

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (Transition to Work) Minister's Rules 2023

AUTHORITY

The Child Care Subsidy Amendment (Transition to Work) Minister'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 Minister's Rules 2017* (Principal Rules) to allow a particular cohort of individuals to continue to access Additional Child Care Subsidy (ACCS) (transition to work). ACCS (transition to work) is a form of subsidy for early childhood education and care (ECEC) that offers a higher rate of payment than the Child Care Subsidy (CCS).

Specifically, the Amendment Rules will have the effect that:

- Individuals who receive an income support payment listed in section 15 of the Principal Rules will not need to have an employment pathway plan or a participation plan in effect in order to receive ACCS (transition to work).
- Individuals who receive JobSeeker payment, but who are not subject to participation requirements under the social security law, may receive ACCS (transition to work) without having an employment pathway plan in place.

Previously, individuals who were not required to have an employment pathway plan or a participation plan in effect under the eligibility requirements for their income support payments were nonetheless required to enter into voluntary plans in order to access ACCS (transition to work). However, from 1 July 2022, the functionality for entering into a voluntary job plan was removed for all income support recipients, with the exception of the Disability Support Pension (DSP). As individuals could no longer enter voluntary job plans, they could no longer meet the eligibility requirements for ACCS (transition to work). Therefore, the decision has been made to remove the Job Plan requirements so that these individuals can continue to receive ACCS (transition to work). The voluntary Job Plan

requirements for the DSP are also being removed for consistency of treatment of income support payment recipients.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that no Impact Analysis is required for the Amendment Rules because they are unlikely to have more than a minor impact (OIA ID: OIA23-05260).

COMMENCEMENT

The Amendment Rules will commence on 1 July 2022. This means that the Amendment Rules will commence before they are registered.

The date 1 July 2022 has been chosen as this is the date when the functionality for entering into a voluntary job plan was removed, ahead of the introduction of Workforce Australia on 4 July 2022. Voluntary job plans previously played an important role in ACCS (transition to work) eligibility, and the Amendment Rules will remove the Job Plan requirements from this date to prevent gaps in ACCS (transition to work) eligibility which could have an adverse financial effect on individuals who receive ACCS (transition to work).

Subsection 12(2) of the *Legislation Act 2003* (Legislation Act) provides that if a legislative instrument commences before the instrument is registered, the instrument or provision does not apply in relation to a person to the extent that:

- (a) the person's rights would be affected so as to disadvantage the person, or
- (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.

The Amendment Rules are consistent with subsection 12(2) of the Legislation Act because their effect is purely beneficial. Specifically, the Amendment Rules will confer ACCS (transition to work) eligibility on individuals that otherwise would not have been eligible for ACCS (transition to work). As a result of the Amendment Rules, certain individuals who receive an income support payment will have their ECEC fees subsidised at a higher rate than they would otherwise have received.

CONSULTATION

The Department of Education (Department) consulted with Services Australia and the Department of Employment and Workforce Relations about the implementation of this measure.

It was not practical for the Department to engage in public consultation given that the amendments were required urgently to realign the Principal Rules with the policy intent of the program following the Workforce Australia changes.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Child Care Subsidy Amendment (Transition to Work) Minister's Rules 2023

The Child Care Subsidy Amendment (Transition to Work) Minister's Rules 2023 (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 Minister's Rules 2017* (Principal Rules) to allow a particular cohort of individuals to continue to access Additional Child Care Subsidy (ACCS) (transition to work). ACCS (transition to work) is a form of subsidy for early childhood education and care (ECEC) that offers a higher rate of payment than the Child Care Subsidy (CCS).

Specifically, the Amendment Rules will have the effect that:

- Individuals who receive an income support payment listed in section 15 of the Principal Rules will not need to have an employment pathway plan or a participation plan in effect in order to receive ACCS (transition to work).
- Individuals who receive JobSeeker payment, but who are not subject to participation requirements under the social security law, may receive ACCS (transition to work) without having an employment pathway plan in place.

Previously, individuals who were not required to have an employment pathway plan or a participation plan in effect under the eligibility requirements for their income support payments were nonetheless required to enter into voluntary plans in order to access ACCS (transition to work). However, from 1 July 2022, the functionality for entering into a voluntary job plan was removed for all income support recipients, with the exception of the Disability Support Pension (DSP). As individuals could no longer enter voluntary job plans, they could no longer meet the eligibility requirements for ACCS (transition to work). Therefore, the decision has been made to remove the Job Plan requirements so that these individuals can continue to receive ACCS (transition to work). The voluntary Job Plan requirements for the DSP are also being removed for consistency of treatment of income support payment recipients.

Human rights implications

The Amendment Rules engage the following rights:

- Rights of children and families, particularly article 18, paragraph 3 of the Convention on the Rights of the Child (CRC).

Rights of children and parents

In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy special rights, particular to their status, under treaties such as the CRC.

In particular, article 18, paragraph 3 of the CRC states that States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from ECEC services and facilities for which they are eligible.

To this end, the Amendment Rules will make a certain cohort of individuals eligible for ACCS (transition to work), which will have the effect that they receive a higher rate of subsidy. This will make it easier for them to afford ECEC services.

In this way, the Amendment Rules promote the rights of children and parents.

Conclusion

The Amendment Rules are compatible with human rights because they promote the protection of human rights.

Minister for Education, Jason Clare

CHILD CARE SUBSIDY AMENDMENT (TRANSITION TO WORK) MINISTER'S RULES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying that the name of the Amendment Rules is the *Child Care Subsidy Amendment (Transition to Work) Minister's Rules 2023*.

