

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

A New Tax System (Family Assistance) Act 1999

Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025

AUTHORITY

The *Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025* (Amendment Rules) are made under subsection 85GB(1) of the *A New Tax System (Family Assistance) Act 1999* (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 and amend or vary any such instrument.

PURPOSE AND OPERATION

The Amendment Rules amend the *Child Care Subsidy Minister's Rules 2017* (Principal Rules) to reduce the adverse impact on individuals and child care services of Ex-Tropical Cyclone Alfred in New South Wales and Queensland.

The Amendment Rules provide for the making of business continuity payments, called the Ex-Tropical Cyclone Alfred Support payment, to approved services affected by the cyclone which has impacted parts of Queensland and New South Wales in March 2025. The Ex-Tropical Cyclone Alfred Support payment will assist providers to waive the gap fees for families and assist providers where revenue has been impacted by service closures due to the impacts of Ex-Tropical Cyclone Alfred.

The amount of the Ex-Tropical Cyclone Alfred Support payment will be a one-off sector specific payment of \$10,000. It will be open to services that are in prescribed Ex-Tropical Cyclone Alfred local government areas and where the service, or part of the service, was closed for eight or more consecutive days starting on a day the service would ordinarily be open, or a total of eight or more days on which the service would ordinarily be open, during the period beginning on 5 March 2025 and ending on 18 March 2025.

Eligible providers must notify the Department of Education (department), in the approved form and manner, that they accept the Ex-Tropical Cyclone Alfred Support payment in respect of a service. They must also give an undertaking, and comply with this undertaking as condition of continued provider approval, to discount gap fees for any children who did not attend care because the service, or part of the service, was closed as a result of Ex-Tropical

Cyclone Alfred. All service types (Centre Based Day Care, Outside School Hours Care, Family Day Care and In Home Care) would be considered for eligibility, where they are in a prescribed Ex-Tropical Cyclone Alfred local government area. For Family Day Care and In Home Care, only one Ex-Tropical Cyclone Alfred Support payment would be paid per service, with the expectation this financial support would be shared with affected educators engaged by the service.

The Ex-Tropical Cyclone Alfred Support payment will support families and services to manage impacts of Ex-Tropical Cyclone Alfred, in conjunction with other emergency supports for the early childhood education and care (ECEC) sector under Child Care Subsidy (CCS) period of emergency arrangements (services continuing to receive CCS even if they are closed, being able to discount families' gap fee payments, and the capacity for families to receive unlimited allowable absences).

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 (reference number OBPR22-01956).

COMMENCEMENT

The Amendment Rules commence on the day after they are registered.

CONSULTATION

The department has taken feedback from stakeholders in the early ECEC sector through the Early Childhood Education and Care Reference Group and the Early Childhood Policy Group on emergency management and natural disaster issues to ensure support for the ECEC sector is appropriately tailored. However, due to the urgency of this measure, it was not reasonably practicable to undertake consultation on the Ex-Tropical Cyclone Alfred Support payment in particular.

The department has also consulted with Services Australia to ensure the Ex-Tropical Cyclone Alfred Support payments can be delivered through the Child Care Subsidy System.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025

The *Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025* (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 reduce the adverse impact on individuals and child care services of Ex-Tropical Cyclone Alfred in New South Wales and Queensland.

The Amendment Rules provide for the making of business continuity payments, called the Ex-Tropical Cyclone Alfred Support payment, to approved services affected by the cyclone which has impacted parts of Queensland and New South Wales in March 2025. The Ex-Tropical Cyclone Alfred Support payment will assist providers to waive the gap fees for families and assist providers where revenue has been impacted by service closures due to the impacts of Ex-Tropical Cyclone Alfred.

The amount of the Ex-Tropical Cyclone Alfred Support payment will be a one-off sector specific payment of \$10,000. It will be open to services that are in prescribed ex-Tropical Cyclone Alfred local government areas and where the service, or part of the service, was closed for eight or more consecutive days starting on a day the service would ordinarily be open, or a total of eight or more days on which the service would ordinarily be open, during the period beginning on 5 March 2025 and ending on 18 March 2025.

Eligible providers must notify the Department of Education (department), in the approved form and manner, that they accept the Ex-Tropical Cyclone Alfred Support payment in respect of a service. They must also give an undertaking, and comply with this undertaking as condition of continued provider approval, to discount gap fees for any children who did not attend care because the service, or part of the service, was closed as a result of Ex-Tropical Cyclone Alfred. All service types (Centre Based Day Care, Outside School Hours Care, Family Day Care and In Home Care) would be considered for eligibility, where they are in a prescribed Ex-Tropical Cyclone Alfred local government area. For Family Day Care and In Home Care, only one Ex-Tropical Cyclone Alfred Support payment would be paid per service, with the expectation this financial support would be shared with affected educators engaged by the service.

The Ex-Tropical Cyclone Alfred Support payment will support families and services to manage impacts of Ex-Tropical Cyclone Alfred, in conjunction with other emergency supports for the

early childhood education and care (ECEC) sector under Child Care Subsidy (CCS) period of emergency arrangements (services continuing to receive CCS even if they are closed, being able to discount families' gap fee payments, and the capacity for families to receive unlimited allowable absences).

