

Explanatory Statement

Child Care Subsidy (Extension of First Deadline) Instrument 2020

Purpose and Authority

The *Child Care Subsidy (Extension of First Deadline) Instrument 2020* (the Instrument) is made under subsection 103B(2) of the A New Tax System (Family Assistance) Act 1999 (Family Assistance Administration Act).

The Instrument extends the period in which affected individuals are able to meet the Child Care Subsidy (CCS) reconciliation conditions for the 2018-19 income year, from 30 June 2020 to 31 March 2021.

The CCS reconciliation conditions are set out in section 103A of the Family Assistance Administration Act. Generally speaking, an individual meets the reconciliation conditions for a particular income year when they and their partner/s during that year have had their adjusted taxable incomes (ATIs) for the year calculated (usually through income tax assessments for that year made by the Australian Taxation Office (ATO)).

In making this Instrument the Secretary is satisfied, in accordance with subsection 103B(2), that special circumstances have prevented the affected individuals from meeting the CCS reconciliation conditions for the 2018-19 income year. The special circumstances are the impacts of the COVID-19 pandemic and its attendant economic and social uncertainties.

The effect of the Instrument is that affected individuals have another 9 months to meet the CCS reconciliation conditions for 2018-19. This means that affected individuals will continue to be entitled to CCS after 30 June 2020 even if they and their partner/s have not had their ATIs worked out for 2018-19, and will have until 31 March 2021 to meet this condition. This measure is intended to facilitate families' ongoing access to subsidised child care. This is a critical component of the Government's strategy to rebuild the Australian economy following the peak of the COVID-19 pandemic shutdowns.

Commencement

The Instrument commences the day after it is registered.

Consultation

This Instrument gives effect to a measure, which forms part of the Government's response to the COVID-19 pandemic.

The Department of Education, Skills and Employment (the Department) consults weekly with stakeholders in the early childhood education and care sector through the Early Childhood Education and Care Reference Group on COVID-19 issues. In addition, the Department has consulted with Services Australia on the implementation of the Legislative Instrument.

Regulation Impact Statement

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

Abbreviations used in this Explanatory Statement

ACCS means Additional Child Care Subsidy.

ATI means adjusted taxable income.

ATO means the Australian Taxation Office.

CCS means Child Care Subsidy.

Family Assistance Administration Act means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Instrument means the *Child Care Subsidy (Extension of First Deadline) Instrument 2020*.

Detailed Explanation of Amendments

Preliminary

Section 1 states the name of the Instrument as the *Child Care Subsidy (Extension of First Deadline) Instrument 2020*.

Section 2 provides for the commencement dates of the Instrument.

Section 3 states that the Instrument is made under the Family Assistance Administration Act.

Extension of the first deadline for meeting CCS reconciliation conditions

Legislative background

Under the family assistance law, individuals are entitled to CCS or ACCS as a result of weekly entitlement decisions made under section 67CD of the Family Assistance Administration Act. At the end of every income year, those weekly entitlement decisions are subject to a process known as “reconciliation”. The process involves comparing individuals’ estimates of their and their partners’ ATIs, which they are required to report to Services Australia throughout the income year, with their actual ATIs. This process is conducted to ensure individuals receive their correct CCS entitlement for that income year.

Reconciliation operates by reviewing an individual’s CCS or ACCS weekly entitlement decisions for an income year – referred to in the Family Assistance Administration Act as the “relevant income year”. Reconciliation can only meaningfully occur once an individual’s and their partners’ ATIs are reasonably ascertainable. This is usually done when the individual and their partners receive their income tax assessments from the ATO for the relevant income year. Services Australia is able to use other methods for ascertaining an individual’s ATI in circumstances where the individual or their partner/s are not required to lodge tax returns.

Section 103A of the Family Assistance Administration Act provides that an individual meets the **CCS reconciliation conditions** for an income year (relevant income year) when they, and each of their partners during that year has either:

- received an income tax assessment for the relevant income year from the ATO; or
- in the case that they do not need to lodge an income tax return for that year—have told the Secretary what their ATI for the year is, or the Secretary is otherwise able to work out their ATI.

If an individual fails to meet the CCS reconciliation conditions for an income year by the **first deadline** (defined in section 103B of the Family Assistance Administration Act):

- the Secretary must set aside all weekly CCS entitlement decisions made during the income year and determine that the individual was not entitled to any CCS or ACCS for that income year until that individual is able to meet the CCS reconciliation conditions (see subsection 105E(2) and (3) of the Family Assistance Administration Act); and
- until the individual meets the reconciliation requirements, the individual is not entitled to any further CCS or ACCS (see subsection 67CB(4) of the Family Assistance Administration Act).

If, before the **second deadline** for the relevant income year (defined in section 103C of the Family Assistance Administration Act), the individual meets the CCS reconciliation conditions

for the year, the Secretary must undertake reconciliation of the CCS and ACCS payments for the relevant income year (subsection 105E(4) of the Family Assistance Administration Act), and the individual can again become entitled, prospectively, to CCS and ACCS.

