EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (2026 Measures No. 1) Minister's Rules 2026

AUTHORITY

The *Child Care Subsidy Amendment (2026 Measures No. 1) Minister's Rules 2026* (the 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 *Child Care Subsidy Minister's Rules* 2017 (Principal Rules) prescribe matters that are required or permitted (or which are otherwise necessary or convenient) for the purposes of the Family Assistance Act or the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).

The Amendment Rules amend the Principal Rules to have the effect that:

- Changes to the Principal Rules are made in accordance with changes to the Family Assistance Act and Family Administration Act following the passage of the *Regulatory Reform Omnibus Act 2025* (the Omnibus Act), changing the language for Additional Child Care Subsidy (ACCS) (child wellbeing) from a 'child at risk of serious abuse or neglect' to a 'child in need of wellbeing support'. The Amendment Rules will amend the Principal Rules so that they prescribe when a child will be taken to be 'in need of wellbeing support'.
- The ACCS (transition to work) study requirements are updated to remove the outdated reference to the 'Skills Priority List' and reflect the current term 'Occupation Shortage List' published by Jobs and Skills Australia.
- Additional circumstances are prescribed for the purpose of paragraph 194A(3)(b) of the Family Assistance Administration Act*,* to specify when an application for provider approval or an application to vary a provider's approval, is taken not to have been made.

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- The additional provider eligibility rules contained in section 43 of the Principal Rules are updated to ensure that the checks approved providers must undertake for new Persons with Management or Control (PMCs), persons responsible for day-to-day operation of a service, Family Day Care (FDC) educators, and In Home Care (IHC) educators are current.
- Additional conditions of continued approval for approved providers of IHC services and Community Child Care Fund Restricted (CCCFR) grant funded services are imposed, consistent with the child safety and protection training requirements prescribed in the Education and Care Services National Law (National Law), contained in the schedule to the *Education and Care Services National Law Act 2010*.
- Appropriation limits for the Community Child Care Fund Special Circumstances (CCCFSC) Grant Opportunity for the 2026-27, 2027-28 and 2028-29 financial years are prescribed.
- When a service that is not currently regulated under the National Law or state or territory residual law, becomes regulated under either regulatory regimes, that service must maintain this approval as a condition of continued approval under the family assistance law. Preschool services with a single National Law approval can apply to operate an Outside School Hours Care (OSHC) service under the family assistance law, and this application will be taken to apply in respect of only the OSHC component of the service.

ACCS (child wellbeing)

The ACCS (child wellbeing) amendments update terminology to reflect the change in language from 'a child at risk of serious abuse or neglect' to a 'child in need of wellbeing support', arising from the Omnibus Act, without changing eligibility criteria. The amendments repeal existing definitions of at risk, harm and neglect in section 4 of the Principal Rules and replace Division 2 of Part 2.

The new provisions set out when a child is taken to be in need of wellbeing support, including where the child is at risk of suffering harm as a result of serious physical, emotional or psychological abuse, sexual abuse, domestic or family violence or neglect. The amendments also clarify the circumstances in which a child is not taken to be in need of wellbeing support solely because of factors such as family income, cultural background, geographical location, socioeconomic disadvantage, disability, or foster or kinship care arrangements.

The measures are designed to make ACCS (child wellbeing) more inclusive and accessible by removing stigmatising language to encourage eligible families, especially First Nations families and domestic violence victims, to engage with approved providers to access affordable early childhood education and care (ECEC) and supports to improve the child's wellbeing through ACCS (child wellbeing).

ACCS (transition to work) study requirements

The ACCS (transition to work) study requirements amendments are a technical update to reflect the current naming conventions for the list that identifies occupations in labour shortages across Australia managed by Jobs and Skills Australia. The amendment is intended to ensure that the Principal Rules continue to operate as intended following changes to the way Jobs and Skills Australia identify and publish information about occupational shortages. The Amendment Rules replace references to qualifications and occupations within the previous 'Shortage Priority List' with those that accord with the current Occupation Shortage List as prepared and published by Jobs and Skills Australia.

Provider application exclusion period

The provider application exclusion amendments prescribe additional circumstances in which an application for provider approval, or an application to vary a provider's approval is taken not to have been made for the purposes of paragraphs 194A(3)(b) and 196A(3)(b) of the Family Assistance Administration Act respectively. The amendments are intended to support the integrity of the provider approval framework by preventing applications from proceeding in circumstances where:

- A provider has recently been refused for approval or had its approval cancelled because it did not meet the requirement to have sufficient governance arrangements in place at its service to ensure compliance with the family assistance law; or
- a PMC of the provider was a PMC of a different provider that has recently been refused for approval or had its approval cancelled because it did not meet requirements to have sufficient governance arrangements in place to ensure compliance with family assistance law.

Provider eligibility rules

The provider eligibility rules amendments update the checks that approved providers must undertake for new PMCs of the provider and other specified persons. The amendments support more current and consistent suitability checks for people who hold positions of responsibility in relation to approved providers and services.

For a PMC who is an individual, the amendments require a provider to ensure that the person held a Working with Children Check (WWCC) or equivalent immediately before commencing in the role (irrespective of whether the person would otherwise be required to hold a WWCC under state or territory law), and had a digitally verifiable Nationally Coordinated Criminal History Check dated within 60 days before commencing in the role. The amendments also require providers to undergo relevant checks through the Australian Financial Security Authority and/or the Australian Securities and Investments Commission within prescribed timeframes.

