

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (Debts for Absences before First Attendance and after Last Attendance) Minister's Rules 2023

AUTHORITY

The *Child Care Subsidy Amendment (Debts for Absences before First Attendance and after Last Attendance) 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) and 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 prescribe a new condition for continued approval for certain approved providers for whom a debt has been raised in respect of Child Care Subsidy (CCS) or Additional Child Care Subsidy (ACCS) paid for absences before a child's first day of attendance or after their last day of attendance before they are unenrolled.

CCS is an entitlement of individuals who are liable for child care fees, but in most circumstances the Commonwealth pays CCS to the provider that charges the fees. The provider is then required to pass on the entitlement to the individual by way of fee reduction.

When a payment greater than the individual's CCS entitlement is made, which may arise when a provider reports enrolment or attendance information that is later found to be incorrect, the CCS system raises a debt and recovers the amount from providers. Providers may adjust billing arrangements for that family to reflect the debt, depending on their individual contractual arrangements with the family.

Except in limited circumstances, where a child is absent before their first day of attendance or after their last day of attendance, no CCS will be payable for those absences. If CCS was paid for a session of care on these absence days, a debt arises. Debts have been raised against providers in respect of CCS paid for these absence days. If the Secretary reviews the

decisions in respect of these debts under section 105 or section 109A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) and the outcome of the review is that the Secretary sets aside the debt, the debt amount will be repaid to the provider by the Commonwealth. However, in some cases, the provider would have already recovered the debt amount from the individual. The new condition for continued approval prescribed by the Amendment Rules will ensure that, if the provider has already recovered all or part of that debt amount from an individual, the provider must pass on an equivalent amount back to that individual. This new condition will ensure providers do not receive payment from both the Commonwealth and individual to address a debt for absences before first attendance or after last attendance.

The new condition applies to providers that meet all the following criteria:

- (a) an amount (the 'CCS/ACCS amount') was paid to an individual by way of CCS or ACCS for a session of care provided by a 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 Family Assistance 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 Family Assistance Administration Act).
- (b) the child was absent and did not attend any part of that session of care on that day.
- (c) the day the child was absent was either:
 - (i) before the child physically attended the child care service for a session of care for the first time; or
 - (ii) after the child physically attended the child care service for a session of care for the last time before they stopped being enrolled at that service.
- (d) a debt was raised against the provider under section 71F of the Family Assistance Administration Act for the CCS/ACCS amount received for that session of care.
- (e) the provider required the individual to reimburse the provider for all or part of the debt amount.
- (f) the individual reimbursed the provider for all or part of that debt (referred to as the 'reimbursement amount').
- (g) the Secretary subsequently set aside the debt upon review under section 105(1) or subsection 109A(2) of the Family Assistance Administration Act.
- (h) as a result, the Commonwealth repaid the provider the debt amount (referred to as 'repayment amount').

If all of the above criteria apply to a provider, the provider must take all reasonable steps to repay the individual the amount that the individual reimbursed the provider for the debt relating to absence before first attendance or after last attendance. The provider must do so as soon as reasonably practicable after receiving the repayment from the Commonwealth.

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 Amendment Rules will commence the day after registration.

CONSULTATION

The Department of Education has commenced consultation, and will continue to consult, including with the Early Childhood Education and Care Reference Group about how to implement this measure. The Early Childhood Education and Care Reference Group comprises key representatives and peak bodies across the Early Childhood Education and Care sector. The Amendment Rules will allow any past errors to be rectified as soon as practicable, without the rectification having an adverse effect on individuals.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Child Care Subsidy Amendment (Debts for Absences before First Attendance and after Last Attendance) Minister's Rules 2023

The *Child Care Subsidy Amendment (Debts for Absences before First Attendance and after Last Attendance) Minister's Rules 2023* (the Amendment Rules) 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 Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) to prescribe a new condition for continued approval for certain approved providers for whom a debt has been raised in respect of Child Care Subsidy (CCS) or Additional Child Care Subsidy (ACCS) paid for absences before a child's first day of attendance or after their last day of attendance before they are unenrolled.

CCS is an entitlement of individuals who are liable for child care fees, but in most circumstances the Commonwealth pays CCS to the provider that charges the fees. The provider is then required to pass on the entitlement to the individual by way of fee reduction.

When a payment greater than the individual's CCS entitlement is made, which may arise when a provider reports enrolment or attendance information that is later found to be incorrect, the CCS system raises a debt and recovers the amount from providers. Providers may adjust billing arrangements for that family to reflect the debt, depending on their individual contractual arrangements with the family.

Except in limited circumstances, where a child is absent before their first day of attendance or after their last day of attendance, no CCS will be payable for those absences. If CCS was paid for a session of care on these absence days, a debt arises. Debts have been raised against providers in respect of CCS paid for these absence days. If the Secretary reviews the decisions in respect of these debts under section 105 or section 109A of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) and the outcome of the review is that the Secretary sets aside the debt, the debt amount will be repaid to the provider by the Commonwealth. However, in some cases, the provider would have already recovered the debt amount from the individual. The new condition for continued approval prescribed by the Amendment Rules will ensure that, if the provider has already recovered all or part of that debt amount from an individual, the provider must pass on an equivalent amount back to that individual. This new condition will ensure providers do not receive payment from both the Commonwealth and individual to address a debt for absences before first attendance or after last attendance.

