

## EXPLANATORY STATEMENT

### **A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Statements) Rules 2009 (No.1)**

#### **Authority**

The *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Statements) Rules 2009 (No. 1)* (the Rules) are made under subsection 4 (1) and subsection 219E (6) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Act) which forms part of the family assistance law.

Section 219E of the Act is repealed and replaced on 1 January 2009. The new subsection 219E (6) empowers the Secretary to make rules, by legislative instrument, relating to how statements under section 219E should be given, to whom they should be given, and information to be contained in those statements (in addition to that mandated by section 219E itself).

Subsection 4 (1) of the Act empowers the Secretary to approve the manner of doing something under the Act (including giving a statement under section 219E) by the use of a telecommunications system or other electronic equipment. It should be noted that sections 9, 10 and 11 of the *Electronic Transactions Act 1999* do not apply to legislative instruments made under the Act (including these Rules).

#### **Purpose of the Rules**

The purpose of these Rules is to set out the requirements relating to the provision of statements by approved child care services for child care benefit (CCB) purposes. These Rules largely replicate the *A New Tax System (Family Assistance) (Administration) (Child care benefit – receipts) Rules 2008*, with amendments to allow statements to be given by means of electronic communication and the provision of a statement to persons who have an interest in the payment of fees.

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).

Under section 219A of the Act as in force prior to the application of the amendments made by the CCMS Act, an approved child care service is required to calculate CCB fee reductions for sessions of care provided to a child in respect of whom there is a determination of conditional eligibility in force, and charge the conditionally eligible individual only the reduced fees.

Under subsection 219E (1) of the Act, from 1 January 2009, when an approved child care service charges reduced fees for a conditionally eligible individual, the service must issue a statement stating the start and end of the statement period, the amount of fees that would have been payable provided there was no fee reduction, the amount of fee reductions made, and any other information the Secretary specifies in the Rules made under subsection 219E (6). The Secretary has made the Rules under subsection 219E (6) of the Act.

## **Explanation of Provisions**

**Section 1** states the name of the Rules is the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Statements) Rules 2009 (No. 1)*.

**Section 2** states that these Rules commence on the day after which they are registered.

**Section 3** revokes the *A New Tax System (Family Assistance) (Administration) (Child care benefit - receipts) Rules 2008* (the revoked Rules), which are replaced by these Rules.

**Subsection 4 (1)** states that the *Child Care Benefit (Receipts) Rules 2000* continue to apply to a session of care provided by an approved child care service to a child that occurred during a week beginning before or on the application day for the service and before the first statement period in relation to the service. Section 7 provides that ‘application day’ has the meaning given by subitem 91 (1) of Schedule 1 to the CCMS Act. A statement period is described in paragraph 219E (4) (a) of the Act as a period of 4 weeks during which a session or sessions of care are provided by a service to a child. The first statement period is the period of 4 weeks starting at the latest of:

- the service’s application day; and
- 1 January 2009; and
- the day when the determination of conditional eligibility for child care benefit came into force; and
- if that day is not a Monday, the period of 4 weeks starting on the first Monday after that day.

The *Child Care Benefit Rules 2000* are saved because of section 219F of the Act which requires child care services to keep records relating to any matter specified by the Secretary in the record keeping rules for 36 months. Paragraph 6 (f) of the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Record Keeping) Rules 2006* specifies that copies of statements (receipts issued to people who have paid child care fees) must be kept by the approved child care service.

**Subsection 4 (2)** states that the revoked Rules continue to apply to a session of care provided by an approved child care service to a child before the first statement period as described in paragraph 219E (4) (a) of the Act.

The Note states that Section 6 of the revoked Rules provides for the application of those Rules. Section 6 states that the Rules apply as follows:

- if the application day for an approved child care service is before the commencement of the Rules, to a session of care provided by the service to a child during a week falling wholly after that commencement; or
- in any other case, to a session of care provided by an approved child care service to a child during a week falling wholly after the application day for the service.

**Subsection 5 (1)** provides that a reference in an instrument to the *Child Care Benefit (Receipts) Rules 2000* or the revoked Rules is taken after the commencement of these Rules, to include a reference to these Rules.

**Subsection 5 (2)** specifies that a reference in an instrument to a provision of the *Child Care Benefit (Receipts) Rules 2000* or a provision of the revoked Rules (the revoked provision) is taken, after the commencement of these Rules, to include a reference to a provision of these Rules that corresponds to the revoked provision.

**Subsection 5 (3)** explains that in section 5 the term instrument includes a contract, deed, undertaking or agreement, but does not include a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

The Note provides that section 10 of the *Acts Interpretation Act 1901* applies to references in a legislative instrument. Section 10 states that where an Act has been repealed and re-enacted, including with modifications, a reference to the repealed Act or a provision of that repealed Act shall be construed as including a reference to the re-enacted Act as originally enacted and amended from time to time or the corresponding provision. Section 46 of the *Acts Interpretation Act 1901*, provides that the *Acts Interpretation Act 1901* applies to a legislative instrument, including these Rules, as though it were an Act and as if each provision of the instrument were a section of an Act. Paragraph 13 (1) (a) of the *Legislative Instruments Act 2003* confirms that the *Acts Interpretation Act 1901* applies to the Rules as though it were an Act.

