

EXPLANATORY STATEMENT

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

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (Session Reports) Secretary's Rules 2023

AUTHORITY

The *Child Care Subsidy Amendment (Session Reports) Secretary's Rules 2023* (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, amend, or vary any such instrument.

PURPOSE AND OPERATION

The Amendment Rules amend the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to set out the requirements for a session report under section 204B of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).

The Family Assistance Act and the Family Assistance Administration Act set out a scheme for the payment of child care subsidy (CCS) to eligible individuals. While CCS is the entitlement of individuals, it is paid to child care providers approved under Part 8 of the Family Assistance Administration Act, who are then required to pass on the amount to individuals, generally by way of fee reduction. The payment of CCS is triggered by a session report, which the provider is required to submit under section 204B of the Family Assistance Administration Act.

Until 30 June 2023, a session report must "include any other information required by the Secretary" under paragraph 204B(2)(c) of the Family Assistance Administration Act. This other information required by the Secretary is set out administratively in the Child Care Provider Handbook, which is available from the Department of Education's website (www.education.gov.au). From 1 July 2023, paragraph 204B(2)(c) will be amended by the *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Amendment Act) to provide that a session report must include any other information "prescribed by the Secretary's Rules". The Amendment Rules will prescribe the requirements for a session report in the Principal Rules to give effect to the Amendment Act.

The Amendment Rules will not change the substantive requirements for a session report, but will insert them in the Principal Rules to provide greater clarity to providers about what their obligations are.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has advised that the proposed amendments are assessed as having a minor regulatory impact and no impact analysis is required (OIA reference: OIA23-05121).

COMMENCEMENT

The Amendment Rules will commence on 1 July 2023.

CONSULTATION

The Department of Education (the Department) consulted on the amendments in Part 6 of the Amendment Act in the second half of 2022, including the proposal to prescribe the requirements for a session report in the Principal Rules. While stakeholders had fulsome feedback on other measures in the Amendment, the concerns raised about the proposal to prescribe the requirements for a session report in the Principal Rules were due to a misunderstanding around the proposed change. Once this misunderstanding was resolved, no further concerns were raised. It was not necessary to conduct consultation about the substance of the session report requirements as these are not being changed, but simply being prescribed in the Principal Rules for greater clarity.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Child Care Subsidy Amendment (Session Reports) Secretary's Rules 2023

The *Child Care Subsidy Amendment (Session Reports) Secretary's Rules 2023* (the Amendment Rules) are 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 Amendment Rules amend the *Child Care Subsidy Secretary's Rules 2017* (Principal Rules) to set out the requirements for a session report under section 204B of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).

The Family Assistance Act and the Family Assistance Administration Act set out a scheme for the payment of child care subsidy (CCS) to eligible individuals. While CCS is the entitlement of individuals, it is paid to child care providers approved under Part 8 of the Family Assistance Administration Act, who are then required to pass on the amount to individuals, generally by way of fee reduction. The payment of CCS is triggered by a session report, which the provider is required to submit under section 204B of the Family Assistance Administration Act.

Until 30 June 2023, a session report must “include any other information required by the Secretary” under paragraph 204B(2)(c) of the Family Assistance Administration Act. This other information required by the Secretary is set out administratively in the Child Care Provider Handbook, which is available from the Department of Education’s website (www.education.gov.au). From 1 July 2023, paragraph 204B(2)(c) will be amended by the *Family Assistance Legislation Amendment (Cheaper Child Care) Act 2022* (Amendment Act) to provide that a session report must include any other information “prescribed by the Secretary’s Rules”. The Amendment Rules will prescribe the requirements for a session report in the Principal Rules to give effect to the Amendment Act.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights because it does not raise any human rights issues.

Secretary of the Department of Education, Tony Cook PSM

CHILD CARE SUBSIDY AMENDMENT (SESSION REPORTS) SECRETARY'S RULES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying that the name of the instrument is the *Child Care Subsidy Amendment (Session Reports) Secretary's Rules 2023* (Amendment Rules).

Section 2: Commencement

2. This section provides that the Amendment Rules will commence on 1 July 2023.

Section 3: Authority

3. This section provides that the Amendment Rules are made under the *A New Tax System (Family Assistance) Act 1999* (Family Assistance Act).

Section 4: Schedules

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

SCHEDULE 1 –AMENDMENTS

Child Care Subsidy Secretary's Rules 2017

Item 1: At the end of the instrument

5. This item inserts new Division 5—Contents of session reports, at the end of the Principal Rules. Division 5 will prescribe information that must be included in a session report under section 204B of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act).
6. The Family Assistance Act and the Family Assistance Administration Act establish a scheme for the payment of child care subsidy (CCS), to subsidise fees paid by eligible individuals towards the cost of child care provided by an approved child care provider for children in their or their partner's care. First the individual must put in a claim to be found eligible for CCS by fee reduction. Then the approved child care provider must submit reports under section 204B of the Family Assistance Administration Act about the child care it provides, which include information required to determine whether the individual is eligible for CCS and if so, the amount of CCS the individual is entitled to in relation to each session.

