Explanatory Statement

## *Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) Minister’s Rules 2020*

## Purpose and Authority

## The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) 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:

* extend the relaxation of the CCS activity test to help individuals impacted by COVID-19 to get back into their workforce participation activities, which currently ends on 4 October 2020, until 4 April 2021.  Under the relaxed activity test, individuals can access 100 hours of subsidised child care per fortnight where they now have a reduced number of hours of work, training, study or other recognised activity, compared to their activity level prior to the COVID‑19 pandemic.
* increase the cap on the appropriation in section 233 of the Family Assistance Administration Act for payments under the *Community Child Care Fund Special Circumstances Grant Opportunity* (CCCF-SC) program for the 2020-2021 financial year from $623 million to $949 million.

## 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. 7) 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*.

**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 Payment** means a payment made to an approved provider in accordance with grant agreements entered into between the provider and the Department under section 85GA of the Family Assistance Act, pursuant to that element of the CCCF-SC program known as the Transition Package.

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. 7) 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**

### Extension of relaxation of activity test requirements for families adversely affected by COVID-19 pandemic

Section 40AB of the Minister’s Rules provides that individuals who can no longer engage in the same number of hours of work, training, study or other activity recognised by the CCS activity test that they were able to engage in immediately prior to the COVID-19 pandemic, will be entitled to 100 hours of subsidised child care per fortnight.

If, in at least one CCS fortnight between 13 January and 22 March 2020, an individual engaged in at least 16 hours of recognised activities, or if they were a member of a couple, their partner engaged in at least 16 hours of recognised activities and they engaged in at least 8 hours of recognised activities, and in the current CCS fortnight, the person (and their partner, if they are a member of a couple) engaged in at least 8 hours of recognised activities, they will have a Minister’s rule result of 100 (i.e. will be entitled to 100 hours of subsidised child care in the current fortnight).

This relaxation of the activity test requirements is intended to assist families to return to the level of work, study or training they were doing before the COVID-19 pandemic, or to undertake more activities than before, by allowing them to access greater levels of subsidised care for a period.

Currently, subsection 40AA(1) provides that section 40AB applies for the purpose of working out a Minister’s rule result for an individual for a CCS fortnight that begins in the period beginning on 13 July 2020 and ending on 4 October 2020.

**Item 1** amends subsection 40AA(1) to extend the application of section 40AB to CCS fortnights up until 4 April 2021. This extension of the relaxation of the activity test requirements for families with reduced activities reflects the reality that for many families, returning to their pre-COVID levels of work, study or training hours will take longer than originally anticipated when the provisions were first enacted.

### 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 CCCF-SC program for the purposes of subsection 233(2), and provides that the cap on the annual appropriation for that purpose is $623 million for the 2020-2021 financial year.

The amount of $623 million for the 2020-2021 financial year was prescribed on 21 August 2020 through amendments to the Minister’s Rules under the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister’s Rules 2020*. This was an increase from the $584 million originally prescribed for the 2020-20201 financial year, and reflected the Government’s expansion of Transition Payments

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:

* extending the duration of Transition Payments to providers operating child care services in Victoria by two weeks, from 13 September to 27 September 2020;
* extending the duration of Transition Payments to providers operating Outside School Hours Care (OSHC) services in Victoria by an additional two or three weeks (until 11 October 2020 for services in regional Victoria and until 18 October 2020 for services in metropolitan Melbourne); and
* providing further support (a Recovery Payment) to all providers operating child care services in Victoria after the end of Transition Payments until 31 January 2021.

These three measures are forecast to cost $326 million in the 2020-2021 financial year.

Accordingly, **items 2 and 3** amend subsections 78(2) and (3) of the Minister’s Rules respectively, to increase the appropriation cap for 2020-2021 in those provisions from $623 million to $949 million.

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

## The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 7) 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:

* extend the relaxation of the CCS activity test to help individuals impacted by COVID-19 to get back into their workforce participation activities, which currently ends on 4 October 2020, until 4 April 2021.  Under the relaxed activity test, individuals can access 100 hours of subsidised child care per fortnight where they now have a reduced number of hours of work, training, study or other recognised activity, compared to their activity level prior to the COVID‑19 pandemic.
* increase 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 $623 million to $949 million.

## 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 expansion of the government’s Relief Package Transition Arrangements and the government’s Recovery Package 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 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 100 hours per fortnight of subsidised child care notwithstanding a substantial reduction in their ability to undertake recognised activities for subsidised care, due to the impacts of the COVID-19 pandemic on their employment or education.

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