

Explanatory Statement

Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2020

Purpose and Authority

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2020* (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*.

Amongst other things, subsection 33(3) of the Acts Interpretation Act provides that a power to make an instrument of a legislative character (such as subsection 85GB(1) of the Family Assistance Act) includes a power to amend such an instrument.

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Minister's Rules).

The Amendment Rules will increase the number of allowable absence days that are available to individuals whose children are in care at approved child care services in Victoria. An allowable absence day is a day on which an individual's child is absent from care, but for which the individual is charged a fee, and on which the individual remains eligible for child care subsidy (CCS). The Amendment Rules will increase these by 30 for the 2020-2021 financial year.

The Amendment Rules also make the following administrative and technical amendments to the Minister's Rules:

- increasing the cap on the appropriation in section 233 of the Family Assistance Administration Act for payments under the Community Child Care Fund Special Circumstances (CCCF-SC) Grant Opportunity program for the 2020-2021 financial year from \$584 million to \$623 million;
- removing redundant statutory references to certain child care support programs;
- fixing a typographical error.

Commencement

The Amendment Rules commence the day after they are registered.

Consultation

The Department of Education, Skills and Employment (the Department) has been consulting weekly with stakeholders in the Early Childhood Education and Care (ECEC) sector through the ECEC Reference Group on COVID-19 issues.

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

Amendment Rules means the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2020*;

CCCF-SC means the Community Child Care Fund Special Circumstances Grant Opportunity;

CCS means Child Care Subsidy;

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

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

FF(SP) Regulations means the *Financial Framework (Supplementary Powers) Regulations 1997*;

Minister's Rules means the *Child Care Subsidy Minister's Rules 2017* (being the rules made by the Minister under subsection 85GB(1) of the Family Assistance Act);

Transition Payments means payments made to approved providers in accordance with grant agreements entered into between an approved provider and the Department under section 85GA of the Family Assistance Act, and which form part of the Transition Arrangements.

Detailed Explanation of Amendments

Preliminary

Sections 1 to 4 of the Amendment Rules are formal provisions providing for the name, commencement, authority etc. for the instrument.

Section 1 states the name of the instrument as the *Child Care Subsidy Amendment (Coronavirus Response Measures No.6) Minister's Rules 2020*.

Section 2 provides for the commencement of the Amendment Rules, being the day after the Rules are registered.

Section 3 states that the Amendment Rules are made under the Family Assistance Act.

Section 4 provides that the Minister's Rules are amended as set out in the Schedule to the Amendment Rules.

Schedule 1 – Amendments

Increase to allowable absences for 2020-2021

Under section 10 of the Family Assistance Act, a child is taken to have been provided with a session of care by an approved child care service on a day if the child attends the session of care, or the child does not attend that session of care in the circumstances set out in subsections (2) or (3).

Subsection 10(2) sets out what are known as “allowable absence days”. Essentially, a child is able to be absent from sessions of care on up to 42 days in a financial year, and the child's parent or guardian will remain eligible for CCS for sessions of care on those days.

The number of allowable absence days under subsection 10(2) can be increased in the Minister's Rules. The Minister's Rules must prescribe the circumstances or event that triggers the increase in allowable absence days, and prescribe any conditions that must be satisfied in order for those allowable absence days to be accessible by an individual.

Section 5AA of the Minister's Rules currently provides that, due to the COVID-19 pandemic, there were an additional 20 allowable absence days for the 2019-2020 financial year.

Items 1 to 4 of the Amendment Rules amend section 5AA of the Minister's Rules to provide that, due to the COVID-19 pandemic, there are 30 additional allowable absence days for the 2020-2021 financial year. However, those additional absence days are only accessible by individuals in relation to sessions of care provided by a service located in Victoria, and only once they have already used up all of their 42 ordinary allowable absence days.

Increasing amount for grant purposes supported by annual appropriation

Subsection 233(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) generally provides that payments made under the family assistance law are supported by special appropriation. However, subsection 233(2) expressly

excludes from the special appropriation any grant payments made under section 85GA of the Family Assistance Act, unless those grant payments are prescribed in the Minister's Rules.

Subsection 233(3) provides that if any grant payments are prescribed in the Minister's Rules in accordance with subsection 233(2) of the Family Assistance Administration Act, the Minister must also prescribe the total amount that may be paid by special appropriation in respect of a financial year for all of those grant payments.