7. Once the Secretary receives a session report, the Secretary will use the information in the session report to calculate the amount of CCS the individual is entitled to and pay this to the approved provider. The approved provider is then required to pass the amount onto the eligible individual, generally by way of fee reduction.
8. Accordingly, session reports play an important role in calculating an individual's entitlement to CCS. While the requirements for session reports are not being substantively changed from those set out in the Child Care Provider Handbook, this item will clearly set them out in the Principal Rules so that providers can identify their obligations with greater clarity and certainty. The Child Care Provider Handbook is, in 2023, available on the Department's website (www.education.gov.au).
9. Division 5 will contain new section 13, which provides that a session report under section 204B of the Family Assistance Administration Act must contain the information set out in paragraphs (a) through to (k).
10. Under paragraph (a), a session report must include the week to which the report relates. A note has been included to draw attention to subsection 3(6) of the Family Assistance Act, which provides that for the purposes of CCS and ACCS, a week begins on a Monday.
11. Under paragraph (b), a session report must include the day the session was provided or would have been provided. This paragraph refers to sessions that would have been provided because session reports do not only include information on sessions that a child attended, but also sessions that a child was enrolled to attend but did not attend. In some circumstances, there is eligibility for CCS even where the child did not attend the session of care (see subsections 10(2), (3) and (5) of the Family Assistance Act).
12. It is possible for a session of care to start on one day and end the next day, under subsection 5(3) of the *Child Care Subsidy Minister's Rules 2017*. If so, the session will be treated to have occurred on the first day under section 5(4) of the *Child Care Subsidy Minister's Rules 2017*. Accordingly, for a session that spans two days, the day that will be reported under new paragraph 13(b) is the earlier of the two days.
13. Under paragraph (c), a session report must include the start time and end time of the session of care for which the child was enrolled. This refers to when the child was booked to attend care, and not necessarily the actual times the child arrived at and left care, which are separately required under paragraph (e).
14. Under paragraph (d), a session report must include whether the child attended the session or any part of the session. This is to assist the Secretary to determine whether the session was "provided" as defined in section 10 of the Family Assistance Act. If the child did not attend, there is only eligibility for CCS in the circumstances set out in subsections 10(2), (3) and (5) of the Family Assistance Act.

15. Under paragraph (e), a session report must include the time the child arrived at and the time the child departed the service. However, a session report only needs to include this information if the child attended the session or any part of it.
16. Under paragraph (f), if the child did not attend the session of care, and the session cannot be taken to have been provided under subsection 10(2) of the Family Assistance Act, the session report must include whether the absence was for a reason set out in subsection 10(4) of the Family Assistance Act, and if so, the reason. Subsections 10(2), (3) and (5) set out when CCS is payable for a session of care that the child did not attend. Subsection 10(2) provides for up to 42 allowable absences, where certain conditions are met. Subsection 10(3) provides for additional absences above the original 42, but only where the absence is for a reason in subsection 10(4). This information will therefore assist the Secretary to determine whether CCS is payable where a child has used up the original 42 allowable absences.
17. Under paragraph (g), a session report must include the amount the individual was liable to pay:
 - a. Disregarding any discount under section 201BA or 201BB of the Family Assistance Administration Act, and
 - b. Reduced by any other payment the individual benefited from in respect of the session, other than a payment mentioned in subclause 2(2A) of Schedule 2 to the Family Assistance Act.
18. Generally, CCS is calculated as a percentage of the amount an individual is liable to pay for the session (clause 2 of Schedule 2 to the Family Assistance Act). However, sections 201BA and 201BB permit the provider to give certain discounts on child care fees without the amount of CCS payable being reduced. Section 201BA provides for a permissible staff discount, which a provider may offer certain employees. Section 201BB provides for a prescribed event or circumstance discount, which a provider may offer during prescribed events or circumstances. For example, if a natural disaster occurred, the Minister may exercise their discretion to permit a discount during that natural disaster by prescribing it in the *Child Care Subsidy Minister's Rules 2017*. These discounts do not affect an individual's CCS entitlement.
19. Under clause 2 of Schedule 2 to the Family Assistance Act, in calculating CCS, the amount of any payment that the individual benefits from in respect of the session, other than payments listed in subclause 2(2A), is subtracted from the individual's liability to pay before calculating CCS. Accordingly, any such payment should be subtracted from the amount the individual is liable to pay before reporting an amount under paragraph (g).
20. Under paragraph (h), a session report must include whether the individual benefited from a payment prescribed under paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act. These are payments that an individual benefits from that do not reduce the amount of CCS the individual is entitled to, and include certain payments

made by State Governments (as set out in section 16A of the *Child Care Subsidy Minister's Rules 2017*).

21. Under paragraph (i), if the individual benefits from the payment described in paragraph (h), the session report must include the name of the party that made the payment and the amount of the payment. Again, this will allow the Department to better understand use of these payments.
22. Under paragraph (j), if the session was provided by a family day care (FDC) service or an in home care (IHC) service, a session report must include the personnel identifier assigned to the educator. This will allow the Secretary to be satisfied that the session is not one where there is no CCS eligibility under section 8 of the *Child Care Subsidy Minister's Rules 2017*. For example, under paragraph 8(1)(e) of the *Child Care Subsidy Minister's Rules 2017*, there is no CCS eligibility for care provided by an FDC educator to their own child, brother or sister. It will also allow the Department to monitor accuracy of session reporting.
23. Under paragraph (k), a session report must include whether the session was part of an early education program as described in in subparagraph 194D(a)(vi) of the Family Assistance Administration Act, which describes it as a program for children in the year that is two years before grade 1 of school, such as preschool or kindergarten.