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The amendments also update the requirements for Nationally Co-ordinated Criminal History Checks for new persons responsible for day-to-day operations of a service, FDC educators and IHC educators. These checks must be carried out no more than 60 days before starting the role or be no more than 12 months old if the person was already in a like role with another provider. The requirements are framed to ensure the provider has received digitally verifiable evidence of the relevant check and has completed digital verification.

Conditions for continued approval related to child safety and protection training

These child safety and protection training amendments extend mandatory child training requirements, agreed by Education Ministers in August 2025, to both providers of IHC services and CCCFR grant funded services that are not regulated under the National Quality Framework (NQF).

Recent amendments to the National Law and the *Education and Care Services National Regulations* (National Regulations) introduce mandatory child safety and protection training for services regulated under the NQF. However, providers of IHC services, and the majority of CCCFR grant funded services, are out of scope of the NQF. These amendments require these services to comply with the nationally agreed training requirements.

Including this obligation as a condition for continued approval under the family assistance law ensures that the Australian Government can support child safety outcomes in these services.

These amendments require approved providers of IHC services and CCCFR grant funded services to ensure that specified personnel complete mandatory child safety training and child protection training, as defined by reference to the National Law and National Regulations. The training requirements are framed to align, as far as practicable, with the content, scope and timeframes that apply under the National Law.

Appropriation

These amendments insert annual appropriation limits for the CCCFSC Grant Opportunity for the 2026-27, 2027-28 and 2028-29 financial years. For each of those financial years, the total amount that may be paid is $4 million.

The amendments provide administrative clarity without changing the scope, purpose, eligibility, or application of the CCCFSC Special Appropriation. These amendments do not alter the underlying policy intent.

Exemption from certain requirements

This amendment clarifies the requirements that apply to certain services that are currently exempt from approval under the National Law, or a relevant State or Territory residual law.

This measure will amend the Principal Rules to require any exempt service, which later becomes approved under the National Law, or an applicable State or Territory residual law,

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to maintain the National Law or State or Territory residual law approval as a condition of continued approval under the family assistance law.

The Amendment Rules will also repeal the current exemption in section 51 of the Principal Rules from the minimum operating period (weeks per year), and replace it with an alternative minimum operating period prescribed under subsection 195C(3) to achieve a substantially similar policy outcome.

Preschool OSHC

The Preschool OSHC amendments reduce duplicative administrative requirements for standalone preschool services seeking approval as an OSHC service under the family assistance law.

Currently, for a preschool service to be approved to deliver CCS-approved OSHC services under the family assistance law, two National Law approvals are required. This amendment prescribes new additional service eligibility criteria for preschool OSHC services for the purposes of paragraph 194D(g) of the Family Assistance Administration Act.

The amendment provides that a provider's application for approval in respect of a child care service under the Family Assistance Administration Act is taken to apply only to the OSHC component of the service, where:

- the service is approved as a centre-based service under the Education and Care Services National Law; and
- a service's approval under the Education and Care Services National Law enables the service to operate from the same location:
    - a preschool program during normal school hours; and
    - an OSHC service.

The amendment will reduce administrative requirements while maintaining the relevant approval and regulatory safeguards.

COMMENCEMENT

The Amendment Rules commence on 1 July 2026.

CONSULTATON

The Department of Education (the department) consulted stakeholders in the ECEC sector through its Early Childhood Education and Care Reference Group (ECECRG) on all proposed amendments to the Principal Rules. No feedback was provided on these changes.

Several amendments were also the subject of targeted or separate consultation:

- The provider application exclusion period and provider eligibility amendments were consulted on separately with the ECECRG. Received feedback indicated that

members supported the amendments noting possible regulatory impact on operational staff delegated to undertake the additional requirements.

- The child safety and protection training amendments were also the subject of consultation via the Education Ministers Meeting who agreed the training should be mandatory for staff and volunteers in all services, including those not regulated under the NQF.
- The preschool OSHC amendments were discussed with relevant state and territory agencies, which raised no concerns. It was noted through consultation that these amendments reduce administrative burden for regulators and providers.
- The department consulted relevant Commonwealth agencies, state and territory representatives and ECEC sector representatives on the ACCS (child wellbeing) and as part of consultations to inform the changes in the Omnibus Act.
- Jobs and Skills Australia was also consulted on the ACCS (transition to work) amendments.

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Child Care Subsidy Amendment (2026 Measures No. 1) Minister's Rules 2026

The *Child Care Subsidy Amendment (2026 Measures No. 1) Minister's Rules* 2026 (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 *Child Care Subsidy Minister's Rules* 2017 (Principal Rules) prescribe matters that are required or permitted (or which are otherwise necessary or convenient) for the purposes of the Family Assistance Act or the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).

The Instrument amends the Principal Rules to have the effect that:

- Changes to the Principal Rules are made in accordance with changes to the Family Assistance Act and Family Administration Act following the passage of the *Regulatory Reform Omnibus Act 2025* (the Omnibus Act), changing the language for Additional Child Care Subsidy (ACCS) (child wellbeing) from a 'child at risk of serious abuse or neglect' to a 'child in need of wellbeing support'. The Amendment Rules will amend the Principal Rules so that they prescribe when a child will be taken to be 'in need of wellbeing support'.
- The ACCS (transition to work) study requirements are updated to remove the outdated reference to the 'Skills Priority List' and reflect the current 'Occupation Shortage List' published by Jobs and Skills Australia.
- Additional circumstances are prescribed for the purpose of paragraph 194A(3)(b) of the Family Assistance Administration Act*,* to specify when an application for provider approval or an application to vary a provider's approval, is taken not to have been made.
- The additional provider eligibility rules contained in section 43 of the Principal Rules are updated to ensure that the checks approved providers must undertake for new Persons with Management or Control, persons responsible for day-to-day operation of a service, Family Day Care educators, and In Home Care (IHC) educators are current.
- Additional conditions of continued approval for approved providers of IHC services and Community Child Care Fund Restricted (CCCFR) grant funded services are imposed, consistent with the child safety and protection training requirements prescribed in the Education and Care Services National Law (National Law), contained in the schedule to the *Education and Care Services National Law Act 2010*.