If, however, the individual fails to meet the CCS reconciliation conditions for the relevant income year by the second deadline for that year, the individual is taken never to have been entitled to CCS or ACCS for the relevant income year (subsection 67CB(4) of the Family Assistance Administration Act), and the Secretary can raise and recover debts from the individual accordingly.

Effect of the Instrument extending the period for the first deadline – section 4

Paragraph 103B(1)(a) of the Family Assistance Administration Act provides that the standard first deadline for an income year (relevant income year) is the end of the income year immediately after the relevant income year. So, if the relevant income year is 2018-19, the first deadline is the end of the income year 2019-20, i.e. the end of 30 June 2020.

However, paragraph 103B(1)(b) provides that the first deadline may be the end of a longer period than the standard deadline for an individual, if such period is allowed by the Secretary under subsection 103B(2).

Subsection 103B(2) provides that the Secretary may allow an individual a longer period if the Secretary is satisfied that special circumstances prevented the individual from meeting the CCS reconciliation conditions for the relevant income year before the standard first deadline.

Subsection 4(1) of the Instrument is made for subsection 103B(2) of the Act, and extends the period in which affected individuals are able to meet the CCS reconciliation conditions for the 2018-19 income year, from 30 June 2020 to 31 March 2021.

Subsection 4(2) provides that “affected individuals” means any individual who has not met the CCS reconciliation conditions for the 2018-19 income year before the end of the 2019-20 income year.

In making this Instrument the Secretary is satisfied, in accordance with subsection 103B(2), that special circumstances have prevented the affected individuals from meeting the CCS reconciliation conditions for the 2018-19 income year by 30 June 2020. The special circumstances are the impacts of the coronavirus pandemic and its attendant economic and social uncertainties.

The effect of the Instrument is that all individuals who have not met the CCS reconciliation conditions for 2018-19 will have another 9 months to meet those conditions. This means that affected individuals will continue to be entitled to CCS after 30 June 2020 even if they and their partner/s have not received income tax assessments for 2018-19 (or otherwise had their ATIs worked out), and will have until 31 March 2021 to do so. This measure is intended to facilitate families’ access to subsidised child care is a critical component of the Government’s strategy to rebuild the Australian economy following the peak of the coronavirus pandemic shutdowns.

Statement of Compatibility with Human Rights

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

Child Care Subsidy (Extension of First Deadline) Instrument 2020

This Legislative 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 (Extension of First Deadline) Instrument 2020* (the Instrument) is made under subsection 103B(2) of the A New Tax System (Family Assistance) Act 1999 (Family Assistance Administration Act).

The Instrument extends the period in which affected individuals are able to meet the Child Care Subsidy (CCS) reconciliation conditions for the 2018-19 income year, from 30 June 2020 to 31 March 2021.

The CCS reconciliation conditions are set out in section 103A of the Family Assistance Administration Act. Generally speaking, an individual meets the reconciliation conditions for a particular income year when they and their partner/s during that year have had their adjusted taxable incomes (ATIs) for the year worked out (usually through income tax assessments for that year made by the Australian Taxation Office (ATO)).

In making this Instrument the Secretary is satisfied, in accordance with subsection 103B(2), that special circumstances have prevented the affected individuals from meeting the CCS reconciliation conditions for the 2018-19 income year. The special circumstances are the impacts of the COVID-19 pandemic and its attendant economic and social uncertainties.

The effect of the Instrument is that affected individuals have another 9 months to meet the CCS reconciliation conditions for 2018-19. This means that affected individuals will continue to be entitled to CCS after 30 June 2020 even if they and their partner/s have not had their ATIs worked out for 2018-19, and will have until 31 March 2021 to do so. This measure is intended to facilitate families' access to subsidised child care is a critical component of the Government's strategy to rebuild the Australian economy following the peak of the COVID-19 pandemic shutdowns.

Analysis of human rights implications

The Instrument engages Articles 3, 19 and 27 of the *Convention on the Rights of the Child* (CRC) and Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICECSR).

Article 3 of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration.

Article 19 of the CRC requires that appropriate measures be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

Article 27 of the CRC recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, social and moral development. Article 27 also requires States Parties to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, where required, provide material assistance and support programmes.

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

Accordingly, the Instrument supports children and families to continue to access and/or remain enrolled in quality child care by extending the deadline by which families must meet the CCS reconciliation conditions for the 2018-19 income year. In particular, the measures in the Instrument continue to advance the rights of parents and children by facilitating access to subsidised child care in circumstances where, due to the COVID-19 crisis, families may not have been able to comply with the ordinary deadline for meeting the CCS reconciliation conditions and as a consequence, would not have been entitled to CCS or ACCS. The measures in the Instrument will also work to ensure that vulnerable and disadvantaged families in particular continue to access child care at a reasonable cost.

Article 9 of the ICECSR recognises the right of everyone to social security.

The Instrument supports the right to social security by providing flexibility to the deadline by which families must meet the CCS reconciliation condition, thereby ensuring that families and children continue to have access to subsidised child care during the COVID-19 pandemic.

Conclusion

The Instrument is compatible with human rights.

Dan Tehan
Minister for Education