to close by a government agency to also apply where the service is advised or required to close part of the service. This will also apply in certain circumstances where a Family Day Care (FDC) educator, or member

of the FDC educator's household is directed to isolate or self-quarantine and where an In Home Care (IHC) educator is directed to isolate or self-quarantine. This amendment will mean that a provider is not required to enforce gap fees for affected families, thereby providing fee relief to parents where children do not attend care because the part of the service that would otherwise provide the care has been advised or required to close. This amendment is in recognition of the fact that a government agency's advice or requirement is not always service wide and that some circumstances, in effect, only result in the closure of part of a service.

- Providing an additional exemption from the requirement on services to enforce the payment of hourly session fees where the child, individual, individual's partner or member of the child's household, is required to isolate or self-quarantine by a health agency. This will make fee relief possible for families impacted by isolation or self-quarantine orders.
- Making provision for an absence to constitute an allowable absence in circumstances where an absence occurs after the child's enrolment with the service has commenced but before the day a child first attends care. This applies where the service or individual's principal place of residence 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 where attendance is affected due to a COVID-19 hotspot.
- Minor technical changes to the precise nature of the direction, requirement and advice that must be in place for different provisions of the Principal Rules to apply. The Amendment Rules also make a number of amendments to ensure that the bodies who must issue the relevant advice, direction or requirement are referred to consistently as a 'government agency'. Government agency is defined in section 4 of the Principal Rules to mean the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or a Territory. This definition is broader than the bodies currently referenced in the rules to allow adequate coverage of the different arrangements across jurisdictions.

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

The Office of Best Practice Regulation has advised that the measures included in the Amendment Rules are unlikely to have a more than minor regulatory impact, and therefore the preparation of a Regulation Impact Statement is not required (OBPR reference: OBPR21-01179).

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.

- The amendment made by item 8 to clause 2.1 provides additional situations in which a provider is exempted from enforcing the payment of session fees, to apply from 1 December 2021 (subclauses 2.1(11) and (12)) and 9 November 2021 (subclause (13)).
- Subclauses 2.1(11) and (12) have a similar operation to existing subclauses 2.1(9) and (10) respectively. Subclauses 2.1(9) and (10) apply to a day between 10 October and 30 November 2021. By applying from 1 December 2021, clauses 2.1(11) and (12) will provide continuity for the application of the exemption and, as the exemption allows services to provide fee relief to users of child care services, is entirely beneficial. Importantly, this amendment does not require child care providers not to enforce the payment of session fees. Child care providers are contractually entitled to session fees and may continue to collect them if they choose. This amendment merely gives them the option not to, if they wish to pass on fee relief.
- Subclause 2.1(13) allows a service to not enforce payment of sessions fees where a child, the individual, the individual's partner or a member of the child's household, is required by a health agency to isolate or self-quarantine. Application of this exemption is beneficial to users of child care services impacted by isolation or self-quarantine orders and, as such, application from 9 November 2021 (the date the Minister announced this measure) will only be beneficial. As above, child care providers are not required to pass on fee relief, and may continue to collect session fees if they choose.
- The amendment made by item 17, inserting clause 3.1A, provides for 10 additional allowable absences for the 2021-2022 year. Child care subsidy is payable in respect of allowable absences and so increasing the number of allowable absences in a year reduces the risk of, or number of, absences for which no CCS is payable. As this amendment can only have financial benefits for child care users, it is entirely beneficial.

- The amendments made by item 16 providing for additional situations (subclauses 3.1(6) and (7)) that satisfy the relevant condition for a service to have been taken to have provided a session of care (i.e. constitutes an allowable absence), apply from 1 December 2021. Providing that a service is taken to have provided a session of care has the effect of CCS being payable for the care. As such, an expansion of the situation that will satisfy the relevant condition will only be beneficial to services and child care users.
- The amendments made by items 18 to 21 to clause 3.2, which provides for an absence to constitute an allowable absence in circumstances where the absence occurs before the day a child first attends care and after the child's enrolment with the service has commenced, has effect from 12 July 2021. This aligns the period of application with the period of application for absences following the last day of attendance and provides fee relief for parents where a COVID-19 hotspot impacts a child's attendance before the first attendance at a service.

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.

The Department has been regularly consulting with jurisdictions to ensure the Amendment Rules work effectively in tandem with State and Territory arrangements.