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- Appropriation limits for the Community Child Care Fund Special Circumstances (CCCFSC) Grant Opportunity for the 2026-27, 2027-28 and 2028-29 financial years are prescribed.
- When a service that is not currently regulated under the National Law or state or territory residual law, becomes regulated under either regulatory regimes, that service must maintain this approval as a condition of continued approval under the family assistance law. Preschool services with a single National Law approval can apply to operate an Outside School Hours Care (OSHC) service under the family assistance law, and this application will be taken to apply in respect of only the OSHC component of the service.

Human rights implications

The Instrument engages the following rights:

1. **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;
2. **Article 18** of the CRC, which 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;
3. **Article 19** of the CRC, which requires that appropriate legislative, administrative, social and educational measures be taken to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, including social programmes to provide necessary support for the child and for those who have the care of the child;
4. **Article 7** of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the right to just and favourable conditions of work;
5. **Article 17** of the International Covenant on Civil and Political Rights (ICCPR), which recognises the right to protection against arbitrary and unlawful interferences with privacy, family and home; and
6. **Article 16** of the CRC, which recognises the right to protection against arbitrary and unlawful interferences with privacy, family and home.

<u>Rights of the Child</u>

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.

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

Article 19 of the CRC requires States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians, or any other person who has the care of the child. Paragraph 2 states that these measures should include effective procedures for the establishment of social programmes to provide necessary support for the child.

The Instrument supports the above rights of parents and children by:

- Removing stigmatising language that may discourage parents and carers of children eligible to subsidised child care through ACCS (child wellbeing) from accessing ACCS (child wellbeing). The amendments may encourage more eligible families to access ACCS (child wellbeing), rendering appropriate assistance to parents and legal guardians.
- Providing greater opportunity for parents and carers who are working or studying to transition into paid work through ACCS (transition to work) support, to access subsidised childcare for the children they care for.
- Introducing clearer safeguards around provider approval applications in cases where there has been a recent refusal or cancellation linked to inadequate governance arrangements. This will contribute to higher quality childcare services for children.
- Promoting the safety and best interests of children by ensuring that ECEC educators and those with management and control of child care providers are fit and proper to administer the Child Care Subsidy (CCS) and ACCS by ensuring they have to go through appropriate checks to confirm their suitability for the role.
- Supporting nationally consistent child safety standards across the early childhood education and care (ECEC) sector by requiring approved providers of IHC and CCCFR services to ensure that relevant personnel complete mandatory child safety and protection training. These requirements strengthen safeguards for children attending these services and reduce risks of harm that may adversely affect children’s physical and mental health.
- Supporting the appropriation for services accessing the CCCFSC Grant Opportunity, a grant opportunity available to services at risk of closure due to a local emergency or unexpected event. The continued appropriation for the 26-27, 27-28 and 28-29 financial years will support continued access to ECEC services during these periods.

- Reducing administrative burden for preschools to provide outside school hours care for children, which supports access to quality ECEC.

Right to just and favourable conditions of work

Article 7 of the ICESCR recognises the right to just and favourable conditions of work. The Amendment Rules may engage this right by requiring personnel working at ECEC services to undertake mandatory training as a condition of service delivery.

Any impact on this right is reasonable and proportionate. The training requirements are directly related to the nature of the work, and support safe working environments for children, staff and volunteers. The requirements replicate obligations contained in the National Law, and the training is available nationally at no cost.

The Instrument also requires providers to comply with requirements to demonstrate fitness and propriety to administer the CCS and to hold certain positions of responsibility. Any impact on this right is reasonable and proportionate. The requirement to ensure a person's fitness and propriety is directly related to the nature of the work, supports safe working environments for staff, protects the safety and wellbeing of children and ensures strong governance and administration.

Right to privacy

Article 17 of the ICCPR and article 16 of the CRC requires that no one shall be subject to arbitrary or unlawful interference with privacy.

The Instrument may engage this right to the extent that providers will be required to ensure that certain checks are conducted of each person with management or control and family day care educators. They will also be required to notify any adverse results to the department.

Any interference with privacy is lawful, limited and proportionate given the objective is to promote child safety and proper governance of the administration of Commonwealth funds. It is important that those who play a role in administering Commonwealth subsidies or caring for children have their suitability for the role appropriately verified.

In addition, each of the checks required are already able to be undertaken by members of the public, so the impact of the Instrument on individuals' privacy is not significant.

Conclusion

This Instrument is compatible with human rights because it promotes the protection of human rights recognised under the CRC and CESCR, and ICCPR.

Minister for Education, the Hon Jason Clare MP

CHILD CARE SUBSIDY AMENDMENT (2026 MEASURES No. 1) MINISTER'S RULES 2026

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument as *Child Care Subsidy Amendment (2026 Measures No. 1) Minister's Rules 2026* (Amendment Rules).

