

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Administration) (Business Continuity Payments) Determination 2010

Authority

The *A New Tax System (Family Assistance) (Administration) (Business Continuity Payments) Determination 2010* (this Determination) is made under subsection 219RD(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Act), which forms part of the family assistance law.

Subsection 219RD(2) requires the Minister to determine, by legislative instrument, the circumstances in which the Secretary may determine that a business continuity payment may be paid, and the method of determining the amount of business continuity payment.

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

Purpose of this Determination

The Act requires approved child care services to provide weekly reports that trigger the calculation and payment of child care benefit fee reduction amounts to the services via the Child Care Management System, which relies on electronic means of communication. Occasionally, a service may be unable to do so within the legislative timeframes – this means that fee reduction amounts that would otherwise be paid to the service for the affected week cannot be calculated and paid.

Amendments made to the Act by the *Family Assistance Legislation Amendment (Child Care) Act 2010* provide the Secretary with a discretionary power to make a business continuity payment to an approved child care service if the service does not give the report required under subsection 219N(1) or (2) of the Act within the period specified in subsection 219N(5) and the Secretary is satisfied that the failure to give the report is due to the circumstances specified for this purpose in a determination under subsection 219RD(2). The amount of the payment is the amount determined in accordance with the method set out in the determination under subsection 219RD(2).

Consequently, the purpose of this Determination is:

- to specify circumstances in which the Secretary may determine that a business continuity payment is to be made to an approved child care service; and
- to set out the method of determining the amount of the payment.

Consultation statement

The introduction of the business continuity payment and how these payments would operate were consulted at a forum of national child care peak bodies. The introduction of the payments was met with strong support as the payments will enable services to continue operations in times of adversity.

Regulatory impact statement

Office of Best Practice Regulation was consulted in the preparation of this Determination and assessed that no Regulation Impact Statement was required as the Determination would be likely to have no or low impacts on business and individuals or the economy.

Explanation of Provisions

Section 1 – Name of Determination

Section 1 states the name of the Determination, which is the *A New Tax System (Family Assistance) (Administration) (Business Continuity Payments) Determination 2010*.

Section 2 – Commencement

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

Section 3 – Interpretation

Section 3 sets out definitions of terms used in the Determination. Many of the terms used in the Determination are defined in the Act or in the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) and hence it is unnecessary to define these terms for the purposes of the Determination. A Note to subsection (1) refers to a number of these.

Subsection (1) provides that references in the Determination to:

‘Act’ means the *A New Tax System (Family Assistance) (Administration) Act 1999*;

‘business continuity payment’ means a payment under section 219RD of the Act; and

‘period to which the business continuity payment relates’ means the period specified in the notice given by the Secretary to an approved child care service in accordance with subsection 219RD(4) of the Act.

Subsection (2) defines the expression ‘positive fee reduction amount paid to the service’. The term is used in the business continuity payment amount calculations (sections 6, 7 and 8) and is the sum of child care benefit (CCB) fee reduction amounts calculated for a service for a week, if that amount is more than 0.

Section 4 - Circumstances in which a business continuity payment may be made

Section 4 specifies the circumstances, for paragraph 219RD(2)(a) of the Act, in which a business continuity payment may be made to an approved child care service under subsection 219RD(1) of the Act.

Section 4 states that the specified circumstances are circumstances that are beyond the control of an approved child care service and which prevent the service from giving a report to the Secretary under subsection 219N(1) or (2) within the period applicable under subsection 219N(5). It provides the following examples of such circumstances: the service is experiencing significant software problems which the service is unable to rectify by the end of the relevant period, a disruption to the operation of communication cables the service uses which cannot be rectified by the end of the relevant period, the service is affected by natural disaster, for example flood, storm, fire or earthquake.

Section 5 – Amount of a business continuity payment for a period

A business continuity payment may be made for a period specified by the Secretary in a notice given to the service under subsection 219RD(4) of the Act. In practice, the period may include one or more weeks.

Section 5 deals with the amount of a business continuity payment.