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. 8) Minister's Rules 2021

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) 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:

- The provision of 10 extra allowable absence days for the 2021-22 financial year, in addition to the current 42 days, in response to COVID-19. The allocation of extra allowable absence days is intended to help offset absence days taken as a result of the impact of COVID-19, and so help ensure continued subsidised fee relief for families with children enrolled in approved child care.
- Extending and/or aligning the end date of the periods for which the COVID-19 related exemption from enforcing the payment of session fees and provision of additional allowable absences apply, to 30 June 2022. This will ensure that fee relief continues to be in place while Australia emerges from the COVID-19 pandemic.
- Expanding the existing exemption from enforcing the payment of hourly session fees where a service is advised or required to close by a government agency to also apply where the service is advised or required to close part of the service. This will also apply in certain circumstances where a Family Day Care (FDC) educator, or member of the FDC educator's household is directed to isolate or self-quarantine and where an In Home Care (IHC) educator is directed to isolate or self-quarantine. This amendment will mean that a provider is not required to enforce gap fees for affected families, thereby providing fee relief to parents where children do not attend care because the part of the service that would otherwise provide the care has been advised or required to close. This amendment is in recognition of the fact that a government agency's advice or requirement is not always service wide and that some circumstances, in effect, only result in the closure of part of a service.

- Providing an additional exemption from the requirement on services to enforce the payment of hourly session fees where the child, individual, individual's partner or member of the child's household, is required to isolate or self-quarantine by a health agency. This will make fee relief possible for families impacted by isolation or self-quarantine orders.
- Making provision for an absence to constitute an allowable absence in circumstances where an absence occurs after the child's enrolment with the service has commenced but before the day a child first attends care. This applies where the service or individual's principal place of residence 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 where attendance is affected due to a COVID-19 hotspot.
- Minor technical changes to the precise nature of the direction, requirement and advice that must be in place for different provisions of the Principal Rules to apply. The Amendment Rules also make a number of amendments to ensure that the bodies who must issue the relevant advice, direction or requirement are referred to consistently as a 'government agency'. Government agency is defined in section 4 of the Principal Rules to mean the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or a Territory. This definition is broader than the bodies currently referenced in the rules to allow adequate coverage of the different arrangements across jurisdictions.

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 make changes to the Principal Rules that will improve the affordability of child care services, for example, by extending and expanding the circumstances where a service is not required to enforce the payment of gap fees and by providing for 10 additional allowable absences for the 2021-2021 financial year. This promotes the best interests of the child by ensuring that child care services remain an affordable and viable option for parents. In addition, the amendments that expand and extend fee relief are in the best interests of the child as they reduce the financial pressure on parents to send a child to child care in circumstances where the COVID-19 pandemic means that there are health risks associated with attendance.

Article 18 of the CRC

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

The Amendment Rules provide fee relief in the form of extending and expanding the circumstances where a service is not required to enforce the payment of gap fees and providing for additional allowable absences, to ensure that families can benefit from subsidised sessions of care where the COVID-19 pandemic impacts a child's attendance at child care. The Amendment Rules have been carefully drafted so that services are not incentivised to close in circumstances where the advice from the relevant government agencies do not require a service to close.

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

Article 24 of the CRC

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

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

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

Conclusion

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

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

***Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) 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. 8) 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. The amendment made by item 8 to clause 2.1 provides additional situations in which a provider is exempted from enforcing the payment of session fees, to apply from 1 December 2021 (subclauses 2.1(11) and (12)) and 9 November 2021 (subclause (13)).
5. Subclauses 2.1(11) and (12) have a similar operation to existing subclauses 2.1(9) and (10) respectively. Subclauses 2.1(9) and (10) apply to a day between 10 October and 30 November 2021. By applying from 1 December 2021, clauses 2.1(11) and (12) will provide continuity for the application of the exemption and, as the exemption allows services to provide fee relief to users of child care services, is entirely beneficial. Importantly, this amendment does not require child care providers not to enforce the payment of session fees. Child care providers are contractually entitled to session fees and may continue to collect them if they choose. This amendment merely gives them the option not to, if they wish to pass on fee relief.
6. Subclause 2.1(13) allows a service to not enforce to payment of sessions fees where a child, the individual, the individual's partner or a member of the child's household, is required by a health agency to isolate or self-quarantine. Application

of this exemption is beneficial to users of child care services impacted by isolation or self-quarantine orders and, as such, application from 9 November 2021 (the date the Minister announced this measure) will only be beneficial. As above, child care providers are not required to pass on fee relief, and may continue to collect session fees if they choose.