Section 2: Commencement

2. This section provides that the entire Amendment Rules commence on 1 July 2026.

Section 3: Authority

3. This section provides that the Amendment Rules are made under *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act). Subsection 85GB(1) of the Family Assistance Act allows the Minister to make rules required or permitted to be prescribed by 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 Minister's Rules 2017* (Principal Rules) is amended or repealed as set out in the applicable items in the Schedule to the Amendment Rules.

SCHEDULE 1 – Amendments

Part 1—ACCS (child wellbeing)

Child Care Subsidy Minister's Rules 2017

Item 1 – Section 4

Definition of at risk, harm and neglect

5. Item 1 repeals the definition of 'at risk', 'harm' and 'neglect' at section 4. This amendment is consequential to the amendments in item 2.

Item 2 – Division 2 of Part 2

6. Item 2 repeals and substitutes Division 2 of Part 2.

7. Currently, Division 2 of Part 2 provides for the circumstances in which children are taken to be 'at risk of serious abuse or neglect' for the purposes of subsection 85CA(4) of the Family Assistance Act, to be eligible for Additional Child Care Subsidy (ACCS) (child wellbeing).

8. This includes because a child is at risk of suffering harm or because they need care under State or Territory law. Division 2 also provides for the circumstances in which a child is not taken to be at risk of serious abuse or neglect.

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9. From 1 July 2026, the *Regulatory Reform Omnibus Act 2025* will replace the phrase 'at risk of serious abuse or neglect' with 'in need of wellbeing support' in the Family Assistance Act and the Family Assistance Administration Act. This is a move toward non-stigmatising and strengths-based language.

10. Item 2 prescribes circumstances when a child is taken to be in need of wellbeing support, and when a child is not taken to be in need of wellbeing support.

11. Item 2 also moves the definitions of 'harm' and 'neglect' from section 4 (definitions) to new section 9, so that these definitions only apply in the context of ACCS (child wellbeing).

12. Item 2 also removes reference to 'at the time a session of care is provided' from section 10 of the Principal Rules. These words are unnecessary as the Family Assistance Act is clear about when the child must be in need of wellbeing support in order for an ACCS (child wellbeing) certificate or determination to be made.

13. These amendments are not intended to change the overall policy intent of when a child is eligible for ACCS (child wellbeing) – a child will generally be 'in need of wellbeing support' in similar circumstances that a child was previously 'at risk of serious abuse or neglect.'

Item 3 – Subsection 54(2)

14. Item 3 amends subsection 54(2) to remove reference to 'risk of serious abuse or neglect.'

15. Currently subsection 54(2) of the Principal Rules operates to permit section 85CB certificates of risk of serious abuse or neglect to be backdated.

16. Item 3 has removed the reference to 'at risk of serious abuse or neglect', and substitutes with 'certificate given by an approved provider under section 85CB (certification for ACCS (child wellbeing).'

17. This item does not change the operation of backdated approval for ACCS (child wellbeing).

Part 2—ACCS (transition to work) study requirements

Child Care Subsidy Minister's Rules 2017

Items 4, 5 and 6 – Subparagraph 13(7)(c)(ii); subsection 13(7) and after subsection 13(7)

18. Item 4 repeals and substitutes subparagraph 13(7)(c)(ii). It is a technical amendment to the eligibility requirements for study that will meet the study requirements to be eligible for ACCS (transition to work).

19. Currently, the ACCS (transition to work) is a subsidy payable to an individual receiving a transition to work payment (such as the parenting payment or jobseeker payment) under the Social *Security Act 1991* (Cth). Eligibility for ACCS (transition to work) is set out

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in section 85CK of the Family Assistance Act, and includes any requirements prescribed by the Principal Rules. The Principal Rules require an individual to meet study requirements. Subsection 13(7) of the Principal Rules sets out the study requirements, and subparagraph 13(7)(c)(ii) includes a course of education or study that, among other requirements, will qualify the individual for an 'occupation listed in the list known as the Skills Priority List as prepared by Jobs and Skills Australia, and as existing from time to time'.

20. Item 4 replaces reference to 'an occupation listed in the list known as the *Skills Priority List*' with 'an occupation in shortage'. An occupation in shortage is defined in new subsection (7A) inserted by Item 6.

21. Item 5 repeals the note about the 'Skills Priority List', to reflect the change made by Item 4.

22. Item 6 inserts new subsection (7A). It identifies the circumstances in which 'an occupation is in shortage' for the purposes of item 4. New section 7A provides that an occupation is in shortage if it is listed in the 'Occupation Shortage List' published by Jobs and Skills Australia, as existing from time to time, and the list indicates the occupation is in shortage.

23. An occupation will be an occupation in shortage if the Occupation Shortage List indicates the occupation is in shortage in at least one State and Territory, irrespective of whether it is a general shortage or a regional or metropolitan shortage, and irrespective of the State or Territory where the shortage exists.

24. The intention of items 4, 5 and 6 is to update the outdated reference to the 'Skills Priority List'. It is intended to ensure eligibility for the subsidy remains aligned to the needs of Australia's labour market by linking eligibility with a domestic occupational shortage list issued by the agency responsible for analysing and advising on workforce and skills shortages in Australia.

25. The 'Occupation Shortage List', has been incorporated by reference as existing from time to time. Subsection 14(2) of the *Legislation Act 2003* provides a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 14(2) of the *Legislation Act 2003* is also subject to contrary intention in any other Act. Relevantly, subsection 85GB(2A) of the Family Assistance Act provides that despite subsection 14(2) of the *Legislation Act 2003*, the Principal Rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force from time to time. Accordingly, the incorporation of the Occupation Shortage List on an ambulatory basis is authorised by subsection 85GB(2A) of the Family Assistance Act.

