

REPLACEMENT 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 No. 1) Minister's Rules 2021

AUTHORITY

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 1) 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) to ensure payments made by Victoria to providers for children participating in kindergarten programs in Victoria in 2021 do not reduce the hourly rate of CCS that individuals are entitled to. This is a measure supporting child care providers and families in response to the COVID 19 pandemic.

Clause 2 of Schedule 2 to the Family Assistance Act sets out the method for determining the "hourly rate of CCS" that applies to an individual for a session of care provided by a child care service to a child in a week. It provides that the hourly rate of CCS is the individual's applicable percentage (as determined by clause 3) of the lower of the "hourly session fee" for the individual; and the "CCS hourly rate cap" (as set out in subclause 2(3)), rounded to the nearest cent.

This means that in circumstances where an individual's hourly session fee is less than the CCS hourly rate cap, their hourly rate of CCS will be determined based on their hourly session fees. This is to prevent individuals from receiving more CCS than they were actually liable to pay in full fees for the session of care.

Subclause 2(2) of Schedule 2 sets out the method for calculating the "hourly session fee". It provides that it is the amount the individual is liable to pay the provider for an hour of the session of care reduced by:

- the hourly rate of any payment which the individual benefits from for the session of care (other than CCS, ACCS or, relevantly, a payment prescribed under of paragraph 2(2A)(c) of Schedule 2); and

- the amount per hour of any reimbursement fringe benefit in respect of the session of care.

The intention of deducting the above types of payments that the individual benefits from, from the hourly session fee calculation, is to ensure that as much as possible, CCS is calculated based on the full fee charged by a provider for a session of care, without adjustment. This results in individuals having a co-contribution amount to pay towards the fees for the session of care.

However, paragraph 2(2A)(c) of Schedule 2 allows for payments to be prescribed in the Minister's rules which are not deducted for the purpose of determining the amount of an individual's hourly session fee. This is intended to help to ensure, where appropriate, cost is not a barrier to individuals accessing early learning and child care, as the prescribed payments partially or wholly cover the co-contribution amount that would otherwise be payable by those individuals.

Currently, sections 15C and 16A of the Principal Rules prescribe particular kinds of payments for the purposes of paragraph 2(2A)(c) of Schedule 2 (being payments by States and Territories to support vulnerable and disadvantaged children, and relief payments to support communities affected by the 2019-20 bushfire season and volunteer firefighters, respectively).

As part of the 2020-21 Victorian State Budget, the Victorian Government has announced it will provide subsidies to eligible child care services in 2021 to provide free or reduced fee kindergarten programs to support families with the costs of early childhood education and make it easier for parents, particularly women, to take up employment opportunities. The subsidies will result in free kindergarten programs in eligible sessional services and reduced fee kindergarten programs in long day care centres. The proposal will support kindergarten participation, service viability, employment in the early childhood education sector and women's workforce participation.

The Australian Government will support the Victorian Government's proposal by ensuring that payments made by the Victorian Government to approved child care providers engaged in delivering kindergarten programs will not reduce the amount of CCS payable to families with children attending those programs.

Accordingly, the Amendment Rules amend the Principal Rules to give effect to this policy.

REGULATORY IMPACT

A Prime Minister's exemption has been granted for all COVID-19 related measures where they have more than a minor regulatory impact – see <https://ris.pmc.gov.au/2020/03/18/prime-ministers-exemption-%E2%80%93-covid-19-related-measures>.

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 weekly with stakeholders in the early childhood education and care sector through the Early Childhood Education and Care Reference Group on COVID-19 issues. In addition, during May and June 2020, the department has run additional consultation sessions with stakeholder groups.

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. 1) Minister's Rules 2021

The *Child Care Subsidy Amendment (Coronavirus Response Measures No. 1) Minister's Rules 2021* (the 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 Instrument makes the following amendments to the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) to give effect to measures supporting child care providers and families in response to the COVID-19 pandemic by ensuring the payments made to Victoria to providers for children participating in kindergarten programs in Victoria in 2021 do not reduce the hourly rate of CCS that individuals are entitled to.

Human rights implications

The Instrument engages the following rights:

- 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 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 parents to receive payments from the Victorian Government without reducing their child

care subsidies. This will help ensure that families in particular are able to access subsidised child care at reasonable costs as they transition back to CCS and ACCS.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

Minister for Education and Youth, Alan Tudge

***Child Care Subsidy Amendment (Coronavirus Response Measures No. 1) Minister's Rules
2021***

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifies the name of the instrument as the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 1) Minister's Rules 2021* (Amendment Rules).

Section 2: Commencement

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

Section 3: Authority

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

Section 4: Title of Section

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

SCHEDULE 1 – Amendments

5. **Item 1** repeals section 15C of the *Child Care Subsidy Minister's Rules 2017* (Principal Rules). Section 15C is no longer needed as its content is moved into new subsection 16A(3A), as inserted by Item 4. This has been done to amalgamate all of the provisions prescribing payments for the purposes of paragraph 2(2A)(c) of Schedule 2 to the Family Assistance Act in one place (being section 16A of the Principal Rules).
6. **Items 2 and 3** make consequential amendments to section 16A to clearly set out the section's purpose and to remove redundant language.
7. **Item 4** inserts new subsections (3A) and (3B) into section 16A of the Principal Rules. Subsection (3A) contains the same content as previously in section 15C of the Principal Rules.
8. Consistent with previous section 15C of the Principal Rules, for the purposes of new paragraph 16A(3A)(a) children in vulnerable or disadvantaged circumstances would include, but not be limited to, children from families who have complex and multiple

challenges, which adversely affect the child's social and developmental opportunities and outcomes. Challenges could include poverty, child neglect, a primary carer with a health or disability issue, and domestic violence or other traumas, where these factors have the effect of restricting the child's access to early education and child care.

9. The effect of subsection (3B) is to prescribe payments made by Victoria for the purposes of enabling a child to participate in a kindergarten program in Victoria in 2021, and that are made to reduce (wholly or in part) the amount that needs to be paid for care provided to that child.
10. **Item 5** inserts a new definition of kindergarten program in subsection 16A(4), for the purposes of the new subsection (3B). A kindergarten program in Victoria is an early childhood education program provided to children before their first year of school (that is, before their foundation year, which is the year before year 1 of primary school).
11. For example: A parent receives financial assistance from the Victorian government for their child to attend kindergarten. The Victorian government makes this payment directly to the child care provider. The parent is charged \$100 for a session of care and the Victorian government pays the provider \$15 for that session of care on the parent's behalf. Previously, the provider was required to reduce the child care fees (\$100) by this payment (\$15) before CCS was calculated. Under these amendments, the provider does not need to reduce the \$100 fee and the Victorian government payment can cover the parent's co-contribution amount.
12. To illustrate:

	Without amendment	With amendment
Cost for session	\$100	\$100
Victorian payment towards session	\$15	\$15
Parents CCS percentage	85%	85%
CCS calculation	$(\$100 - \$15) \times 85\% = \$72.25$	$\$100 \times 85\% = \85
Parent co-contribution	$\$85 - \$72.25 = \$12.75$	$\$100 - \$85 - \$15 = \0