7. The amendment made by item 17, inserting clause 3.1A, provides for 10 additional allowable absences for the 2021-2022 year. Child care subsidy is payable in respect of allowable absences and so increasing the number of allowable absences in a year reduces the risk of, or number of, absences for which no Child Care S is payable. As this amendment can only have financial benefits for child care users, it is entirely beneficial.
8. The amendments made by item 16 providing for additional situations (subclauses 3.1(6) and (7)) that satisfy the relevant condition for a service to have been taken to have provided a session of care (i.e. constitutes an allowable absence), apply from 1 December 2021. Providing that a service is taken to have provided a session of care has the effect of CCS being payable for the care. As such, an expansion of the situation that will satisfy the relevant condition will only be beneficial to services and child care users.
9. The amendments made by items 18 to 21 to clause 3.2, which provides for an absence to constitute an allowable absence in circumstances where the absence occurs before the day a child first attends care and after the child's enrolment with the service has commenced, has effect from 12 July 2021. This aligns the period of application with the period of application for absences following the last day of attendance and provides fee relief for parents where a COVID-19 hotspot impacts a child's attendance before the first attendance at a service.

Section 3: Authority

10. This section 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 *A New Tax System (Family Assistance) (Administration) Act 1999* (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

Child Care Subsidy Minister's Rules 2017

Item 1

12. This item amends the definition of 'period of local emergency' in subsection 6(2) of the Principal Rules to exclude periods related to a COVID-19 related or disaster declaration.
13. Subsection 6(2) of the Principal Rules provides that a period of local emergency to mean a period in respect of which:
 - (a) an event has occurred which affects a widespread area, has a severe impact on the lives of a significant number of the inhabitants of the area, and prevents, or may prevent, children from attending the service, or may make such attendance hazardous; or
 - (b) a disaster declaration (however described) is made by a state emergency service, the police, or another Commonwealth, State or Territory agency and the disaster prevents, or may prevent, children from attending the service, or may make attendance hazardous.
14. The existence of a 'period of local emergency' is relevant to the application of section 6 and section 8 of the Principal Rules.
15. Section 6 prescribes reasons for a child's absence that result in a child care service being taken to have provided a session of care to a child on a day that the child is absent. Relevantly, paragraph 6(1)(d) prescribes that the child cannot attend as a direct result of a period of local emergency.
16. Section 8 prescribes circumstances in which a session of care is provided for which there is no eligibility for CCS. Relevantly paragraph 8(1)(g), in conjunction with subsection 8(4B), provides that there is no eligibility for CCS for a session of care on a day the service is closed if it is closed for reasons other than a public holiday or a period of local emergency.

17. This item amends subclause 6(2) of the Principal Rules to provide that a period of local emergency does not include the period between when the Amendment Rules commence and 30 June 2022 where the event, or disaster declaration, relates to the COVID-19 pandemic.
18. This item also adds a note at the end of subclause 6(2) to advise that Schedule 3 of the Principal Rules sets out the temporary measures relating to the COVID-19 pandemic.
19. The amendments made by item 2 will ensure that CCS is payable where a service is closed because a government agency has advised or required the service to close as a result of the COVID-19 pandemic.
20. The combination of the amendment made by this item and the amendment made by item 2 will provide clarity regarding when a service is eligible for CCS where the service or part of the service is closed as a result of the COVID-19 pandemic, while Part 3 of Schedule 3 sets out instances in which a child care service is taken to have provided a session of care on a day the child is absent during the COVID-19 pandemic.

Item 2

21. This item inserts subparagraphs 8(4B)(b)(iii) and (iv) into the Principal Rules.
22. Section 8 of the Principal Rules prescribes, for the purposes of subparagraph 85BA(1)(c)(iii) of the Family Assistance Act, circumstances in which a session of care is provided for which there is no eligibility for CCS.
23. Paragraph 8(1)(g) provides that one of the relevant circumstances is where the session of care is taken to have been provided on a day covered by subsection 8(4B).
24. Subsection 8(4B) provides that a day is covered by this subsection, for the purpose of paragraph 8(1)(g), if on the day, a session of care is not provided because the child care service that would otherwise provide that session is closed; and

(b) the child care service is closed for reasons other than:

- (i) a public holiday; or
- (ii) a period of local emergency.