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26. This is necessary to ensure that the ACCS (transition to work) program remains adapted to Australia's skills and qualifications needs as they change over time.

27. The Occupation Shortage List is publicly available, without any fee, on the Jobs and Skills Australia website and it is expected to continue to be freely accessibly by members of the public.

Part 3—Provider application exclusion period

Child Care Subsidy Minister's Rules 2017

Item 7 – Subsections 41A(1) and 41A(2)

28. Item 7 repeals and substitutes subsections 41A(1) and (2).

29. It is a technical and consequential amendment that adds into the provider application exclusion period provision:

    a. the provider eligibility rule requiring providers to have arrangements in place to ensure compliance with the family assistance law under paragraph 194C(da) of the Family Assistance Administration Act; and

    b. the service eligibility rule that the provider of the service, and each person responsible for the day-to-day operation of the service have arrangements in place to comply with the family assistance law under paragraph 194D(da) of the Family Assistance Administration Act.

30. Paragraphs 194C(da) and 194D(da) were inserted into the Family Assistance Administration Act by *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Cth).

Application for approval

31. Currently, subsection 41A(1) of the Principal Rules sets out, for the purposes of paragraph 194A(3)(b) of the Family Assistance Administration Act, circumstances under which an application for approval as a provider of a child care service is taken not to have been made.

32. Those circumstances are if, during the *application exclusion period* (as defined under subsection 41A(4) of the Principal Rules), the Secretary refused to approve the provider's application under subsection 194B(6) of the Family Assistance Administration Act or cancelled the provider's approval under paragraph 195H(1)(b) of the Family Assistance Administration Act, for failures relating to a relevant person's fitness and propriety to administer Child Care Subsidy (CCS) and ACCS.

33. Subsection 41A(1) of the Principal Rules also provides that an application for approval will be taken not to be made occurs if a person with management or control of the provider seeking approval was a person in management or control of a different

provider about which the Secretary made a cancellation or refusal decision for the reasons listed above.

34. Item 7 extends these circumstances to include circumstances where, during the application exclusion period, the Secretary refused to approve a provider under subsection 194B(6), refused to approve a service under subsection 194B(7), or cancelled a provider under paragraph 195H(1)(b) of the Family Assistance Administration Act for failure to satisfy paragraph 194C(da) (a provider eligibility rule) or paragraph 194D(da) (a service eligibility rule) in respect of having arrangements in place to ensure compliance with the family assistance law.

35. Where paragraphs 194C(da) or 194D(da) have not been satisfied during the provider application exclusion period, an application for approval as a provider is taken not to be made.

Application for variation

36. Currently, an application for a variation of the provider's approval to add or remove a child care service is taken not to have been made in circumstances prescribed by subsection 41A(2) of the Principal Rules.

37. Those circumstances include where the Secretary has made a decision to refuse to add a child care service to the provider's approval or to vary the provider's approval so that the provider is not approved in respect of a service because the Secretary finds that the provider failed to satisfy the service eligibility rules in paragraph 194D(c) or (d) of the Family Assistance Administration Act. Paragraphs 194D(c) and (d) provide that it is a service eligibility rule that each person who is, or will be, responsible for the day to day operation of the service must be fit and proper persons to be involved in the administration of CCS and ACCS.

38. Item 7 extends the circumstances to include circumstances where, during the application exclusion period, the Secretary refused to approve a variation to add or remove a child care service under subsection 196B(4) or 196C(3) of the Family Assistance Administration Act, because the Secretary was not satisfied that the child care service satisfied the service eligibility rule in paragraph 194D(da) of the Family Assistance Administration Act.

39. Item 7 also extends the circumstances in subsection 41A(2) to include where the Secretary varied the provider's approval so that a provider was not approved in respect of one or more child care services under paragraph 195H(1)(d) of the Family Assistance Administration Act because a provider had not complied with a condition in subsection 195A(1) in respect of the service eligibility rule in paragraph 194D(da).

40. The intention of item 7 is to ensure that providers, and former persons with management and control of a provider, with a history of having insufficient governance arrangements to ensure compliance with the family assistance law cannot immediately

submit new applications for approval but must wait an 18 month period. This ensures that the Secretary does not need to consider multiple, similar, unmeritorious applications from providers with poor governance arrangements in a short period of time.

Part 4—Provider eligibility rules

Child Care Subsidy Minister's Rules 2017

Item 8 – Section 4

41. Item 8 inserts definitions for the Australian Criminal Intelligence Commission (ACIC), Australian Securities and Investments Commission (ASIC), 'nationally coordinated criminal history check' and 'working with children check' into section 4. It does so in support of amendments to the additional rules a provider must satisfy to be approved for child care services in relation to checks for persons with management or control of the provider, for family day care (FDC) educators and in home care (IHC) educators in Item 9.

Item 9 – Subsections 43(2) to (4)

42. Item 9 repeals subsections 43(2) to (4) of the Principal Rules and substitutes new subsections 43(2) to (4).

43. Currently for a provider to be approved under the family assistance law, the provider must ensure that each person with management or control has undertaken the checks set out in paragraphs 43(2)(a) to (d).

44. Subsection 43(3) of the Principal Rules prescribes the checks a provider must ensure are carried out for each person who is an FDC educator for an FDC service.