Subsection 5(1) states that, for paragraph 219RD(2)(b) of the Act that requires setting out the methods of determining the amounts of business continuity payments, the amount of business continuity payment is the sum of the amounts determined under section 6, 7 or 8 of this Determination in respect of each of the weeks of the period to which the business continuity payment relates (notional weekly payments), and the amount determined under section 9 (notional enrolment advances).

Subsection 5(2) provides for rounding off of the amount of the business continuity payment to the nearest \$100.

Sections 6, 7, 8 and 9 set out the methods for determining the amount of business continuity payment for each of the weeks of the period to which the payment relates.

Generally, the method to be used to determine the amount of business continuity payment to be paid to a service for any week of the period to which the payment relates depends on whether the service has been previously paid fee reductions for the kind of care that is comparable to the care provided by the service during the period to which a business continuity payment relates. If the service has been previously so paid, the amount of a business continuity payment for a week is based on the amount of fee reduction previously paid (section 6 or 7 applies, as appropriate). Otherwise, the amount of a business continuity payment for a week is based on a notional weekly amount of fee reductions (section 8 applies).

Section 6 – Weekly amount of a business continuity payment where fee reductions previously paid to the service – school holiday sessions

Section 6 sets out the method of working out an amount of a business continuity payment for an outside school hours care service for a week of school holiday sessions of care (in the period to which the payment relates) if a fee reduction amount of more than zero was previously calculated in respect of sessions of care in a week during comparable school holidays.

Subsection 6(1) provides that the method in section 6 applies to calculate an amount of the payment for a week if school holiday sessions of care are, or are expected to be, provided by the service and the service was previously paid, under section 219Q of the Act, a positive fee reduction amount in respect of the period of school holidays that corresponds to the period of holidays in which the week occurs, that is in respect of comparable school holidays.

‘School holiday session’ is defined in section 3 of the Act as meaning a session of care provided by an outside school hours care service during school holidays.

The phrase ‘a positive fee reduction amount’ is defined in subsection 3(2).

Subsection 6(2) specifies that, for the purposes of subsection 6(1), a period of school holidays corresponds to another school holiday period if both periods are summer school holidays or school holidays that include Easter or school holidays other than the summer or Easter holidays.

Subsection 6(3) states that the amount of business continuity payment for the week to which section 6 applies is the average of the positive fee reduction amounts paid to the service in each week in the previous comparable school holidays. In other words, an amount of a business continuity payment for such a week equals the average of the weekly sum of fee reduction amounts (if the sum was more than zero) calculated for each of the weeks in a comparable holiday period.

The method of calculating a business continuity payment under this section applies to the calculation of the amount for a week of care provided, for example, during summer school holidays if there was at least one week during the previous summer school holidays (the comparable school holiday) in respect of which a fee reduction amount of more than zero was calculated under section 50Z or 50ZB of the Act (or recalculated under section 50ZA or 50ZC). If the service did not provide care during the previous comparable school holidays (in this example, during the previous summer school holidays) or if the service provided care during the previous summer school holidays but there were no weeks in respect of which the sum of fee reduction amounts for the week of more than 0 was calculated (or recalculated), section 6 does not apply (the method in subsection 8(3) applies).

Section 7 - Weekly amount of a business continuity payment where fee reductions previously paid to the service – sessions of care other than school holiday sessions

Section 7 sets out the method of determining the amount of business continuity payment to be paid to an approved child care service for a week (in the period to which the payment relates) of other than school holiday sessions of care if a fee reduction amount of more than zero was previously calculated in respect of a week in which other than school holiday sessions of care were provided by the service.

Subsection 7(1) provides that the method in section 7 applies to calculate an amount of a business continuity payment for a week if other than school holiday sessions of care are, or are expected to be, provided, by the service and the service was previously paid, under section 219Q of the Act, a positive fee reduction amount in respect of

sessions of care, other than school holiday sessions, in a week occurring before the start of the period to which the business continuity payment relates.

‘School holiday session’ is defined in section 3 of the Act as meaning a session of care provided by an outside school hours care service during school holidays.

The phrase ‘a positive fee reduction amount’ is defined in subsection 3(2).