Subsection 233(5) provides that the Minister may also prescribe the total amount that may be paid in respect of a specific grant payment prescribed by the Minister's Rules.

Section 78 of the Minister's Rules currently prescribes payments made for the purposes of an agreement under the *Community Child Care Fund Special Circumstances Grant Opportunity* (CCCF-SC) program for the purposes of subsection 233(2), and provides that the cap on the annual appropriation for that purpose is \$584 million for the 2020-2021 financial year.

The amount of \$584 million for the 2020-2021 financial year was set in June 2020 and was based on the anticipated budget for Transition Payments under the Government's financial support package for the Early Childhood Education and Care (ECEC) sector announced on 8 June 2020 (\$580 million), plus the usual annual amount of funding available for the CCCF-SC Grant Opportunity program (\$4 million).

Since that time, as a result the impacts of the COVID-19 pandemic in Victoria, the Government has expanded financial support to the ECEC sector in that State, by:

- increasing the Transition Payments to all providers operating child care services in metropolitan Melbourne;
- providing further support (a Special Transition Payment) to providers operating child care services in metropolitan Melbourne that have seen substantial reductions in the numbers of children attending; and
- providing further support (an Additional Viability Support Payment) for providers operating outside school hours care (OSHC) services in regional Victoria.

These three measures are forecast to cost \$39.15 million in the 2020-2021 financial year.

Accordingly, **items 10 and 11** amend subsections 78(2) and (3) of the Minister's Rules respectively, to increase the appropriation cap for 2020-2021 in those provisions from \$584 million to \$623 million.

Minor technical amendments

Items 5 to 8 omit references to the *Financial Framework (Supplementary Powers) Regulations 1997* (FF(SP) Regulations) from section 7 of the Minister's Rules. Section 7 of the Minister's Rules specifies payments that are *child care payments* for the purposes of the family assistance law, and does so by reference to payments under the grants programs listed in that section. Each of those programs is referred to in a particular item in Part 4 of Schedule 1AB to the FF(SP) Regulations, which provided authority for Commonwealth expenditure on those programs.

However, section 7 of the Rules pre-dates the enactment of section 85GA of the Family Assistance Act. Section 85GA now provides an authority for Commonwealth expenditure on grants programs that support provision of child care and the ECEC sector. For example, Commonwealth expenditure on grants under the CCCF-SC Grant Opportunity program is now authorised under section 85GA of the Family Assistance Act.

Accordingly, references to the FF(SP) Regulations in reference to the programs listed in section 7 of the Rules are redundant, and in the case of the CCCF (paragraph 7(a)), incorrect, and are being repealed.

Item 9 corrects a typographical error in subsection 47AB(2) of the Minister's Rules by adding "2020" to the citation of the legislative instrument referred to in that subsection.

Statement of Compatibility with Human Rights

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

Child Care Subsidy Amendment (Coronavirus Response Measures No. 4) Minister's Rules 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

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Amongst other things, subsection 33(3) of the Acts Interpretation Act provides that a power to make an instrument of a legislative character (such as subsection 85GB(1) of the Family Assistance Act) includes a power to amend such an instrument.

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Analysis of human rights implications

The Amendment Rules engage Articles 3 and 27 of the *Convention on the Rights of the Child* (CRC).

Article 3 of the *Convention on the Rights of the Child* (CRC) recognises that in all actions concerning children, the best interests of the child shall be a primary consideration.

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.

Accordingly, these Amendment Rules give effect to the government’s Relief Package Transition Arrangements as expanded to support families and the Early Childhood Education and Care (ECEC) sector affected by the COVID-19 pandemic in Victoria. The Amendment Rules support children and families to continue to access and/or remain enrolled in quality child care. In particular, the measures in the Amendment Rules continue to advance the rights of parents and children by ensuring that they can continue to access CCS for child care that they must pay fees for, but are unable to attend.

By increasing the appropriation available to make financial assistance payments to child care providers in Victoria, the Amendment Rules also support business continuity and viability of those providers. This ensures that additional financial support continues to be available for the ECEC sector, in circumstances where that sector is experiencing increased hardship and financial distress due to natural disasters and emergency events, such as the COVID-19 pandemic.

Conclusion

The Amendment Rules are compatible with human rights.

Dan Tehan
Minister for Education