Human rights implications

The Amendment Rules engage the following human rights:

- **Article 3** of the *Convention on the Rights of the Child* (CRC) which recognises that in all actions concerning children, the best interests of the child shall be a primary consideration;
- **Article 18** of the CRC, which requires States Parties to take all appropriate measures to ensure that children of working parents can benefit from child care services and facilities.

Article 3 of the CRC

Article 3 of the CRC recognises that in all actions concerning children, including those undertaken by administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Amendment Rules will improve the affordability of child care services by requiring providers who accept the Ex-Tropical Cyclone Alfred Support payment to waive the gap fees for families who are unable to attend because the service is closed or partially closed. This promotes the best interests of the child by ensuring that child care services remain an affordable option for parents.

Article 18 of the CRC

Article 18 of the CRC, and particularly paragraph 3 of article 18, requires States Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

The Amendment Rules provide financial support to child care services in areas affected by Ex-Tropical Cyclone Alfred, supporting their ongoing viability. Accordingly, the Amendment Rules will support children and families to continue to be able to afford and access child care in a safe and sustainable manner.

Conclusion

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

Minister for Education, the Hon. Jason Clare

Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument as the *Child Care Subsidy Amendment (Ex-Tropical Cyclone Alfred Support Payment) Minister's Rules 2025* (Amendment Rules).

Section 2: Commencement

2. The Amendment Rules commence on the day after they are registered.

Section 3: Authority

3. This provision provides that the Amendment Rules are made under the *A New Tax System (Family Assistance) Act 1999* (Assistance Act), which allows the Minister to make rules required or permitted to be prescribed by either the Assistance Act or the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act).

Section 4: Schedules

4. This section 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

Item 1

5. Item 1 repeals section 41 of the Principal Rules.
6. Section 41 refers to section 60A. The version of section 60A that section 41 refers to was about business continuity payments made under the Early Childhood Education and Care Relief Package for weeks occurring in the period beginning on 6 April 2020 and ending on 28 June 2020. This section 60A has since been repealed, however, section 41 was originally retained to make it clear that any applications for approval and variation during this period were taken not to have been made.
7. Item 1 now repeals section 41 given its time-limited nature and to avoid any confusion by the insertion of the new section 60A, which concerns the Ex-Tropical Cyclone Alfred Support payment as opposed to the Early Childhood Education and Care Relief Package.

Item 2

8. Division 5, Part 4 of the Principal Rules provides additional conditions for continued provider approval of child care services. This item inserts a new section 48D to add another condition for continued approval under section 195E of the Administration Act, the provision which establishes that the provider must comply with any conditions prescribed by the Principal Rules in respect of the provider or an approved service of the provider.
9. The condition imposed by the new section 48D is that providers in receipt of the Ex-Tropical Cyclone Alfred Support payment must comply with the undertaking at paragraph 60C(1)(d) of the Amendment Rules, which is that the provider will, after receiving notice of a fee reduction decision for an individual concerning sessions of care provided by the service in circumstances to which subparagraph 54B(1)(c)(ii) of the Principal Rules apply, give the individual or their partner an 100 per cent discount on the pre-discount fee attributable to sessions of care which their child did not attend because of the service's closure.
10. The circumstances referred to under subparagraph 54B(1)(c)(ii) of the Principal Rules are where the service, or part of the service, that provided the session of care is closed as a direct result of a period of emergency (which for the purposes of the Amendment Rules, is the period of emergency relating to Ex-Tropical Cyclone Alfred).
11. To ensure the immediate impact of the Ex-Tropical Cyclone Alfred Support payment for affected families, under paragraph 48D(a) providers are required to comply with the undertaking to fully discount gap fees within 14 days of giving the undertaking. Paragraph 48D(b) then serves as an additional enforcement mechanism by requiring providers to, within 14 days of being requested to do so by the Secretary, provide evidence that they have complied with the undertaking.
12. This item is intended to mitigate the risk that services do not adhere to the conditions of the Ex-Tropical Cyclone Alfred Support payment by not complying with their undertaking to fully discount gap fees in the applicable circumstances under new section 60C. If providers do not comply with their undertaking, the department can consider whether a sanction is appropriate. If a sanction such as cancellation or suspension is imposed, the amount of the Ex-Tropical Cyclone Alfred Support payment will then be a debt under subsection 71H(1) of the Administration Act.

Item 3

13. Item 3 of the Amendment Rules provides for a once-off business continuity payment of \$10,000 (called the Ex-Tropical Cyclone Alfred Support payment) to providers of child care services that closed for eight or more consecutive days commencing on a day the service would ordinarily be open, or a total of eight or more days on which the service would ordinarily be open, during the period beginning on 5 March 2025 and ending on 18 March 2025 because the service is in an Ex-Tropical Cyclone Alfred local government area. All service types (Centre Based Day Care, Outside School Hours Care, Family Day Care and In Home Care) can be eligible.

