

## **EXPLANATORY STATEMENT**

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

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

***Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules 2025***

### **AUTHORITY**

The *Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules* (Amendment Rules) are made under subsection 85GB(2) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act).

Under subsection 33(3) of the Acts Interpretation Act, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **PURPOSE AND OPERATION**

The Amendment Rules amend the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to add additional reporting and record keeping requirements for early childhood education and care (ECEC) providers in relation to any prescribed third party payments and discounts on fees charged to families, effective from 7 July 2025.

Families are generally required to pay a co-contribution towards their ECEC fees; this is the difference between the session fee and Child Care Subsidy (CCS) entitlement. Prescribed discounts can reduce or eliminate a family's co-contribution without affecting their CCS entitlement. Prescribed discounts include state and territory third-party payments, provider discounts for their staff and provider discounts for a period of emergency (refer to subsections 16A(3A), 16(3D), 54B(1) and 54B(2) of the *Child Care Subsidy Minister's Rules 2017* and sections 201BA and 201BB of the *A New Tax System (Family Assistance) (Administration) Act 1999*).

The Amendment Rules require providers to submit session reports which estimate the amount of any prescribed discount applied, acknowledging that they may not always have sufficient information to estimate the co-contribution fee (such as when a child first attends a service) and that CCS entitlement from week to week is subject to change (i.e. after reconciliation, or if an individual's estimate of adjusted taxable income changes during the income year). Once the co-contribution fee can be reasonably estimated, providers must report the type and amount of the prescribed discount. All session reports should reflect the

most accurate prescribed discount information available at the time of submission. Providers are also required to include the type and amount of any discounts in statements of entitlement, as well as make and keep records relating to these discounts.

The increasing use of prescribed discounts since 2022, particularly through state and territory third-party preschool payments, necessitates a formal reporting mechanism. This instrument will enhance the Department of Education's (department) understanding of the actual cost of early childhood education and care by providing transparency around reductions or removal of co-contributions through prescribed discounts, while also strengthening compliance monitoring.

## **COMMENCEMENT**

The Amendment Rules will commence on 7 July 2025.

## **CONSULTATION**

The department consulted with the Early Childhood Education and Care Reference Group (ECECRG) and the Early Learning and Care Council of Australia (ELACCA) across the duration of the project.

Services Australia has been a joint delivery partner in the design and implementation of the prescribed discount reporting requirements within the Child Care Subsidy System (CCSS). The department and Services Australia have worked closely throughout the project to ensure the legislative, policy, and technical elements are aligned. As the administrator of the CCSS and the primary liaison with software vendors, Services Australia played a central role in coordinating system change and supporting vendor readiness.

Consultation was also undertaken with state and territory governments in relation to reporting of state and territory third-party preschool payments.

These forums provided valuable feedback on the practices of third parties and ECEC providers that fund these discounts, as well as the understanding and readiness of ECEC providers who apply these discounts to family accounts, which have informed the development of these Amendment Rules.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### *Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules 2025*

The *Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules 2025* (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Instrument amends the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to add additional reporting and record keeping requirements for early childhood education and care (ECEC) providers in relation to any prescribed third party payments and discounts on fees charged to families, effective from 7 July 2025.

Families are generally required to pay a co-contribution towards their ECEC fees; this is the difference between the session fee and Child Care Subsidy (CCS) entitlement. Prescribed discounts can reduce or eliminate a family's co-contribution without affecting their CCS entitlement. Prescribed discounts include state and territory third-party payments, provider discounts for their staff and provider discounts for a period of emergency (refer to subsections 16A(3A), 16(3D), 54B(1) and 54B(2) of the *Child Care Subsidy Minister's Rules 2017* and sections 201BA and 201BB of the *A New Tax System (Family Assistance) (Administration) Act 1999*).

The Instrument requires providers to submit session reports which estimate the amount of any prescribed discount applied, acknowledging that they may not always have sufficient information to estimate the co-contribution fee (such as when a child first attends a service) and that CCS entitlement from week to week is subject to change (i.e. after reconciliation, or if an individual's estimate of adjusted taxable income changes during the income year). Once the co-contribution fee can be reasonably estimated, providers must report the type and amount of the prescribed discount. All session reports should reflect the most accurate prescribed discount information available at the time of submission. Providers are also required to include the type and amount of any discounts in statements of entitlement, as well as make and keep records relating to these discounts.

The increasing use of prescribed discounts since 2022, particularly through state and territory third-party preschool payments, necessitates a formal reporting mechanism. The measures in this Instrument will enhance the Department of Education's understanding of the actual cost of early childhood education and care by providing transparency around reductions or removal of co-contributions through prescribed discounts, while also strengthening compliance monitoring.

