

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Child Care Benefit – Eligible Hours of Care) Amendment Determination 2007 (No.1)

Summary

This Determination is made under section 57A of the ***A New Tax System (Family Assistance) Act 1999*** (the Family Assistance Act).

This Determination is a legislative instrument for the purposes of the ***Legislative Instruments Act 2003***.

The purpose of this Determination is to amend the *A New Tax System (Family Assistance) (Child Care Benefit – Eligible Hours of Care) Determination 2006* (the Eligible Hours of Care Determination).

The Eligible Hours of Care Determination sets out the order in which hours of care are to be counted towards a claimant's weekly limit of hours for the purposes of eligibility for child care benefit (CCB). The amendments made by this Determination specify the new method relating to the order of priority for counting hours of care towards the weekly limit, applicable under the Child Care Management System (CCMS).

Background

The ***Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*** (the CCMS Act) amended the family assistance law for the purposes of the introduction of the CCMS.

The CCMS amendments commenced on 1 July 2007 but will start applying to an approved service from the service's particular 'application day' determined under item 91 of the CCMS Act.

The amendments made by this Determination are relevant to the operation of the CCMS.

Section 52 of the Family Assistance Act limits the number of hours in a week for which an individual may be eligible for CCB. The limit is 24, 50 or more than 50 hours of care in a week. If the number of hours of care provided to a claimant's child in a week is higher than the claimant's weekly limit, CCB is paid only for the number of hours up to the claimant's weekly limit.

The CCB rate is an hourly rate, which differs depending on the 'kind of care', as specified in table item 2, clause 4 of Part 2, Schedule 2 of the Family Assistance Act. In the case of care provided by centre based long day care, it

also depends on 'part time%' specified in subclause 2(2) of Part 1, Schedule 2 of the Family Assistance Act.

Section 57A of the Family Assistance Act requires the Minister to determine rules setting out the order of priority for counting hours in the sessions of care provided to a child in a week towards the weekly limit. These rules are set out in the Eligible Hours of Care Determination.

The effect of the Eligible Hours of Care Determination is that the hours to which a higher CCB rate applies are counted first towards the claimant's weekly limit of hours. In a situation where care is provided by more than one service, the current rule operates to the effect that CCB fee reductions for a week cannot be properly calculated until all the hours of care provided in a week to the child are known.

Amendments made by the CCMS Act require approved child care services to give the Secretary weekly reports relating to sessions of care provided by a service to any child in a week. This will provide the Secretary with the information required to calculate fee reductions for sessions of care reported soon after the reports are received.

To enable the calculation of fee reductions for sessions of care reported by a service in respect of a child and a week, when they are reported, amendments are made to the Eligible Hours of Care Determination specifying new rules relating to the order of priority for counting hours of care towards the weekly limit.

The need to amend the Eligible Hours of Care Determination arises in the context of the introduction of the CCMS, which has been extensively consulted with the child care sector.

A preliminary assessment of the impact of this proposal has been undertaken in accordance with the procedure established by the Office of Best Practice Regulation. The impact on approved child care services was assessed to be minimal.

Explanation of the sections

Name of Determination

Section 1 states the name of this Determination.

Commencement

Section 2 states that this Determination commences on the day after it is registered.

Amendment of the Eligible Hours of Care Determination

Section 3 states that Schedule 1 amends the Eligible Hours of Care Determination.

Application

Section 4 provides that amendments made by this Determination apply to sessions of care provided by an approved child care service to a child in a week falling wholly after the application day for the service, as defined and determined under Schedule 1 to the CCMS Act.

Explanation of the items in Schedule 1

Item 1 – subsection 5(1), definition of ‘weekly report’

Item 1 inserts a new definition of ‘weekly report’ in subsection 5(1) to mean a report given by an approved child care service to the Secretary under section 219N of the ***A New Tax System (Family Assistance) (Administration) Act 1999*** (the Family Assistance Administration Act), for a child for a week. This definition is relevant to new sections 6 and 7 substituted by item 2.

Item 2

Item 2 replaces section 6 with new sections 6, 7 and 8.

New section 6 – Order of approved child care services

New section 6 deals with the order of services in which hours of care reported by the services are counted.

New section 6 provides that the hours in sessions of care provided to a child in a week by an approved child care service whose weekly report is the first for the child and the week that the Secretary receives are to count first towards the weekly limit of 24, 50 or more than 50 hours applicable to the claimant and the child (new paragraph 6(a)).

Hours reported in respect of that week and that child by any other approved child care service are counted next, in the order in which the Secretary receives the reports from those services (new paragraph 6(b)).

The hours provided by any approved child care service for the child and the week are counted in the order set out in new section 8.

The counting of hours reported by an approved child care service, regardless of the order of the service’s reporting, is subject to the limitation provided by new section 7.

New section 7 – Nominated hours in sessions of care to count towards weekly limit

Under the CCMS, a claimant who uses more than one approved child care service for a child in a week will be able to nominate, in writing, a specific number of hours provided by the service or services to the child to be counted towards the claimant's weekly limit of hours at the time the service first makes the weekly report. The nominated number of hours (if any) applicable to a particular week will be reported to the Secretary by the service as part of the service's weekly report.

New section 7 deals with the counting of the hours provided by the service that reports in the weekly report that the individual who enrolled a child for care by the service has nominated in writing the number of hours in the sessions of care provided by the service that are to count towards the claimant's weekly limit of hours.

New subsection 7(1) provides that, in this situation, only the hours up to the nominated number are counted for the child for the week.

As a result of the operation of new section 6 and new subsection 7(1), if, for example, the first service reporting hours provided to a child in a week reports that the claimant nominated the number of hours to be counted towards the claimant's weekly limit, only the hours up to nominated number are first counted towards the limit even if the service provided more hours of care that would otherwise fall within the claimant's weekly limit of hours.

New subsection 7(2) deals with the situation where the total number of hours nominated by a claimant to be counted towards the claimant weekly limit is lower than the weekly limit of hours applicable to the claimant and the child and lower than the number of hours provided by a service or services to which the nomination applies. New subsection 7(2) provides for the counting of those hours that the service or services provided in a week to the child above the number nominated. Those hours are to be counted after the counting under new subsection 7(1) of all the 'nominated' hours for the week and the child provided by all services which reported the nomination.

The hours to be counted under new subsection 7(2) are counted in the order of the services determined by new section 6, which sets out which service's hours are counted first (the hours provided by the service with the nomination whose report was received first by the Secretary will be counted first). The internal order of hours provided by a service is then determined by new section 8.

New section 8 – Order of hours in sessions of care provided by an approved child care service

New subsection 8 sets out the order in which particular hours in sessions of care provided by an approved child care service are to count towards the weekly limit.

The order of priority specified in new subsection 8(1) is as follows:

- if the care is provided by an approved family day care service, non-standard hours family day care are to count first, hours of part-time family day care count second, and other hours (standard hours) of care provided by the service to the child count third (new paragraph 8(1)(a));
- if the care is provided by an approved in-home care service, non-standard hours in-home care are counted first, hours of part-time in-home care are counted second, and other hours (standard hours) of care count third (new paragraph 8(1)(b));
- if care is provided by an approved centre based long day care service, the hours of part-time long day care are to count first, and any other hours (standard hours) of care are to count second (new paragraph 8(1)(c));
- in the case of care provided by an approved occasional care service or outside school hours service – all the hours have the same priority.

New subsection 8(2) provides a definition of ‘part-time long day care’ for the purposes of new subsection 8(1), as meaning care for which part-time% is more than 100% under clause 2(2) of Schedule 2 to the Family Assistance Act.