

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education and Youth

A New Tax System (Family Assistance) Act 1999

**Child Care Subsidy Amendment (Coronavirus Response Measures – New South Wales)
Minister’s Rules 2021**

Authority

The *Child Care Subsidy Amendment (Coronavirus Response Measures - New South Wales) Minister’s Rules 2021* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act) as construed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act).

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.

Purpose and Operation

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

The Amendment Rules introduce measures to support approved child care providers and families in New South Wales subject to “stay at home” restrictions in response to the COVID-19 pandemic. These measures include allowing approved providers to waive their fees for child care services during the period the “stay at home” restrictions apply.

Commencement

The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Consultation

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

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.

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 – New South Wales) Minister’s Rules 2021

The Child Care Subsidy Amendment (Coronavirus Response Measures – New South Wales) Minister’s Rules 2021 (Amendment Rules) 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 Amendment Rules

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

The Amendment Rules introduce measures to support approved child care providers and families in New South Wales subject to “stay at home” restrictions in response to the COVID-19 pandemic. These measures include allowing approved providers to waive their fees for child care services during the period the “stay at home” restrictions apply.

Analysis of human rights implications

The Amendment Rules engage Articles 3, 19 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 19 of the CRC requires that appropriate measures are 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, these Amendment Rules which will 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 enabling providers

to reduce the cost of care for parents. This will help ensure that vulnerable and disadvantaged families in particular are able to access subsidised child care at reasonable costs.

Conclusion

The Amendment Rules are compatible with human rights.

Minister for Education and Youth, Alan Tudge

Abbreviations used in this Explanatory Statement

Amendment Rules means the *Child Care Subsidy Amendment (New South Wales Coronavirus Response Measures) Minister's Rules 2021*.

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*.

Principal 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).

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 – New South Wales) Minister’s Rules 2021*.

Section 2 provides that the Amendment Rules commence on the day after they are registered.

Section 3 states that the Amendment Rules are made under subsection 85GB(1) of the Family Assistance Act.

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

Schedule 1 – Amendments

Period during which providers can waive gap fees for services in areas with “stay at home” restrictions

Subsection 201B(1A) of the Family Assistance Administration Act allows the Minister’s rules to prescribe particular events or circumstances in which a provider is not required to take reasonable steps to enforce payment of so-called child care “gap fees” (the difference between the child care fees charged by the provider and an individual’s entitlement to CCS in relation to those fees).

Section 54A of the Principal Rules currently permits providers to not recover gap fees for a service in the following circumstances:

- the service is closed because a health agency has advised or required the service to close as a result of the COVID-19 pandemic;
- the service is in an area in Victoria that is subject to “stay at home” directions.

In response to increased numbers of COVID-19 cases in New South Wales, the New South Wales government has recently imposed “stay at home” restrictions that require people in Greater Sydney to stay at home and not leave except for a small number of reasons, such as obtaining essential goods or services.

As a consequence of these restrictions, the Australian Government expects child care services in Greater Sydney to experience a substantial decline in attendance. Nevertheless, it is important that services that are able to remain open do so, to ensure that essential workers can continue to put their children in care. To assist child care services and the families that access these services, providers will be able to waive gap fees for child care provided at the services in areas of New South Wales that are subject to “stay at home” directions” and remain open, until the end of the stay at home restrictions.

Item 1 inserts a note at the end of subsection 54A(1) of the Principal Rules. The note provides that Schedule 3 of the Principal Rules sets out other COVID-19 pandemic-related conditions for when a provider is not required to take reasonable steps to enforce payment of gap fees.

Item 2 inserts a new Part 1, Schedule 3 to the Principal Rules to set out the COVID-19 pandemic-related conditions for when a provider is not required to take reasonable steps to enforce payment of gap fees.

Clause 1.1 of Schedule 3 provides that Part 1 applies in relation to a service located in an area to which the Temporary Movement and Gathering Restrictions Order (“stay at home” order) applies. Clause 1.1 also provides that Part 1 of Schedule 3 only applies for the period during which the “stay at home” order is in force in relation to that area.

Clause 1.2 of Schedule 3 defines the **Temporary Movement and Gathering Restrictions Order** as the *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* (NSW) issued under the *Public Health Act 2010* (NSW), as in force from time to time. The [Temporary Movement and Gathering Restrictions Order](#) is available on the NSW legislation website.

Subclause 1.3(1) of Schedule 3 prescribes the particular event or circumstance in which a provider is not required to take reasonable steps to enforce payment of gap fees. The particular event or circumstances is the outbreak of COVID-19 in New South Wales to which the “stay at home” order relates. For this event or circumstances to be met, subclause 1.3(2) provides that it is a condition that the service is not closed.

These amendments are intended to provide further business continuity for the child care sector and will enable child care services to provide fee relief to families during the COVID-19 pandemic where the abovementioned conditions apply. As the COVID-19 pandemic has made it difficult for parents to continue paying their child care fees, this amendment will enable child care providers to waive parents’ gap fees during this period.