25. Subparagraph 8(4B)(b)(iii), inserted by this item, provides that, between 1 October 2021 and 30 June 2022, a reason for a child care service being closed, which will not prevent CCS being payable, is that a government agency has advised or required the service to close as a result of the COVID-19 pandemic. Government agency is defined in section 4 of the Principal Rules to mean the Commonwealth, a State or a Territory or an authority of the Commonwealth or of a State or a Territory.
26. The effect of this subparagraph is that, between 1 October 2021 and 30 June 2022, CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed, if the service was closed because a government agency has advised or required the service to close as a result of the COVID-19 pandemic.
27. Subparagraph 8(4B)(b)(iv), inserted by this item, provides that, between 1 October 2021 and 30 June 2022, a reason for an out of school hours care service care (located on a school campus) being closed, which will not prevent CCS being payable, is that the school at which the service is located is closed because a government agency has advised or required the school to close as a result of the COVID-19 pandemic.
28. The effect of this subparagraph is that, between 1 October 2021 and 30 June 2022, CCS will be payable in respect of sessions of care that the service would otherwise have provided if it was not closed because a government agency has advised or required the school at which the service is located to close as a result of the COVID-19 pandemic.
29. Subparagraph 8(4B)(b)(iv) is necessary because an out of school hours care service located on a school campus may not be directly advised or required to close by a government agency where the school is advised or required to close. As all the children the service would usually provides sessions of care for will be absent from school, it may not be necessary or safe for the service to operate.
30. The amendments made by this item are necessary as a consequence of the amendments made by item 1 excluding COVID-19 related events and declarations from the definition of period of local emergency (meaning that paragraph 8(4B)(b)(ii) cannot apply in relation to the COVID-19 pandemic).

31. The amendment also provides greater clarity regarding when CCS is payable in respect of COVID-19 related service closures than the current reliance on the application of a period of local emergency.
32. It is important that CCS is payable in respect of sessions of care a service would have provided if not required or advised to be closed in order for the services to remain financially viable and so that fee relief can be provided to parents.

Item 3

33. This item inserts a note at the end of subsection 8(4B) of the Principal Rules.
34. The note provides that a child care service is not closed for the purposes of subsection 8(4B) if only part of the service is closed.
35. The note clarifies that subsection 8(4B), which provides that a session is not eligible for CCS where a service is closed, will not apply to the service where only part of the service is closed.

Item 4

36. This item amends the heading to Part 2 of Schedule 3 to the Principal Rules to reflect that clauses within this Part apply to other COVID-19 related situations as well as COVID-19 hotspots.

Item 5

37. This item amends subclause 2.1(3) of Part 2 of Schedule 2 to the Principal Rules to provide that the relevant period ends on 30 June 2022.
38. Clause 2.1 of Schedule 3 of the Principal Rules sets out, for the purpose of subsection 201B(1A) of the Family Assistance Administration Act, COVID-19 pandemic related conditions and the period during which a service provider is not required to take reasonable steps to enforce payment of gap fees.
39. Existing subclause 2.1(3) prescribes 13 August 2021 to 12 August 2022 as the relevant period. This item omits 12 August 2022 and substitutes 30 June 2022.

40. The change made by this item aligns the cessation date for this measure with the cessation date for other COVID-19 related measures contained in the Principal Rules.

Item 6

41. This item amends paragraph 2.1(4)(c) of Part 2 of Schedule 3 to the Principal Rules to include references to subclauses 2.1(11), (12) and (13) in paragraph 2.14(c).
42. Currently, paragraph 2.1(4)(c) specifies that one of the conditions that must be met for a service to be exempted from enforcing the payment of hourly session fees, under the general COVID-19 pandemic exemption, is that subclause 2.1(5), (6), (7), (8), (9) or (10) applies to the session of care.
43. Subclauses 2.1(11), (12) and (13) are inserted by item 8 of the Amendment Rules and provide additional situations in which the condition will be met and, consequently, the exemption will apply (necessitating this amendment).

Item 7

44. This item repeals and replaces paragraph 2.1(4A)(b) of Part 2 of Schedule 3 to the Principal Rules to remove one of the circumstances that would constitute satisfaction of the condition in clause 2.1(4)(b) for the purpose of the exemption in clause 2.1.
45. Paragraph 2.1(4)(b) provides that one of the conditions that must be met for a service to be exempt from enforcing the payment of session fees in the circumstance of the COVID-19 pandemic is that subclause 2.1(4A) applies.
46. Paragraph 2.1(4A)(b) provides that subclause 2.1(4A) applies where a service is closed on the day a session of care is provided if either:
- (i) the service predominantly provides care to Indigenous children; or
 - (ii) if the service is not an outside school hours care service that provides only vacation care—the service has not been closed for a period of more than 14 continuous days since 23 August 2021.
47. As services would generally stay open unless advised or required to close by a government agency, current subparagraph 2.1(4A)(b)(ii) is no longer required.