Section 2: Commencement

2. Section 2 provides that the Amendment Rules commence on 1 July 2022. This means that the Amendment Rules will commence before they are registered on the Federal Register of Legislation.
3. The date 1 July 2022 has been chosen as this is the date when the functionality to make provision for voluntary Job Plans ceased for individuals on most income support payments except the Disability Support Pension (**DSP**) due to the introduction of Workforce Australia. This meant that most individuals could no longer enter voluntary Job Plans. Voluntary Job Plans previously played an important role in ACCS (transition to work) eligibility. But as most individuals could no longer enter voluntary Job Plans, they could no longer meet the eligibility requirements for ACCS (transition to work). The Amendment Rules will remove the Job Plan requirements from this date to prevent gaps in ACCS (transition to work) eligibility which could have an adverse financial effect on income support payment recipients.
4. Subsection 12(2) of the *Legislation Act 2003* (Legislation Act) provides that if a legislative instrument commences before the instrument is registered, the instrument or provision does not apply in relation to a person to the extent that:
 - a. the person's rights would be affected so as to disadvantage the person, or
 - b. liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.
5. The Amendment Rules are consistent with subsection 12(2) of the Legislation Act because their effect is purely beneficial. Specifically, the Amendment Rules will confer ACCS (transition to work) eligibility on individuals that otherwise would not have been eligible for ACCS (transition to work). As a result of the Amendment Rules, certain individuals who receive an income support payment will have their ECEC fees subsidised at a higher rate than they would otherwise have received.

Section 3: Authority

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

Section 4: Title of Section

7. Section 4 provides that the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) are amended as set out in the Schedule to the Amendment Rules.

SCHEDULE 1 – AMENDMENTS

Child Care Subsidy Minister's Rules 2017

Item 1: Paragraph 13(1)(c)

8. This item repeals paragraph 13(1)(c).
9. Sections 13 to 15 of the Principal Rules, which will be amended by this Schedule, deal with ACCS (transition to work). ACCS (transition to work) is a form of ACCS and is paid at a higher rate than child care subsidy (CCS).
10. Section 85CK of the Family Assistance Act provides that an individual is eligible for ACCS (transition to work) if:
 - a. the individual is eligible for CCS,
 - b. the individual is receiving a transition to work payment referred to in subsection 85CK(3),
 - c. if the individual is receiving a transition to work payment referred to in paragraph 85CK(3)(a), an employment pathway plan or a participation plan as referred to in the social security law is in effect,
 - d. any requirements prescribed by the Principal Rules are met, and
 - e. Division 5 does not prevent the individual being eligible for ACCS (transition to work).
11. Section 13 of the Principal Rules sets out additional requirements to be eligible for ACCS (transition to work). Previously, these included activity requirements (paragraph 13(1)(a)), income requirements (paragraph 13(1)(b)), job plan requirements (paragraph 13(1)(c)) and a further requirement for individuals receiving the income support payment known as 'special benefit'.
12. A significant cohort of ACCS (transition to work) recipients, historically, have not needed to enter into employment pathway plans or participation plans to access their income support payment. However, having an employment pathway plan or a participation plan was an eligibility requirement for ACCS (transition to work). Previously, they would enter into a voluntary job plan (meaning an employment pathway plan or a participation plan) to receive ACCS (transition to work). However, due to changes to mutual obligations through the Workforce Australia, the concept of voluntary Job Plan has been removed and so it has not been possible to enter into a voluntary Job Plan since 1 July 2022, for individuals on most income support payments except the DSP.
13. This amendment will remove the Job Plan requirements from the additional eligibility requirements for ACCS (transition to work) so that this cohort can continue to receive ACCS (transition to work).

Item 2: Subsections 13(4) to (6)

14. This item repeals subsections 13(4) to 13(6).
15. Previously, these subsections set out the detail of the Job Plan requirements, including by setting out who is subject to the Job Plan requirements, and defining the term 'job plan' as including:
 - a. Employment pathway plans, whether required under the social security law or voluntary, and
 - b. Participation plans, whether required under the social security law or voluntary.
16. As the Job Plan requirements are being removed as described under item 1, these subsections are no longer needed.

Item 3: At the end of section 15

17. This item adds new paragraph 15(i) to the end of section 15.
18. Paragraph 85CK(3)(a) defines four payments as 'transition to work payments': parenting payment, disability support pension, youth allowance and job seeker payment. Paragraph 85CK(3)(b) allows further transition to work payments to be prescribed in the Principal Rules.
19. This item will prescribe a further 'transition to work payment': jobseeker payment, but specifically as paid to those individuals who are not required to have an employment pathway plan in effect. That is, new paragraph 15(i) will prescribe a specific subset of jobseeker payment recipients. This is consistent with the approach that has previously been taken for parenting payment, disability support pension, and youth allowance in paragraphs 15(f) to (h) of the Principal Rules.
20. JobSeeker payment recipients who are required to have an employment pathway plan in effect as part of the eligibility requirements for the payment will continue to be eligible for ACCS (transition to work) if they have an employment pathway plan in effect, in accordance with subparagraph 85CK(1)(b)(ii).
21. However, because it is no longer possible to enter into a voluntary employment pathway plan, this amendment will ensure that jobseeker payment recipients who are *not* required to have an employment pathway plan in effect as part of the eligibility requirements for JobSeeker payment can continue to access ACCS (transition to work), with no gaps in eligibility. For example, this may include individuals with exemptions from employment pathway plan requirements.