Subsection 7(2) states that the amount of business continuity payment for the week to which section 7 applies is the average of the 8 most recent positive fee reduction amounts paid to the service in respect of sessions of care in weeks that were not during a period of school holidays.

For calculation of the weekly amount of the payment under this section, up to 8 most recent weeks (other than during school holidays) in respect of which a fee reduction amount of more than 0 was calculated (or recalculated) is taken into account towards the average weekly amount. If there is only one such week, the amount of fee reductions in respect of that week is the amount of the business continuity payment for any of the weeks to which the payment relates.

The method in section 7 applies to calculation of a business continuity payment for an approved centre based long day care service, an approved family day care service, an approved in-home care service and an approved occasional care service for each week of the period to which the payment relates if a fee reduction amount of more than 0 was previously calculated for sessions of care provided by the service. If a fee reduction amount of more than 0 was not previously calculated (or recalculated) in respect of a week of care provided by this kind of an approved child care service, section 7 does not apply (the method in subsection 8(2) applies).

The method in section 7 also applies to calculation of a business continuity payment for an approved outside school hours care service for a week of the period to which the payment relates in which before school hours and/or after school hours sessions of care are, or are expected to be, provided, if a fee reduction amount of more than 0 was previously calculated in respect of a week in which the service provided before school hours and/or after school hours sessions of care. If a fee reduction amount of more than 0 was not previously calculated (or recalculated) in respect of a week of before school hours and/or after school hours care provided by the service, section 7 does not apply (the method in subsection 8(3) applies).

Section 8 - Weekly amount of a business continuity payment where fee reductions not previously paid to the service

Section 8 sets out the method of determining the amount of business continuity payment to be paid to an approved child care service for a week (in the period to which the payment relates) if section 6 or 7 does not apply.

Subsection 8(2) sets out the method of determining the amount of payment for a week for an approved centre based long day care service, an approved family day care service, an approved in-home care service and an approved occasional care service.

As this method applies in the situation where fee reduction amounts were not calculated previously for the service (generally, when a service is unable to provide its first report required under section 219N of the Act), the method in subsection 8(2) provides for calculation of a notional amount of the sum of fee reduction amounts that the service might have been paid for the week but for the circumstances referred to in section 4 of this Determination.

The amount of business continuity payment for a week is calculated using the following formula:

$$\frac{\text{standard hourly rate} \times \text{maximum hours} \times \text{approved places}}{2}$$

‘Standard hourly rate’, ‘maximum hours’ and ‘approved places’ are defined in subsection 8(4).

The formula provides for the calculation of an amount for a week that represents a notional hourly fee reduction rate applicable to a child, for the notional weekly limit of hours, for the notional maximum number of children in the care of the service.

The calculation of a notional hourly fee reduction rate is represented in the formula by the reference to the ‘standard hourly rate’ divided by 2, where 2 represents a notional CCB% of 50%. (CCB% is an element of the calculation of an hourly rate of fee reductions, based, among other things, on the adjusted taxable income of the individual who is conditionally eligible for child care benefit by fee reductions for care provided to a child – clause 2 of Schedule 2 to the Family Assistance Act refers.)

The notional weekly limit of hours is represented in the formula by the reference to ‘maximum hours’ and is set at the level of 45 hours of care per week for occasional care services and 50 hours for other kind of services. (Eligibility for child care benefit, and fee reductions, in a week is limited by the weekly limit of hours applicable to a child.)

The notional maximum number of children in care of the service is represented in the formula by the reference to ‘approved places’, which refers to the maximum number of places the service may provide, as identified in the application for its approval for the purposes of the family assistance law.

Subsection 8(3) sets out the method of determining the amount of payment for a week for an approved outside school hours care service. As this method applies in the situation where fee reduction amounts were not calculated previously in respect of comparable school holidays sessions of care or in respect of before school care and/or after school care sessions of care, the method in subsection 8(3) provides for calculation of a notional amount of the sum of fee reduction amounts that the service might have been paid for the week but for the circumstances referred to in section 4 of this Determination.