48. New paragraph 2.1(4A)(b) will provide that subclause 2.1(4A) applies where the service is closed on the day the session of care was provided and the service predominantly provides care to Indigenous children.

Item 8

49. This item inserts subclauses 2.1(11), (12) and (13) into clause 2.1 of Part 2 of Schedule 3 to the Principal Rules.
50. Paragraph 2.1(4)(c) of the Principal Rules specifies that one of the conditions that must be met for a service to be exempted from enforcing the payment of hourly session fees, under the general COVID-19 pandemic exemption, is that subclause 2.1(5), (6), (7), (8), (9) or (10) applies to the session of care. This paragraph will be amended by item 6 to include references to subclauses (11), (12) and (13).
51. Subclause 2.1(9) applies to sessions of care on days between 10 October 2021 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.
52. For all other types of service, subclause 2.1(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.
53. Subclause 2.1(10) does the same as subclause 2.1(9), but where the individual's place of residence is in an area with restrictions, rather than the service.
54. Subclause 2.1(11) applies to sessions of care on days between 1 December 2021 and 30 June 2022. For outside school hours care services (other than vacation care only services), it applies if the service is in a geographical area where not all primary school children are permitted to be at school on-site and full-time due to government agency directions or advice relating to the COVID-19 pandemic that apply to all primary schools in that area.
55. For all other types of service, subclause 2.1(11) applies to sessions of care between 1 December 2021 and 30 June 2022 if the service is in a geographic area where not

all children are permitted to attend child care due to government agency directions or advice relating to the COVID-19 pandemic that apply to all services in that area.

56. Subclause 2.1(12) does the same as subclause 2.1(11), but where the individual's principal place of residence is in an area with restrictions, rather than the service. The individual mentioned here is the individual referred in section 201B(1) – that is, the individual whom the Secretary has decided is entitled to CCS under a fee reduction decision.
57. Subclauses 2.1(11) and 2.1(12) effectively continue the operation, post 30 November 2021, of subclauses 2.1(9) and 2.1(10) respectively with the following differences.
 - The advice or direction applies to a 'geographical area' (rather than 'local government area') and the advice or direction applies to all the schools or services in 'that area'. This change recognises that some relevant government agency advice or directions may not be local government area wide.
 - The advice or direction must come from a 'government agency' (rather than the 'State or Territory government in which the local government area is located'). This will broaden the circumstances in which these subclauses apply and allow adequate coverage of the different arrangements across jurisdictions.
58. These changes will extend and align the period for which fee relief is available to parents where relevant directions or advice apply with a number of other COVID-19 related measures in the Principal Rules.
59. Subclause 2.1(13) will apply to sessions of care on a day between 9 November 2021 and 30 June 2022 where any of the following are required to isolate or self-quarantine by a health agency:
 - the individual referred to in section 201B(1) of the Family Assistance Administration Act (that is, the individual entitled to CCS under a fee reduction decision);
 - the individual's partner;
 - the child;
 - another member of the child's household.

60. This amendment allows a service to provide fee relief to individuals in certain circumstances where an isolation or self-quarantine order by a health agency prevents or makes a child's attendance at a session of care difficult.

Item 9

61. This item repeals and replaces paragraphs 2.2(1)(a) and (b) of Part 2 of Schedule 3 to the Principal Rules to provide that the exemption from enforcing the payment of session fees also applies in a number of specified circumstances that constitute a service being closed or part of a service being closed.
62. Currently, clause 2.2 provides a service an exemption from enforcing the payment of sessions fees where the service is advised or required to close as a result of the COVID-19 pandemic. Paragraph 2.2(1)(a) provides that one of the conditions that must be satisfied is that the child did not attend any part of the session of care and paragraph 2.2(b) provides that the service must be closed because a health agency has advised or required the service to close due to the COVID-19 pandemic.
63. New paragraph 2.2.(1)(a) requires that any of the following applies:
- (i) the service is closed because a government agency has advised or required the service to close as a result of the COVID-19 pandemic;
 - (ii) if the service is an outside school hours care service that is located on a school campus—the school campus is closed to students because a government agency has advised or required the school to close as a result of the COVID-19 pandemic;
 - (iii) part of the service is closed because a government agency has advised or required that part of the service to close as a result of the COVID-19 pandemic;
 - (iv) for an FDC service provided at a particular location—an educator for the service at that location, or a member of that educator's household, is required to isolate or self-quarantine by a government agency;
 - (v) for an IHC service—the IHC educator is required to isolate or self-quarantine by a government agency.
64. Subparagraph 2.2(1)(a)(ii) will only apply where the whole of the relevant school is advised or required to close. It will not apply where only part of the school is advised or required to close.