## Human rights implications

This Instrument engages the following rights:

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

### Rights of parents and children

Article 3(1) of the CRC states that in all actions concerning children, including those undertaken by administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

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

This Instrument promotes the rights of parents and children by enhancing the Commonwealth's understanding of the actual cost of early childhood education and care by providing transparency around reductions or removal of co-contributions through prescribed discounts. This enhanced understanding will contribute towards evidence-based child care policy that reflects the real circumstances and needs of the community.

## Conclusion

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

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

***Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules 2025***

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This is a formal provision specifying that the name of the instrument is the *Child Care Subsidy Amendment (Requirements Relating to Third Party Payments and Discounts) Secretary's Rules 2025* (Amendment Rules).

**Section 2: Commencement**

2. This section provides that the Amendment Rules will commence on 7 July 2025.

**Section 3: Authority**

3. This section provides that the Amendment Rules are made under the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act). Specifically, subsection 85GB(2) of the Family Assistance Act allows the Secretary to make rules (referred to as the Secretary's Rules) prescribing matters 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), or necessary or convenient to be prescribed for carrying out or giving effect to certain provisions of the Family Assistance Act and the Family Assistance Administration Act.

**Section 4: Schedules**

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

**SCHEDULE 1 – Amendments**

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

**Item 1**

5. Item 1 repeals and substitutes paragraph 10(k) of the Principal Rules.
6. Section 10 of the Principal Rules prescribes additional information that must be included in a statement of entitlement given by approved providers to individuals in accordance with section 201D of the Family Assistance Administration Act. Specifically, under subparagraph 201D(3)(a)(iv) of the Family Assistance

Administration Act, a statement of entitlement must include any information prescribed by the Secretary's Rules.

7. In addition to the information required to be included in a statement of entitlement under existing section 10 of the Principal Rules, new subparagraphs 10(k)(ii) and (iii) introduce new requirements relating to daily and weekly totals of the amount of all fees charged by the provider for care provided during the statement period. These include details about the type and amount of:
  - any discounting applied in order to pass on payments prescribed by the *Child Care Subsidy Minister's Rules 2017* (Minister's Rules) for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that have been received by the provider; and
  - any discounting allowed under section 201BA or 201BB of the Family Assistance Administration Act.
8. New subparagraph 10(k)(i) serves the same function as existing paragraph 10(k) of the Principal Rules, though for clarity and consistency with new subparagraphs 10k(ii) and (iii), the effect of new subparagraph 10(k)(i) is that it expressly requires a statement of entitlement to include details of the 'type and amount' of any discounting or refund applied in order to pass on fee reductions. There is no substantive or practical change to the existing requirement under current paragraph 10(k), rather the revised wording is intended to state more expressly the requirement in existing paragraph 10(k).
9. The 'type' of discounting refers to the specific name of an applicable discount. For instance, section 201BA of the Family Assistance Administration Act allows providers to apply a 'permissible staff discount' on fees charged to an individual, or their partner, if they are working as an educator or cook at a child care service (other than a family day care or in home care service) of the provider in a week in which their child has received a session of care from a service of the provider. The permissible staff discount applied in accordance with section 201BA of the Family Assistance Administration Act would be the 'type' of discounting included in the statement of entitlement under the new subparagraph 10(k)(iii) of the Principal Rules.
10. Similarly, section 16A of the *Child Care Subsidy Minister's Rules 2017* (Minister's Rules) prescribes payments for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act – these include payments for children in vulnerable or disadvantaged circumstances and State and Territory preschool payments. The 'type' of discounting included in the statement of entitlement under the new subparagraph 10(k)(ii) of the Principal Rules refers to the discounting applied as a result of the relevant type of payment in section 16A of the Minister's Rules.

## Item 2

11. Item 2 inserts new paragraph 11(f) at the end of section 11 of the Principal Rules.
12. Subsection 202A(1) of the Family Assistance Administration Act requires an approved provider to make written records of information or events of which it becomes aware,

if the provider would not otherwise have a written record of the information or event and the information or event relates to specified matters, including matters prescribed by the Secretary's Rules. Section 11 of the Principal Rules prescribes such additional matters in accordance with subparagraph 202A(1)(b)(iv) of the Family Assistance Administration Act.

13. In addition to the matters already prescribed under the current section 11 of the Principal Rules, new paragraph 11(f) requires providers to make records in relation to any discount allowed under section 201BA or 201BB of the Family Assistance Administration Act. This requirement complements the existing requirement in paragraph 11(e) of the Principal Rules to make records in relation to any payments prescribed by the Minister's Rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that have been received by the provider.

### Item 3

14. Item 3 inserts new paragraph 12(ib) into the Principal Rules.
15. Subsection 202B(1) of the Family Assistance Administration Act requires an approved provider to keep records of information or events in relation to certain matters, including matters prescribed by the Secretary's Rules. Section 12 of the Principal Rules prescribe matters in accordance with paragraph 202B(1)(d) of the Family Assistance Administration Act.
16. In addition to the matters that approved providers are already required to keep records of under section 12 of the Principal Rules, new paragraph 12(ib) requires providers to keep records in relation to any discounts allowed under section 201BA or 201BB of the Family Assistance Administration Act. This requirement complements the existing requirements in paragraph 12(ia) of the Principal Rules to keep records in relation to payments prescribed by the Minister's Rules for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act that have been received by the provider.