**Section 6** provides that the Rules apply to a session or sessions of care provided by an approved child care service to a child during a statement period in relation to the service. A statement period is described in subsection 219E (4) of the Act.

**Section 7** contains definitions of the terms used in these Rules.

The Note states that ‘approved child care service’ and ‘Family Assistance Act’ are defined in subsection 3 (1) of the Act. Approved child care service means an approved centre based long day care service, an approved family day care service, an approved in-home care service, an approved occasional care service or an approved outside school hours care service. Family Assistance Act means the *A New Tax System (Family Assistance) Act 1999*.

Subsection 3 (2) of the Act and paragraph 13 (1) (b) of the *Legislative Instruments Act 2003* provide that the terms ‘session of care’ and ‘week’ have the same meaning as in the Family Assistance Act. The Minister is to determine by legislative instrument what constitutes a ‘session of care.’ A ‘week,’ for the purposes of child care benefit and child care tax rebate, commences on a Monday.

**Subsection 8 (1)** provides that a statement must be given in writing.

**Subsection 8 (2)** provides that an individual who gives a statement on behalf of an approved child care service must sign the statement.

**Subsection 8 (3)** allows for a statement to be given electronically. This subsection is made under subsection 4 (1) of the Act. It is anticipated that this subsection will be used, where appropriate, to allow a service to distribute statements via email.

**Paragraph 8 (3) (a)** requires that the person to whom a statement is being given by way of electronic communication must consent to the statement being given by electronic communication. This is consistent with the requirements for sending electronic communications under paragraph 9 (1) (d) of the *Electronic Transactions Act 1999*.

**Paragraph 8 (3) (b)** requires that the individual's signature on the statement must comply with subsection 10 (1) of the *Electronic Transactions Act 1999*. Subsection 10 (1) states that where a signature is required in relation to an electronic communication, that requirement has been met if a method is used that identifies and indicates the approval of the person and the method could be considered reliable having regard to the particular circumstances at the time.

**Subsection 8 (4)** defines 'electronic communication' by reference to subsection 5 (1) of the *Electronic Transactions Act 1999*, that is:

- a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
- a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

**Subsection 9 (1)** requires a statement to always be given to the person who is conditionally eligible for child care benefit by fee reduction. It also requires the statement to be given to some other person who has requested the statement and who the child care service is satisfied has an interest in the payment of fees for the child or children to whom the statement relates. It is anticipated that this will be in situations where there is a person who is paying the fees but who is not conditionally eligible for CCB for that child or children, e.g. a non-carer grandparent or an employer. A request for a statement need not be a formal written request. The requirement can be satisfied by a verbal request made to the child care service.

The Note specifies that in a situation where more than one person is conditionally eligible for child care benefit, each person will receive a statement which will include only the sessions of care for which that person is conditionally eligible for CCB.

**Subsection 9 (2)** exempts a service from the requirement to issue a statement if the payment is for or includes a session of care provided to a child at risk of serious abuse or neglect, that is, a child in respect of whom a certificate is given by the service under subsection 76(1) of the *A New Tax System (Family Assistance) Act 1999* or a determination is made by the Secretary under subsection 81(3) of that Act.

**Subsection 10 (1)** specifies the additional information that approved child care services are required to provide in a statement issued for a session of care provided by the service to an enrolled child.

The following information required under subsection 10 (1) is the same as the information required by section 10 (1) of the revoked Rules:

- the name of the service;
- the service's Australian Business Number (ABN) (if any);

- the unique identifier assigned to the service by the Department for the purpose of the child care management system operated by the Department;
  - the name of the person to whom the statement is given;
  - the name of the child in respect of whom the session of care was provided;
  - the unique identifier assigned by the Department to the enrolment of the child for care by the service for the purpose of the child care management system operated by the Department;
  - subject to subsection (2), the number of hours in the session of care;
  - for the statement period, as described in paragraph 219E (4) (a) of the Act – the sum of:
    - the number of days on which the service is taken to have provided a session of care to the child under subsection 10 (2) of the *A New Tax System (Family Assistance) Act 1999*; and
    - the number of days on which the service is taken to have provided a session of care to the child under subsection 10 (3) of the *A New Tax System (Family Assistance) Act 1999*;
- These sessions refer to those absences of a child from care that attracts CCB. Absences falling within subsection 10(2) are limited to 42 in a financial year; absences falling within subsection 10(3) are for specific reason only. The intention behind this requirement is to keep parents informed about the number of all such absences of a child from care occurring in the statement period.
- the date of issue of the statement.

The new information that must be provided in a statement under subsection 10 (1) is the weekly total of the number of hours in the session of care for which fees were reduced.

Subsection 10 (2) of the Rules clarifies that if a statement is for 2 or more sessions of care, the service is required to specify in the statement the total number of hours of care provided to the child. This information should be broken down into daily and weekly totals for the statement period.

Subsection 10 (3) of the Rules provides that if a statement is for sessions of care provided to 2 or more children, the service must specify in the statement the information specified in paragraphs 10 (1) (e) to (j) for each child, i.e. the name of the child, the unique identifying number assigned to the enrolment of the child, the number of hours in sessions of care paid for the child, the weekly total of the number of hours in the session of care for which fees were reduced and the number of the child's absence days in the statement period for which CCB eligibility arises in accordance with subsections 10 (2) and (3) of the *A New Tax System (Family Assistance) Act 1999*.