- 65. For paragraphs 2.2(1)(iv) and (v) the part of the service provided by the affected educator is the part of the service that will be closed.
- 66. New subparagraph 2.2(1)(b) provides that it is a condition for the exemption to apply that the child did not attend any part of the session of care because the service, or the part of the service, that would have provided the session of care is closed because of the applicable circumstance in paragraph 2.2(1)(a). The effect of this is that, for the exemption to apply, the non-attendance must be because the part of the service the child would have attended for the session of care, is closed. It is not sufficient that part of the broader service is closed.
- 67. Changes made by this item gives services the option to not enforce gap fees where only part of the service is closed (and is closed for specific reasons). This extends the fee relief available to users of child care services beyond the circumstance where the whole service is required to close.

Item 10

- 68. This item amends paragraph 2.2(2)(a) of Part 2 of Schedule 3 of the Principal Rules to make paragraph 2.2(2)(a) consistent with amended subparagraphs 2.2(1)(a) and (b).
- 69. Clause 2.2(2) sets out the period the session of care must fall in for the exemption from the obligation to enforce the payment of gap fees specified in subclause 2.2(1) to apply.
- 70. Paragraph 2.2(2)(a) currently provides that the period begins on the day the child care service closes as a result of the advice or requirement referred to in paragraph (1)(b).
- 71. This item omits 'the child care service closes as a result of the advice or requirement referred to in paragraph (1)(b)' from paragraph 2.2(2)(a) and replaces it with 'the child care service, or the part of the child care service, closes as a result of the advice or requirement referred to in paragraph (1)(a)'. This change is required because of the changes made by item 9 to paragraphs 2.2(1)(a) and (b) to the type of closures covered by the exemption and changing the order in which the relevant paragraphs are included.

Item 11

72. This item amends subparagraph 2.2(2)(b)(i) of Part 2 of Schedule 3 of the Principal Rules to make subparagraph 2.2(2)(b)(i) consistent with amended paragraphs 2.2(1)(a) and (b).
73. As indicated above, subclause 2.2(2) sets out the period the session of care must fall in for the exemption from the obligation to enforce the payment of gap fees specified in subclause 2.2(1) to apply.
74. Subparagraph 2.2(2)(b)(i) currently specifies one of the two possible end dates of the relevant period as the last day in the period that the health agency advises or requires the child care service to be closed.
75. This item omits 'that the health agency advises or requires the child care service to be closed' from subparagraph 2.2(2)(b)(i) and replace it with 'that the government agency (including a health agency) advises or requires the child care service, or the part of the child care service, to be closed.' This change is required because of the changes made by item 9 to 2.2(1)(a) which expands the advice or requirements relevant to the exemption.

Item 12

76. This item amends subparagraph 2.2(2)(b)(ii) of Part 2 of Schedule 3 of the Principal Rules to extend the period to which the exemption may apply till 30 June 2022.
77. As described above, subclause 2.2(2) prescribes the period for which the exemption of the obligation on a service to enforce the payment of session fees where a service is advised or required to close by a health agency because of the COVID-19 pandemic.
78. Paragraph 2.2(2)(b) prescribes the end of the period as the earlier of:
 - (i) the last day in the period that the health agency advises or requires the child care service to be closed; and
 - (ii) 31 December 2021.
79. This item omits 31 December 2021 in subparagraph 2.2.(2)(b) and substitutes 30 June 2022.

80. This amendment extends and aligns the effective end of these provisions with a number of the other COVID-19 related measures in the Principal Rules.

Item 13

81. This item amends the heading to Part 3 of Schedule 3 to the Principal Rules to reflect that clauses within this Part apply to other COVID-19 related situations as well as COVID-19 hotspots.

Item 14

82. This item amends subclause 3.1(2A) of Part 3 of Schedule 3 to the Principal Rules to include references to subclause 3.1(6) and (7).
83. Current subclause 3.1(2A) specifies that one of the conditions that must be met in order for a child care service to be taken to have provided a session of care for the purposes of subparagraph 10(2)(c)(ii) and subsection 10(2AA) of the Family Assistance Act is that subclause (3), (4) or (5) applies to the day.
84. Subclauses 3.1(6) and (7) are inserted by item 16 of the Amendment Rules and provide additional situations that will constitute satisfaction of the condition in 3.1(2A) (necessitating this amendment).

