

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Amendment Rules 2008 (No.1)

Summary

These Rules are made under subsection 219F(3) of the **A New Tax System (Family Assistance) (Administration) Act 1999** (the Family Assistance Administration Act) which forms part of the family assistance law.

These Rules are a legislative instrument for the purposes of the **Legislative Instruments Act 2003**.

The purpose of these Rules is to amend the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006* (the Record Keeping Rules).

The Record Keeping Rules set out the kinds of records that must be kept by an approved child care service for the purposes of child care benefit (CCB).

The amendments made by these Rules specify new kinds of records which must be kept by an approved child care service and modify the existing requirement relevant to keeping records of children's attendance and absences from care.

Background

Under the family assistance law, a person may be eligible for CCB for child care provided by a child care service approved for the purposes of the family assistance law. Under subsection 219F(1) of the Family Assistance Administration Act, an approved child care service must keep records of information relating to certain matters relevant to CCB eligibility as provided for in the rules made under subsection 219F(3). The rules made under subsection 219F(3) are set out in the Record Keeping Rules.

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 new Child Care Management System (CCMS).

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

Following the CCMS amendments, amendments were also made to two legislative instruments that are relevant to the record keeping requirements.

The *A New Tax System (Family Assistance) (Child Care Benefit – Eligible Hours of Care) Determination 2006* (the Eligible Hours of Care Determination) dealing with the order of hours of care in which the hours are counted towards an individual's weekly limit of hours for which CCB eligibility arises was amended by *A New Tax System (Family Assistance) (Child Care Benefit – Eligible Hours of Care) Amendment Determination 2007 (No.1)*; and the *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000* (the Permitted Circumstances Determination) dealing with the circumstances in which absences of a child from care are taken to be care provided for which CCB eligibility arises was amended by the *Child Care Benefit (Absence From Care – Permitted Circumstances) Amendment Determination 2007*.

Amendments made by these Rules to the record keeping requirements are consequential on the CCMS amendments and the amendments made to the Eligible Hours of Care Determination and the Permitted Circumstances Determination.

The Department has consulted closely with the child care sector in relation to the policy changes resulting from the introduction of the CCMS.

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.

Information included in the records referred to in these Rules is subject to the ***Privacy Act 1988*** and the confidentiality provisions in Part 6 of the Family Assistance Administration Act.

Explanation of the rules

Name of Rules

Rule 1 states the name of these Rules.

Commencement

Rule 2 states that these Rules commence on the day after they are registered.

Amendment of the Record Keeping Rules

Rule 3 states that Schedule 1 amends the Record Keeping Rules.

Application

Subrule 4(1) provides for the application of the amendments made by these Rules. The amendments apply to an approved child care service on and after the first day of the first week falling wholly after both the commencement of these Rules and the application day for the service. If the application day occurs earlier than the commencement day of these Rules, the amendments start applying after the commencement of these Rules. If the application day occurs later than the commencement of these Rules, the amendments start applying after the application day.

Subrule 4(2) states that 'application day' has the meaning given by subitem 91(1) of the CCMS Act.

Explanation of the items in Schedule 1

Item 1 – amendment to subrule 4(1)

This item omits the definitions of 'permitted absence day', 'permitted absence rules', and 'permitted circumstances' from subrule 4(1). These expressions are currently used in paragraphs 6(b) and 6(h) which are amended by items 2 and 4 respectively with the effect that these expressions are no longer being used in the Record Keeping Rules.

Item 2 – amendment to paragraph 6(b)

Item 4- amendment to paragraph 6(h)

Item 2 substitutes paragraph 6(b) of the Record Keeping Rules with new paragraphs 6(b) and 6(ba).

Eligibility for CCB arises in respect of sessions of care provided to a child by an approved child care service. Under subsections 10(2) and 10(3) of the *A New Tax System (Family Assistance) Act 1999* applicable before the application of the CCMS amendments, eligibility for CCB also arises in relation to absences of a child from care that would otherwise be provided by an approved child care service if the absence occurred in 'permitted circumstances' or on 'permitted absence days' as defined in subrule 4(1). Under the current pre-CCMS system, an approved child care service is required to calculate CCB fee reductions for such absences.

Consequently, subrule 6(b) of the Record Keeping Rules currently requires an approved child care service to keep records of attendance for each child to whom care is provided (whether or not any person is currently eligible or conditionally eligible for CCB in respect of the child), including records of any absences from care which, in the opinion of the service, occurred in permitted circumstances or on a permitted absence day.

As a result of the CCMS amendments, an approved child care service is no longer required to calculate CCB fee reductions but continues to be required to provide the Secretary with the information about the children's attendance and all absences. Under the CCMS, fee reductions in respect of any child will be calculated by the Secretary using the attendance and absence information provided by the service. Furthermore, the CCMS amendments to absence provisions in subsections 10(2) and 10(3) of the *A New Tax System (Family Assistance) Act 1999* rendered the concept of permitted absence days obsolete.

Consequently, item 2 amends the requirement in paragraph 6(b) to require an approved child care service to keep records of any absence of a child from care (regardless of the circumstances in which the absence occurred).

Paragraph 6(h) of the Record Keeping Rules requires an approved child care service to keep records of any statements or other documents prepared or obtained by the service for the purposes of the permitted absence rules. Subrule 4(1) defines 'permitted absence rules' as the *Child Care Benefit (Absence from Care – Permitted Circumstances) Determination 2000*; this determination specifies circumstances in which a child's absence from care documented in a prescribed way attracts CCB.

As a result of the amendments made to absence provisions in subsection 10(3) of the *A New Tax System (Family Assistance) Act 1999* by the CCMS Act, subsection 10(3) now specifies the circumstances in which a child's absence from care attracts CCB if certain documents are prepared or obtained by the approved child care service. Therefore, the current reference in paragraph 6(h) of the Record Keeping Rules to these documents being for 'permitted absence rules' is no longer correct. To correct the reference, item 4 omits paragraph 6(h) and item 2 substantially replicates in new paragraph 6(ba) the requirement to keep records of any statements prepared or obtained in respect of the circumstances referred to in subsection 10(3).

Item 3 – new paragraph 6(ea)

Item 3 inserts new paragraph 6(ea).

CCB rate is an hourly rate, which depends, among other things, on the category of the hours during which care is provided. The number of hours in a week for which an individual may be eligible for CCB is limited to 24, 50 or more than 50 hours.

As a result of the amendments made to the Eligible Hours of Care Determination for the CCMS purposes (subsection 7(1) of that Determination), if an individual enrolls a child for care by an approved service and nominates in writing the number of hours to be counted towards the individual's weekly limit of hours, the hours provided by particular services are counted in accordance with the nomination.

If an individual does not nominate the number of hours for which CCB is to be claimed for care provided to the individual's child, the hours of care provided by services to the individual's child are counted in the order in which the services report the provision of care in a week to the Secretary (the hours reported by a service first are counted first).

New paragraph 6(ea) requires an approved child care service to keep any written nominations of the kind mentioned in subsection 7(1) of the Eligible Hours of Care Determination.