

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) (Administration) Act 1999

A New Tax System (Family Assistance) (Administration) (Class Debt Waiver—Absences before First Attendance or after Last Attendance) Instrument 2023

AUTHORITY

The *A New Tax System (Family Assistance) (Administration) (Class Debt Waiver—Absences before First Attendance or after Last Attendance) Instrument 2023* (Instrument) is made under subsection 102(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act).

PURPOSE AND OPERATION

An individual is eligible for Child Care Subsidy (CCS) for a session of care provided by an approved child care provider to the child of an eligible individual. If an amount of CCS or Additional Child Care Subsidy (ACCS) is paid where there was no entitlement to CCS or ACCS, this amount is a debt owed to the Commonwealth under Part 4 of the Administration Act.

CCS and ACCS are generally not payable for absences before a child's first physical attendance, or after their last physical attendance, at a child care service. This Instrument will apply to debts where an individual was not entitled to CCS for a session of care because the session of care was either:

- before the child's first attendance at a child care service; or
- after the child's last attendance at a child care service before their enrolment at that service ended.

The Department of Education (Department) has identified circumstances in which debts have been raised against approved providers in circumstances where they ought to have been individual debts under the Administration Act, contrary to policy intent. This Instrument will create a power to waive the individual debts that arose in these circumstances to ensure that individuals are not faced with debts for which they were never intended to be responsible.

The Government is taking steps to amend the Administration Act so that individual debts in these circumstances do not arise in future.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has advised no Impact Analysis is required for the Instrument because it will have no more than a minor regulatory impact (OIA ID: OIA23-05010).

COMMENCEMENT

The Instrument will commence on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The Department has consulted with the Early Childhood Education and Care Reference Group about how the debt waivers will be implemented, noting the effect of the Instrument is purely beneficial and there is no risk of it creating disadvantage to any parties. The Early Childhood Education and Care Reference Group comprises key representatives and peak bodies across the Early Childhood Education and Care sector.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

A New Tax System (Family Assistance) (Administration) (Class Debt Waiver—Absences before First Attendance or after Last Attendance) Instrument 2023

The *A New Tax System (Family Assistance) (Administration) (Class Debt Waiver—Absences before First Attendance or after Last Attendance) Instrument 2023* (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

An individual is eligible for Child Care Subsidy (CCS) for a session of care provided by an approved child care provider to the child of an eligible individual. If an amount of CCS or Additional Child Care Subsidy (ACCS) is paid where there was no entitlement to CCS or ACCS, this amount is a debt owed to the Commonwealth under Part 4 of the Administration Act.

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- after the child's last attendance at a child care service before their enrolment at that service ended.

The Department of Education (Department) has identified circumstances in which debts have been raised against approved providers in circumstances where they ought to have been individual debts under the Administration Act, contrary to policy intent. This Instrument will create a power to waive the individual debts that arose in these circumstances to ensure that individuals are not faced with debts for which they were never intended to be responsible.

The Government is taking steps to amend the Administration Act so that individual debts in these circumstances do not arise in future.

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.

Minister for Education, the Hon Jason Clare MP

A NEW TAX SYSTEM (FAMILY ASSISTANCE) (ADMINISTRATION) (CLASS DEBT WAIVER—ABSENCES BEFORE FIRST ATTENDANCE OR AFTER LAST ATTENDANCE) INSTRUMENT 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument as the *A New Tax System (Family Assistance) (Administration) (Class Debt Waiver—Absences before First Attendance or after Last Attendance) Instrument 2023* (Instrument).

Section 2: Commencement

2. This section provides that the Instrument will commence on the day after the Instrument is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the instrument is made under subsection 102(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act).

Section 4: Class of debts that may be waived

4. This provision defines the class of debts that may be waived under the Instrument.
5. It provides that a debt, or part of the debt, may be waived under the Instrument if it arose under subsection 71B(1) or 71C of the Administration Act because:
 - a. an amount of Child Care Subsidy (CCS) or Additional Child Care Subsidy (ACCS) was paid to an individual for a session of care provided by an approved child care service of a provider to a child on a day. In most cases, providers are paid a fee reduction amount under section 67EB of the Administration Act, which the provider will be required to pass on to the individual under section 201A of that Act. An amount of CCS or ACCS is taken to have been paid to an individual if the provider passes on the fee amount to the individual (see subsection 201A(5) of the Administration Act). Individuals may also be paid directly by the Secretary (see subsection 67EC of the Administration Act);
 - b. the child did not attend any part of the session of care on that day;
 - c. the day was before the child's first attendance at the service, or after the child's last attendance at the service before becoming unenrolled with the service;
 - d. the service is not taken to have provided the session of care on that day under subsection 10(2), (3) or (5) of the *A New Tax System (Family*

Assistance) Act 1999 (Assistance Act). Subsections 10(2), (3) and (5) of the Assistance Act identify certain limited circumstances where CCS is payable for an absence before a child's first attendance or after a child's last attendance.

6. This Instrument will allow the Secretary to waive all or part of individual debts that were incurred due to CCS paid for an absence before a child's first attendance or after the child's last attendance to be waived, so that individuals are not faced with debts that they had no control over, and which may place financial pressure on them. Such debts often arise in circumstances where providers claim CCS or ACCS on behalf of individuals who do not require child care, for example, because the providers require a few weeks' notice before the individual unenrolls from care. The individual will then be charged fees until the notice period ends. In these circumstances, individuals are unable to avoid incurring a debt as they cannot control whether providers submit session reports claiming CCS or ACCS on their behalf.
7. The Government is taking steps to amend the Administration Act to confirm that debts raised in respect of CCS or ACCS paid for absences before a child's first attendance or after the child's last attendance before the child is unenrolled are debts of the provider and not of the individual. These amendments will ensure that individual debts in these circumstances do not arise in future.