Item 15

85. This item amends subclause 3.1(3) of Part 3 of Schedule 3 to the Principal Rules to specify 30 June 2022 as the end of the period to which this subclause applies.
86. Subclause 3.1.(1) provides that a child care service will be taken to have provided a session of care to a child (an allowable absence), for the purposes of subparagraph 10(2)(c)(ii) and subsection 10(2AA) of the Family Assistance Act, where the condition in subclause 3.1(2A) is met.
87. As identified in item 14 above, subclause 3.1(2A) currently provides that the condition is that subclause (3), (4) or (5) applies.
88. Subclause 3.1(3) applies where (a) the 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 day or (b) 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.

- 89. Subclause 3.1(3) currently applies to a day after 23 June 2021. This item amends subclause 3.1(3) so that it applies between 23 June 2021 and 30 June 2022.
- 90. This amendment aligns the effective end of operation of this provision with a variety of other COVID-19 related measures in the Principal Rules.

Item 16

- 91. This item inserts two new subclauses 3.1(6) and (7) into Part 3 of Schedule 3 to the Principal Rules.
- 92. As described in item 15 above, subclauses 3.1(4) and (5) set out circumstances that satisfy the relevant condition for a service to have been taken to have provided a session of care (i.e. constitutes an allowable absence).
- 93. Subclause 3.1(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. For all other kinds of service, subclause 3.1(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 that advice is in effect for 7 continuous days or more.
- 94. Subclause 3.1(5) applies to sessions of care on days between 10 October and 30 November 2021 and has the same effect as subclause 3.1(4) but where the individual's principal place of residence is in an area with restrictions, rather than the service.
- 95. New subclause 3.1(6) applies to a day between 1 December 2021 and 30 June 2022 if, for outside school hours care services (other than vacation care only services), the service is in a geographical area where not all primary school

children are permitted to be at school on-site and full-time due to government agency directions or advice relating to the COVID-19 pandemic that apply to all primary public schools in that area and that advice is in effect for more than 7 continuous days. For all other kinds of service, subclause 3.1(6) applies to sessions of care between 1 December 2021 and 30 June 2022 if the service is in a geographic area where not all children are permitted to attend child care due to government agency directions or advice relating to the COVID-19 pandemic that apply to all services in that area and that advice is in effect for more than 7 continuous days.

96. New subclause 3.1(7) applies to sessions of care on days between 1 December 2021 and 30 June 2022 and has the same effect as subclause 3.1(6) but where an individual's principal place of residence is in an area with restrictions, rather than the service. The individual whose principal place of residence is relevant for this subclause is an individual who:
- the Secretary has determined to be eligible for CCS by fee reduction for the child under section 67CC(1) of the Family Assistance Administration Act; and
 - has (or whose partner has) incurred a liability to pay for the session of care under a complying written arrangement.
97. Subclause 3.1(6) and 3.1(7) effectively continue the operation, beyond 30 November 2021, of subclauses 3.1(4) and 3.1(5) respectively with the following differences.
- The relevant direction or advice to have been in force for more than 7 continuous days (rather than 7 or more continuous days). This aligns with the requirement in subclause 3.1(3).
 - The advice or direction applies to a 'geographical area' (rather than 'local government area') and the advice or direction applies to all the schools or services in 'that area'. This change recognise that some relevant government agency advice or directions may not be local government area wide.
 - The advice or direction must come from a 'government agency' (rather than the 'State or Territory government in which the local government area is located'). This will broaden the circumstances in which these subclauses apply and allow adequate coverage of the different arrangements across jurisdictions.

98. Extending the period during which additional allowable absences may occur to 30 June 2022 reduces the risk of families incurring child care service debts due to the impact of COVID-19 and aligns the effective end of these provisions with a variety of other COVID-19 related measures in the Principal Rules.