The new condition applies to providers that meet all the following criteria:

- (a) an amount (the 'CCS/ACCS amount') was paid to an individual by way of CCS or ACCS for a session of care provided by a 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 Family Assistance 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 Family Assistance Administration Act).
- (b) the child was absent and did not attend any part of that session of care on that day.
- (c) the day the child was absent was either:
 - (i) before the child physically attended the child care service for a session of care for the first time; or
 - (ii) after the child physically attended the child care service for a session of care for the last time before they stopped being enrolled at that service.
- (d) a debt was raised against the provider under section 71F of the Family Assistance Administration Act for the CCS/ACCS amount received for that session of care.
- (e) the provider required the individual to reimburse the provider for all or part of the debt amount.
- (f) the individual reimbursed the provider for all or part of that debt (referred to as the 'reimbursement amount').
- (g) the Secretary subsequently set aside the debt upon review under section 105(1) or subsection 109A(2) of the Family Assistance Administration Act.
- (h) as a result, the Commonwealth repaid the provider the debt amount (referred to as 'repayment amount').

If all of the above criteria apply to a provider, the provider must take all reasonable steps to repay the individual the amount that the individual reimbursed the provider for the debt relating to absence before first attendance or after last attendance. The provider must do so as soon as reasonably practicable after receiving the repayment from the Commonwealth.

Human rights implications

The Amendment Rules engage the following rights:

- the rights of parents and children under the Convention on the Rights of the Child (CRC), particularly Article 18.

Rights of parents and children

Article 18(2) requires States Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children.

The Amendment Rules provide that, where parents have reimbursed providers for debts owing due to absences before a child's first attendance or after a child's last attendance and that debt is subsequently set aside, parents can also benefit from this debt being set aside and be repaid the money that they paid to providers in relation to that debt. Without this measure, families will not see the benefits of the debt being set aside and will continue to be out-of-pocket for that debt, while providers receive a double repayment from both Commonwealth and families.

This measure supports the right in Article 18 of the CRC because it ensures parents receive appropriate assistance in the performance of their child-rearing responsibilities. In particular, this measure assists parents by ensuring they are repaid for their contribution towards paying off a child care related debt that was subsequently set aside by the Secretary.

Conclusion

The Instrument is compatible with human rights because it promotes the rights of parents and children.

CHILD CARE SUBSIDY AMENDMENT (DEBTS FOR ABSENCES BEFORE FIRST ATTENDANCE OR AFTER LAST ATTENDANCE) MINISTER'S RULES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument.

Section 2: Commencement

2. This section provides that the Amendment Rules will commence on the day after the Amendment Rules are registered on the Federal Register of Legislation.

Section 3: Authority

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

Section 4: Schedules

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

SCHEDULE 1 – AMENDMENTS

Child Care Subsidy Minister's Rules 2017

Item 1: After section 48B

5. Item 1 inserts new section 48C into the Principal Rules to prescribe a new condition for continued approval under section 195E of the Family Assistance Administration Act for providers that meet certain criteria.
6. New subsection 48C(1) sets out the criteria that providers must meet for this new condition of continued approval to apply. These criteria are:
 - (a) an amount (the 'CCS/ACCS amount') was paid to an individual by way of CCS or ACCS for a session of care provided by a 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 Family Assistance 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 Family Assistance Administration Act). Individuals may also be paid directly by the Secretary (see subsection 67EC of the Family Assistance Administration Act).
- (b) the child was absent and did not attend any part of that session of care on that day.
 - (c) the day the child was absent was either:
 - (i) before the child physically attended the child care service for a session of care for the first time; or
 - (ii) after the child physically attended the child care service for a session of care for the last time before they stopped being enrolled at that service.
 - (d) The Commonwealth recovered the CCS/ACCS amount from the provider as a debt due to the Commonwealth by the provider under section 71F of the Family Assistance Administration Act.
 - (e) the provider required the individual to reimburse the provider for all or part of the debt amount.
 - (f) the individual reimbursed the provider for all or part of that debt (referred to as the 'reimbursement amount').
 - (g) the Secretary subsequently set aside the debt decision and substituted with a new decision that the debt did not exist, upon review under Part 5 of the Family Assistance Administration Act.
 - (h) as a result, the Commonwealth repaid the provider the debt amount (referred to as 'repayment amount').
7. If the provider meets the above criteria, new subsection 48C(2) requires that they must, as a condition of their continued approval, take all reasonable steps to pass on the individual an amount equivalent to the reimbursement amount, as soon as reasonably practicable after receiving the repayment from the Commonwealth. This condition is prescribed for the purposes of section 195E of the Family Assistance Administration Act.
8. To comply with this condition, the provider must be able to demonstrate a genuine effort to repay the individual. There may be instances where a provider is unable to make contact with an individual. For example, if the individual's child has left the service and the provider attempts to contact the individual on a number of occasions but the individual does not respond. In these circumstances, the repeated attempts to contact the individual would be considered to constitute reasonable steps to pass on the reimbursement amount to the individual. A provider would also be considered to have taken reasonable steps if they attempted to contact an individual, but the attempt fails because contact details are no longer current and the provider has no alternative means to contact the individual.