45. Subsection 43(4) of the Principal Rules prescribes the checks a provider must ensure are carried out for each person who is an IHC educator for an IHC service.

46. Item 9 amends these requirements. The purpose of these amendments is to ensure more current and consistent suitability checks for people who hold positions of responsibility in relation to approved providers and services. This includes persons with management or control of the provider, FDC educators and IHC educators. FDC and IHC educators provide child care from separate locations and have a high degree of independence in how they carry out their work. Accordingly, it is appropriate to require the provider to undertake additional checks for them, compared to educators in centre-based day care or outside school hours care.

Working with children check

47. Currently, under paragraphs 43(2)(a), 43(3)(a) and 43(4)(a), a 'working with children check' (WWCC) must be held by persons with management or control, FDC educators

and IHC educators, immediately before they hold the position, if the person was required to hold the check under a law of a state or territory.

48. Item 8 amends 43(2)(a), 43(3)(a) and 43(4)(a) to require such a person to hold a check regardless of the law of a state or territory. This will mean that certain persons with management or control who do not work directly with children and may not have previously been required to hold WWCCs, will need to hold a WWCC as a provider eligibility rule.

Nationally coordinated criminal history check

49. Currently, under paragraphs 43(2)(b), 43(3)(b) and 43(4)(b) a 'national police check' must be held by such a person with management or control, FDC educators and IHC educators, carried out no more than 6 months before the person holds the position.

50. Item 8 removes reference to 'national police check' and replaces it with the new defined term 'nationally coordinated criminal history check' to ensure consistency across the checks undertaken.

51. Item 8 also amends the timeframes in paragraphs 43(2)(b), 43(3)(b) and 43(4)(b) to require the nationally coordinated criminal history check to have been carried out no more than 60 days before the person commenced to hold the position.

Other checks for persons with management or control

52. Currently, a provider must also ensure that a person with management or control (except persons responsible for the day to day operation of a service) has had additional checks carried out under subsection 43(2)(c). These checks are those undertaken with the Australian Financial Security Authority and ASIC.

53. Item 8 inserts a new requirement into new subparagraph 43(2)(c)(iv), that a provider must ensure that each person with management or control (except persons responsible for the day to day operation of a service) has had checks of the banned and disqualified registers held by ASIC carried out.

54. The timeframes for the checks required under paragraph 43(2)(c) have been amended from 30 days before a person commenced to hold a position to 60 days before a person commenced to hold a position for consistency.

<u>Item 10 – Subsection 43(5) (heading)</u>

55. Item 10 omits 'to be provided on request', for consistency with new subsection (4A) inserted by item 11.

<u>Item 11 – After the heading to subsection 43(5)</u>

56. Item 11 inserts new subsection (4A).

57. It imposes a new obligation that the provider receives digitally verifiable evidence of the nationally coordinated criminal history check, and completes the digital verification.

58. This amendment reflects current digital verification processes, and ensures providers are obtaining authentic criminal history checks.

Item 12 – Section 55 (table item 12)

59. Item 12 repeals and substitutes item 12 of the table in section 55 of the Principal Rules.

60. Section 55 of the Principal Rules sets out matters that must be notified to the Secretary, and the prescribed timeframes of notification, for the purposes of subsection 204F(1) of the Family Assistance Administration Act. Item 12 of the table in the section contains matters related to the checks required in section 43 of the Principal Rules. Adverse findings must be notified to the Secretary within 7 days after the provider undertakes or receives a record of the check.

Part 5—Conditions for continued approval related to child safety and protection training

Child Care Subsidy Minister's Rules 2017

Item 13 – Section 4

61. Item 13 inserts definitions for 'foundation child safety training', 'advanced child safety training', and 'child protection training'. It also inserts a new definition for 'mandatory child safety training'. Each term is defined by reference to the Education and Care Services National Law (National Law), contained in the schedule to the *Education and Care Services National Law Act 2010*, and the Education and Care Services National Regulations, made under section 301 of the National Law. This is because the new child safety and child protection training requirements introduced by this part are intended to mirror those imposed under recent amendments to the National Law and National Regulations.

Item 14 – Subsection 8(5)

62. Item 18 repeals the definition of 'mandatory child safety training'.

Item 15 – After subsection 48A(10)

63. Section 48A of the Principal Rules set out additional conditions for continued approval for approved providers of IHC services for the purposes of section 195E of the Family Assistance Administration Act.

64. Item 15 inserts new subsection 48(10A), which requires providers to ensure that the persons mentioned in column 1 of an item of the table in subsection 48(10A) complete the training mentioned in column 2 for that item within the timeframes prescribed in column 2.

65. Item 15 introduces new foundation child safety training, advanced child safety training and child protection training requirements on providers of IHC services. These training

requirements have been introduced to reflect child safety training and child protection training requirements required under the National Law.

66. This amendment is necessary because IHC services are generally not 'education and care services' for the purposes of the National Law, although some States do have quality and safety regulatory requirements for IHC services. This amendment ensures that the training requirements for the IHC sector are no less than those that apply to other types of child care service.

Item 16 – After section 48D

67. Item 16 inserts new section 48E. New Section 48E prescribes additional conditions for continued approval under section 195E of the Family Assistance Administration Act for providers receiving funding under the Community Child Care Fund Grant Restricted (CCCFR) program in respect of a service, and that are not an education and care service under the National Law.

68. Subsection 48E(2) requires these providers to ensure that persons mentioned in column 1 of an item of the table contained in subsection 48E(2) complete the training mentioned in column 2 for that item within the timeframes prescribed in column 2.