Item 17

99. This item inserts a new clause 3.1A into Part 3 of Schedule 3 to the Principal Rules to prescribe, for the purposes of subparagraph 10(2)(c)(ii) and subsection 10(2AA), that a session of care will be taken to be provided to a child if:
- an absence is related to the COVID-19 pandemic (the particular event or circumstance);
 - the session of care would have been attended by the child in the 2021-2022 financial year and clause 3.1 does not apply in relation to the session of care (the conditions); and
 - the child has not already claimed 10 absence days for reasons relating to the COVID-19 pandemic (the number of extra allowable absences).
100. While the number of days prescribed under paragraph 10(2AA)(b) is 9, this in fact allows the child to access 10 days of extra allowable absences. This is because section 10(2AA)(b) allows for an extra absence if 'no more than 9' extra absences have been used for the financial year. This means that on the tenth such absence, exactly 9 extra absences have been used and as exactly 9 is 'no more than 9', the tenth extra absence is allowed.
101. Clause 3.1A therefore operates to provide a child with up to 10 days of extra allowable absences from a child care service within the 2021-2022 financial year. A higher absence rate could occur in the 2021-2022 financial year as a consequence of the COVID-19 pandemic due to families exercising greater caution and keeping unwell children at home in line with health advice. As such, increasing allowable absences aims to reduce the risk of, or number of, absences for which no subsidy is payable. Combined with other measures, this measure will help ensure that families can keep their children enrolled in care during the COVID-19 pandemic, and avoid or reduce the cost to families of unpaid absences.
102. As indicated in the note at the end of clause 3.1A, the allowable absences provided by clause 3.1A are in addition to the 42 allowable absences provided under subparagraph 10(2)(c)(i) of the Family Assistance Act and also in addition to any allowable absences provided under clause 3.1.

Item 18

103. This item amends the heading of clause 3.2 to reference allowable absences before the first day of attendance as well as allowable absences after the last day of attendance.
104. This amendment is necessary because of changes made by item 19 to the scope of application of clause 3.2.

Item 19

105. This item amends subclause 3.2(1) of Part 3 of Schedule 3 to the Principal Rules to include a reference to subparagraph 10(2)(b)(ii) of the Family Assistance Act.
106. Subparagraph 10(2)(b)(ii) of the Family Assistance Act provides that a child care service is taken to have provided a session of care to a child on a day (on which the child did not attend the session of care) if the day is not before the day the child first attended a session of care provided by the service. Subparagraph 10(2)(b)(iii) provides that a child care service is taken to have provided a session of care to a child on a day if the day is not after the last day the child attended a session of care by a child care service before the child ceased to be enrolled for care by the service.
107. Subsection 10(2A) of the Family Assistance Act states that the Principal Rules may prescribe circumstances in which subparagraphs 10(2)(b)(ii) or (iii) does not apply.
108. Current 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.
109. 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.
110. 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.

111. The amendment made by this item will have the effect of prescribing the three circumstances describes above as circumstances in which subparagraph 10(2)(b)(ii) of the Family Assistance Act does not apply.
112. The effect of this amendment is that families will be eligible for CCS on allowable absence days and therefore will not incur a CCS debt where:
- a child's enrolment has commenced but the child has not 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 or for the 28 days following the last COVID-19 hotspot day (providing the first or second circumstance previously applied).
113. The extension of the operation of clause 3.2 to sessions of care before a child first attends a service will assist to alleviate the risk of individual's accruing CCS related debts due to the impact of COVID-19 hotspots on a child's attendance.

Item 20

114. This item amends paragraphs 3.2(2)(c) and (3)(e) of Part 3 of Schedule 3 to provide that the circumstances set out in subclauses 3.2(2) and 3.2(3) include that it is a day between 12 July 2021 and 30 June 2022.
115. As identified above, clause 3.2 prescribes three circumstances in which subparagraph 10(2)(b)(iii) of the Family Assistance Act 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.
116. 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.

117. The amendments made by this item to paragraphs 3.2(2)(c) and (3)(e) omit the references to 'on or after 12 July 2021' and substitutes 'between 12 July 2021 and 30 June 2022' to provide that these circumstances cannot be satisfied beyond 30 June 2022.
118. This amendment aligns the effective end of these provisions with a number of other COVID-19 related measures in the Principal Rules.

Item 21

119. This item inserts a new subparagraph 3.2(4)(c) into Part 3 of Schedule 3 of the Principal Rules to provide that the circumstances set out in subclause 3.2(4) include that it is a day on or before 30 June 2022.
120. This amendment relates to the third circumstance where subparagraph 10(2)(b)(iii) of the Family Assistance Act (as described at item 19) is taken to not apply.
121. The third circumstance is where the first or second circumstance (described above in items 19 and 20) 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.
122. New paragraph 3.2(4)(c) limits this circumstance by requiring that the day be on or before 30 June 2022.
123. This amendment aligns the effective end of this provision with a variety of other COVID-19 related measures in the Principal Rules.