The amount of business continuity payment for a week for an outside school hours service is calculated using the following formula:

$$\frac{0.85 \times \text{standard hourly rate} \times \text{maximum hours} \times \text{approved places}}{2}$$

‘Standard hourly rate’, ‘maximum hours’ and ‘approved places’ are defined in subsection 8(4).

The formula provides for the calculation of an amount for a week that represents a notional hourly fee reduction rate applicable to a child, for the notional weekly limit of hours for the specific type of care the service provides, for the notional maximum number of children in the care of the specific type.

The calculation of a notional hourly fee reduction rate is represented in the formula by the reference to the ‘standard hourly rate’ multiplied by 0.85 and divided by 2. The multiple of 0.85 represents a notional schooling % of 85%, the schooling % for school children, who form the largest population of children in outside school hours care. The 2 in the formula represents a notional CCB% of 50%. Schooling % and CCB% are elements of the calculation of an hourly rate of fee reductions, based, among other things, on the adjusted taxable income of the individual who is conditionally eligible for child care benefit by fee reductions for care provided to a child (clause 2 of Schedule 2 to the Family Assistance Act refers).

The notional weekly limit of hours is represented in the formula by the reference to ‘maximum hours’. The notional number of maximum hours depends on the type of care the service indicated as intending to provide in the application for the service’s approval (50 hours – if only school holiday care is provided; 10 – if only before school hours care is provided; 17.5 – if only after school hours care is provided and 27.5 - if both before and after school care is provided).

The notional maximum number of children in care of the service is represented in the formula by the reference to ‘approved places,’ which refers to the maximum number of places in a particular type or types of care that the service may provide in the week falling in the business continuity period. That number of places for a particular type of care is identified in the application for the service’s approval for the purposes of the family assistance law. For example, if an outside school hours care service identified in the application for approval that it intends to provide a particular number of places for school holiday care (referred to in the application as ‘vacation care’) and a particular number of places in before school hours care and a particular number of places in after school hours care, and the week to which the payment relates is the week of school holidays, the number of ‘approved places’ for the purposes of calculation of a business continuity payment for that week will be the number identified in the application for service’s approval as the number of ‘vacation care’ places. Otherwise, it will be the sum of the before and after school hours care places.

Subsection 8(4) provides the following meaning of the terms used in the formulae in subsections (2) and (3):

approved places means the maximum number of children for whom the service may provide care, as identified in the application for approval of the service for the purposes of the family assistance law, in the week;

maximum hours for an approved child care service means the number of hours mentioned in the last column of the table (included in this definition) for the kind of child care service and the kind of care (if any) mentioned in the second column of the table in respect of sessions of care in the week (the numbers of maximum hours set in the table are referred to in the explanation of the notional weekly limit of hours in relation to subsections 8(2) and (3));

standard hourly rate is the rate referred to in item 1 of the table in subclause 4 (1) of Schedule 2 to the Act (as indexed).

Section 9 – Notional amounts of enrolment advances

Section 9 sets out the method for determining a notional amount of enrolment advances to be included in the total amount of a business continuity payment, as provided for in paragraph 5(1)(b), if the conditions specified in subsection 9(1) apply.

Subsection 9(1) of the Determination provides for calculation of a notional amount of enrolment advances if an approved child care service has not been paid previously enrolment advances (whether under section 219RA of the Act or as a result of this section) and section 219RA requires the Secretary to pay an amount of enrolment advances, but the Secretary is not able to do so because of the circumstances in which a business continuity payment may be made.

Section 219RA requires the Secretary to pay an enrolment advance amount to a service if the service elected to receive an advance in relation to a notified enrolment of a child and the enrolment was confirmed by the Secretary. If the service has never been paid enrolment advances before and, as a result of the circumstances referred to in section 4 of this Determination (for example, the Child Care Management System cannot communicate with a service), a determination to pay a business continuity payment to the service is made under section 219RD of the Act and, because of those circumstances, the Secretary is not able to make the payment of enrolment advance as required under section 219RA, a notional amount of the enrolment advances is to be determined for the service.

Subsection 9(2) states that the amount is equal to the sum of the amounts of enrolment advances that the Secretary is not able to pay to the service under section 219RA.