69. Item 16 introduces new foundation child safety training, advanced child safety training and child protection training requirements on providers receiving CCCFR grant funding, and which are not regulated under the National Law. This amendment ensures that the training requirements for staff members working in CCCFR grant funded services are no less than those that apply to other types of child care services.

Part 6—Appropriation

Child Care Subsidy Minister's Rules 2017

Item 17 – At the end of section 78

70. Item 17 adds subsections (14), (15), (16), (17), (18) and (19) to section 78.

71. It provides appropriations for the Community Child Care Fund Special Circumstances Grant Opportunity for financial years 2026-27, 2027-28, and 2028-29.

72. Payments under the Family Assistance Administration Act are made from the Consolidated Revenue Fund and the Minister's Rules prescribe the total amount payable in respect of a financial year. Currently, the Minister's Rules provide appropriations up to financial year 2025-26.

73. Item 17 prescribes amounts for upcoming financial years for the purposes of subsections 233(3) and (5) of the Family Assistance Administration Act. Payments made under section 85GA funding agreements for the purpose of the Community Child Care Fund Special Circumstances Grant Opportunity will be paid out of the special appropriation established by section 233, up to the total amount specified in the new provisions.

74. The cap on the amount available under the special appropriation is set ahead of each year under the Minister's Rules. This is set at $4 million per year for each of 2026-27, 2027-28 and 2028-29.

75. Item 17 provides for the continuation of the Community Child Care Fund Special Circumstances Grant Opportunity, a grant that helps services operating for a disadvantaged or vulnerable community remain open when they are at risk of closure due to financial viability issues resulting from an unforeseen event or circumstance.

76. It provides administrative clarity regarding the funding source for the Community Child Care Fund Special Circumstances Grant Opportunity Special Appropriation in future financial years. The amendment does not alter the underlying policy intent of the program.

Part 7—Exemption from certain requirements

Child Care Subsidy Minister's Rules 2017

Item 18 – After section 46A

77. Item 18 inserts new section 46B for the purposes of subsection 195C(3) of the Family Assistance Administration Act.

78. This item makes it such that the minimum operating period for certain CCCFR Grant funded services is one day.

79. This item applies to services that on 30 June 2018 were in receipt of Budget Based Funding and were not approved under the family assistance law, or services that are prescribed in paragraph 46B(b).

80. The legislative note provides guidance that all services to which this provision applies are services that, in 2026, were in receipt of CCCFR grant funding.

81. Currently, each approved child care service must operate for a minimum period of 48 weeks per year unless the provider or service is suspended or the Secretary determines that special circumstances affected the service. This item prescribes that the CCCFR grant funded services covered under new section 46B have a one-day minimum operating period.

82. This measure ensures that CCCFR grant funded services, which operate in remote and vulnerable communities will not lose approval under the family assistance law if they are unable to meet the minimum operating period. This exemption is required to reflect that services may need to cease operation for periods of time due to unusual situations. For example, a CCCFR grant funded service that operates in a remote community that experiences flooding may have to close more frequently, or for a long duration, during the wet season.

83. This amendment aligns with the purpose of the CCCFR grant which is to address barriers to early education and care participation, particularly in remote communities.

Item 19 – Subsection 50(1)

84. Item 19 repeals the subsection and substitutes new subsection 50(1).

85. Currently, certain specified providers of child care services are not required to comply with the requirement to operate under the law of a State or Territory to become or remain approved for the purposes of the family assistance law.

86. Subsection 50(1) of the Principal Rules currently specifies, for the purpose of section 199F of the Family Assistance Administration Act, such providers that were in receipt of funding under the Budget Based Funded program for a child care service on 30 June 2018, where that service was not approved for the purposes of the family assistance law.

87. Item 19 adds a third criteria - that the provider has not held an approval or licence required to operate that service under the law of a State or Territory in which that service is situated.

88. The intent of Item 19 is to make it such that where providers funded under the Budget Based Funding program (now CCCFR grant funding recipients) transition to holding approval or a licence under the law of the State or Territory, the providers are required to maintain that approval as required under provider eligibility rules contained in paragraph 194C(a) of the Family Assistance Administration Act. The exemption under section 199F of the Family Assistance Administration Act will cease to apply from the date that they transition.

Item 20 – Subsection 50(3)

89. Item 20 repeals the subsection and substitutes new subsections 50(3) and (3A).

90. This item amends the list of specified providers in respect of their child care service that are exempt from the requirement to operate under the law of a State or Territory as a condition of their Commonwealth family assistance law approval. This list reflects the current providers that are exempt.

91. In addition, Item 20 has been amended similarly to subsection 50(1) at Item 19, to make it such that any listed providers that transition to holding approval or a licence under the law of the State or Territory will be required to maintain this approval. The exemption under section 199F of the Family Assistance Administration Act will no longer apply.

Item 21 – Section 51

92. Item 21 repeals section 51.

93. Currently, section 51 makes it such that the same providers who are exempt from State or Territory requirements under section 50 of the Minister's Rules are also exempt from

meeting the minimum operating period requirement under section 195C of the Family Assistance Administration Act.

94. Section 51 is no longer required due to Item 18, which inserted new section 46B. New section 46B makes it so that services previously funded under the Budget Based Funding program and other listed services have an alternative minimum operating period of just one day.