### Item 4

17. Item 4 repeals and substitutes paragraphs 13(h) and 13(i) of the Principal Rules.
18. Section 13 of the Principal Rules prescribes additional information that providers must include in session reports given to the Secretary in accordance with section 204B of the Family Assistance Administration Act. Specifically, under paragraph 204B(2)(c) of the Family Assistance Administration Act, a session report must include any information prescribed by the Secretary's Rules.
19. The effect of new paragraph 13(h) is to introduce a new requirement for session reports to include information about whether the individual benefited from a discount allowed under section 201BA or 201BB of the Family Assistance Administration Act in respect of the session (new subparagraph 13(h)(ii)), alongside the existing requirement for session reports to include information about whether the individual benefited from a payment prescribed under paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act in respect of the session (new subparagraph 13(h)(i), which effectively replicates existing paragraph 13(h) of the Principal Rules).

20. Where an individual benefits from a payment or discount referred to in new paragraph 13(h) in respect of a session, new paragraph 13(i) requires sessions reports to also include information about the type and an estimate of the amount of the payment or discount. The 'type' of payment or discount refers to the type of payment that is prescribed under the Minister's Rules or the type of discount allowed under section 201BA or 201BB of the Family Assistance Administration Act (as discussed at paragraph 9 above).
21. Providers are only required to report estimates of the amount of the payment or discount because due to the nature of how Child Care Subsidy (CCS) entitlement is calculated, it is not possible to precisely determine the amount of the payment or discount that will be applied to the individual's child care fees on a weekly basis. Prescribed payments and discounts contribute to the individual's child care fees without reducing their CCS entitlement, which means the payments and discounts are applied to the individual's co-contribution amount (that is, the amount the individual is liable to pay to the provider after their CCS entitlement has been calculated). CCS entitlement is determined with reference to an individual's applicable percentage given under clauses 3 or 3A of Schedule 2 to the Family Assistance Act, which varies depending on the individual's adjusted taxable income (ATI) for the income year in which the CCS fortnight starts. During an income year, CCS entitlement is calculated based on an estimate of ATI which the individual may update at any time. While it is therefore possible to estimate an individual's CCS entitlement during the CCS fortnight based on previous CCS entitlement, this may not be indicative of the individual's actual CCS entitlement during that fortnight, which could vary if the individual updates their ATI during the income year or after the end of the income year, when the individual's ATI can be confirmed and their CCS entitlement is reconciled.
22. This means the exact amount of any prescribed payment or discount applied on the individual's co-contribution amount may be difficult to determine, so the reference to 'estimate' is designed to account for this uncertainty. Providers are expected to report reasonable estimates of the amount and type of the discounts applied based on the information available to them when submitting the report, i.e. previous statements of entitlement. In practice, this may mean that the first session report submitted for a child with a particular service may report an estimate of \$0, given they do not have access to previous CCS entitlement information for that child to inform their co-contribution amount, and therefore the amount of any prescribed discounts or payments that will be applied to the co-contribution amount.
23. As the prescribed discount amount is an estimate and intended solely as a reporting tool, providers will not be required to update session reports when a family's CCS entitlement changes and affects a previously processed session report. This approach helps minimise reporting burden for providers. However, all session reports should reflect the most accurate prescribed discount information available to the provider at the time of submission. Additionally, statements of entitlement issued to families must accurately reflect the actual prescribed discount for each session (as per item 1).



24. As an example of how this reporting will work, a service charges \$150 for a session of care. A family has a CCS percentage of 60%, resulting in a co-contribution of \$60. The family is eligible for a 95% staff discount on their co-contribution (under section 201BA of the Family Assistance Administration Act). Based on this, the provider can reasonably estimate the prescribed discount amount to be \$57 for that session (95% of \$60), leaving a remaining co-contribution of \$3 payable by the family.

#### Item 5

25. Item 5 adds a new section 15 at the end of Division 1 of Part 5 of the Principal Rules.
26. Part 5 of the Principal Rules sets out transitional and application provisions relating to the Primary Rules.
27. Section 15 clarifies that the amendments to section 13 of the Principal Rules in Schedule 1 to the Amendment Rules apply in relation to session reports for weeks beginning on or after 7 July 2025. This means, for example, that if a provider submits a session report on 8 July 2025 but the report is about the week commencing 23 June 2025, they are not required to include the matters that are inserted into section 13 by these Amendment Rules. For the benefit of the reader, the note under section 15 explains the effect of the amendments to section 13 contained in item 4 of Schedule 1 to the Amendment Rules.