14. The Ex-Tropical Cyclone Alfred Support payment will assist providers to fully waive the gap fees for families and assist providers where revenue has been impacted by service closures due to the impacts of Ex-Tropical Cyclone Alfred. A provider will only be eligible for one Ex-Tropical Cyclone Alfred Support payment per service, subject to the provider and service meeting the eligibility criteria at section 60C of the Amendment Rules.
15. Section 205C of the Administration Act provides for business continuity payments to be made to approved child care providers whose services have been adversely financially impacted by a prescribed emergency or disaster (which includes an emergency or disaster prescribed by the Principal Rules). Section 205C also provides that additional eligibility criteria (if any), the period for which the emergency business continuity payments are payable, and the amount of the business continuity payments (or the way in which they are calculated) will be set out in the Principal Rules.
16. Item 3 of the Amendment Rules adds new Division 2 to Part 6 of the Principal Rules to provide for the making of business continuity payments to approved child care providers affected by Ex-Tropical Cyclone Alfred.
17. New section 60A defines Ex-Tropical Cyclone Alfred local government area as ‘a local government area affected by Ex-Tropical Cyclone Alfred and that is listed in subsection 60C(2)’. Subsection 60C(2) provides an exhaustive list of these local government areas.
18. New section 60A also defines ‘Ex-Tropical Cyclone Alfred Support payment’ as ‘a business continuity payment under section 205C of the Family Assistance Administration Act that is payable in accordance with this Division (Division 2)’.
19. New subsection 60B(1) provides the purpose of Division 2 is to set out ‘matters in relation to business continuity payments under section 205C of the Administration Act to providers whose approved child care services are located in an Ex-Tropical Cyclone Alfred local government area’. Subsection 60B(2) then prescribes Ex-Tropical Cyclone Alfred as an ‘emergency or disaster’ for the purposes of paragraph 205C(2)(a) of the Administration Act.
20. New section 60C provides the eligibility criteria for the Ex-Tropical Cyclone Alfred Support payment.
21. First, the service must be located in an Ex-Tropical Cyclone Alfred local government area. These are set out exhaustively under subsection 60C(2).
22. Second, the provider must notify the Secretary that they have accepted an Ex-Tropical Cyclone Alfred Support payment in respect of the service, in the form and manner determined by the Secretary.
23. Third, the service, or part of the service, was closed for eight or more consecutive days commencing on a day the service would normally open, or a total of eight or more days on which the service would ordinarily be open, during the period beginning on 5 March 2025 and ending on 18 March 2025. This is the period in which there was a period of emergency due to Ex-Tropical Cyclone Alfred in the local government areas mentioned at subsection 60C(2).
24. A service is considered partially closed if the service was required to reduce the number of children attending. Services which have partial closures (e.g. 2 rooms closed, 2 rooms open) can charge gap fees to children that are attending in the open

rooms, but a condition of receiving the Ex-Tropical Cyclone Alfred Support payment is that they cannot charge gap fees for children that could not attend because the child was unable to attend due to the partial closure.

25. Although the period of closure for eight consecutive days must commence on a day the service normally operates, the remainder of the eight consecutive days may include days the service does not normally operate, such as weekends or public holidays.
26. For example, take a service that is usually open Monday to Friday. If they are closed on Thursday 6 March and do not open again until Monday 17 March, they will be eligible as they were closed for 11 consecutive days, starting on a day they would usually be open. Alternatively, if they are closed on Wednesday 5 March, Thursday 6 March, Friday 7 March, reopen again on Monday 10 March and Tuesday 11 March, and are closed again on Wednesday 12 March, Thursday 13 March, Friday 14 March, Monday 17 March and Tuesday 18 March, they will be eligible, as while they have not been closed for eight consecutive days, they have been closed for a total of eight days on which they would usually be open.
27. The provider must give the Secretary an undertaking that they will, after receiving notice of a fee reduction decision for an individual concerning sessions of care provided by the service in circumstances to which subparagraph 54B(1)(c)(ii) of the Principal Rules apply, give the individual or their partner an 100 per cent discount on the pre-discount fee attributable to sessions of care which their child was unable to attend because of the service's closure. New section 48D makes compliance with this undertaking a condition for continued approval for providers in receipt of the Ex-Tropical Cyclone Alfred Support payment, which is explained under Note 2.
28. Note 1 explains the interaction between this new section and existing provisions in the Administration Act and the Principal Rules. Under section 201BB of the Administration Act, a provider who receives notice of a fee reduction decision for an individual may allow the individual, or the individual's partner, a discount on the pre-discount fee attributable to sessions provided during a period prescribed by the Principal Rules. Section 54B of the Principal Rules prescribes periods of emergencies for the purposes of section 201BB, such as the period of emergency caused by Ex-Tropical Cyclone Alfred. Subparagraph 54B(1)(c)(ii) deals with the circumstance where children do not attend care because the service, or the part of the service, that provided the session of care is closed as a direct result of the emergency.
29. New section 60D prescribes the period beginning on 5 March 2025 and ending on 18 March 2025 for the purposes of paragraph 205C(1)(d) of the Administration Act as the period to which the Ex-Tropical Cyclone Alfred Support payment relates.
30. New section 60E prescribes the amount of \$10,000 as the amount of the Ex-Tropical Cyclone Alfred Support payment.