Part 8—Preschool outside hours school care

Child Care Subsidy Minister's Rules 2017

Item 22 – Section 4

95. Item 22 inserts the definition of 'preschool program'. 'Preschool program' is defined as 'an early educational program provided to children in the year that is 2 years before grade 1 of school'. In other words, in the year before the child starts school.

Item 23 – Subsection 16A(4)

96. Item 23 repeals subsection 16A(4) which contains a definition of 'preschool program'. All references to 'preschool program' will rely on the new definition prescribed by Item 22.

Item 24 – Subsection 45(3)

97. Item 24 omits 'where the provider' from the beginning of subsection 45(3) and substitutes 'subject to subsection (3A), where the provider'. This item facilitates the amendments made by Item 26, which inserts new subsection (3A).

Item 25 – Subparagraph 45(3)(b)(ii)

98. Item 25 repeals subparagraph 45(3)(b)(ii), which currently references 'children who attend an early education program provided by children in the year that is 2 years before grade 1 of school (such as preschool or kindergarten)' and replaces it with 'children who attend a preschool program'. This item amends the language, but not the effect, of subparagraph 45(3)(b)(ii) to reflect the new definition inserted by Item 22.

Item 26 – Subsection 45(3A)

99. Item 26 repeals current subsection 45(3A) and substitutes new subsection 45(3A) and 45(3B).

100. New subsection 45(3A) sets out requirements for certain services applying for outside of school hours care (OSHC) approval.

101. Currently, for an approved provider to be approved in respect of a service, that service cannot primarily provide an early educational program to children in the year that is 2 years before grade 1. This is a service eligibility rule contained in subparagraph 194D(a)(vi) of the Family Assistance Administration Act. This means that for a service to provide OSHC at the same location as a preschool service, two approvals are required

under the National Law, to distinguish between the preschool component of the service and the OSHC component of the service.

102. New subsection 45(3A) provides that an application for OSHC approval will be taken to apply only to the OSHC component of the service if the service is approved as a centre-based service under the National Law, and the National Law approval enables the services to operate from the same location, a preschool program during normal school hours and an outside school hours care service.

103. This means that for OSHC services operated from the same location as a preschool, only the OSHC component of the service will be regulated under the family assistance law, and CCS and ACCS will only be payable for the OSHC hours. The preschool component of the service will not be regulated by the family assistance law, and no CCS or ACCS will be payable, consistent with the service eligibility rule in subparagraph 194D(a)(vi) of the Family Assistance Administration Act.

104. Other additional service criteria for OSHC services set out in paragraph 45(3)(b) of the Principal Rules still apply.

105. New subsection 45(3B) moves the definition of 'normal school hours' to the end of the end of the subsections in section 45 specific to OSHC services. The definition provides that normal school hours include the normal hours of a preschool program.

106. The intention of this measure is to reduce administrative burden on providers and National Law regulators by removing the requirement for a provider to obtain two National Law approvals.

Part 9—Application and transitional provisions

Child Care Subsidy Minister's Rules 2017

Item 27 – at the end of Part 6A

107. Item 27 adds new Division 3 at the end of Part 6A of the Principal Rules. New Division 3 consists of sections 61AF, 61AG, 61AH and 61AI.

108. New section 61AF inserts definitions for 'amending rules' and 'commencement' for the purpose of new sections 61AG, 61AH, and 61AI.

109. New section 61AG inserts an application provision. This provision provides that the amendments made to the Principal Rules by Part 3 of Schedule 1 to the Amendment Rules will not apply to an application by a provider until the commencement of the Amendment Rules. The application provision ensures that the changes apply to applications that are made on or following the commencement of the Amendment Rules. This means, for example, that if the Secretary made a decision not to approve a provider because of a failure to satisfy paragraph 194C(da) of the Family Assistance Administration Act in June 2025, and the provider makes a new application for provider approval on 1 July 2026, the application will be taken not to have been made because

the prior decision occurred during the application exclusion period, even though that prior decision occurred before the commencement of the Amendment Rules.

110. New section 61AH inserts an application provision. This provision provides that the amendments made to the Principal Rules by Part 4 of Schedule 1 to the Amendment Rules apply in relation to persons who become persons with management or control of a provider on after commencement. This means that the provider does not have to immediately undertake new checks such as checking whether all persons with management or control of the provider are on one of the ASIC banned and disqualified registers – rather, they will only have to do it for new staff hired as persons with management or control, or existing staff who are promoted to the position of a person with management or control.

111. New section 61AI inserts a transitional provision. This provision applies to providers subject to the provisions in Part 5 of Schedule 1 of the Amendment Rules. These providers are providers of IHC services, and providers in receipt of CCCFR grant funding, that are not regulated under the National Law or other State or Territory residual law.

112. Subsection 61AI(2) inserts a table which provides transitional timeframes for specified persons to undertake the foundation and advanced child protection training, and the child protection training.

113. The transitional timeframes apply to specified persons already engaged by a Provider on commencement of the Amendment Rules.

114. If on commencement of the Amendment Rules, a person is a person with management or control of the provider, or a staff member of, or volunteer at the service, the provider must ensure the person undertakes foundation child safety training, and child protection training on or before 27 August 2026. This is consistent with the transitional timeframes under the National Law.

115. In respect of advanced child safety training, if a person is a person with management or control of the provider, or a staff member of, or volunteer at the service, the provider must ensure the person undertakes the advanced child safety training on or before day 6 months after the training is published.

116. This transitional timeframe is consistent with the transitional timeframes in the National Law, and accounts for the fact that the advanced child safety training has not been published. Once published, providers are given time to ensure compliance with the advanced child safety training requirements.