

Explanatory Statement

Child Care Benefit (Activity Requirements and Exemptions) Determination 2017

Summary

The *Child Care Benefit (Activity Requirements and Exemptions) Determination 2017* (the Determination) is made by the Minister for Education and Training under sections 14, 15 and 17A of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). The Determination sets out provisions in relation to the activity requirements of persons in order to be eligible for child care benefit.

The Determination continues the operation of five instruments:

- *A New Tax System (Family Assistance) (Child Care Benefit — Activities counting towards activity requirements) Determination 2006;*
- *A New Tax System (Family Assistance) (Child Care Benefit — Circumstances in which activity requirements do not apply) Determination 2006;*
- *A New Tax System (Family Assistance) (Child Care Benefit — Individuals who must meet activity requirements) Determination 2006;*
- *A New Tax System (Family Assistance) (Child Care Benefit — Recognised Work or Work Related Commitments) Determination 2006;*
- *Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000.*

which are repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Background

Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to the eligibility requirements for child care benefit. A person must be eligible for child care benefit, before they may be determined, under Division 4 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act), to be entitled to be paid child care benefit.

Child care benefit is a means-tested payment which assists individuals with child care costs. Under family assistance law, eligibility for child care benefit arises in respect of a session of care provided to a child.

The following provisions provide the authority to make this instrument:

Subdivision G of Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to working out the number of hours of child care provided in a week by an approved child care service to a child, for which an individual is eligible for child care benefit. A limit of 24 hours applies in a week to claimants for child care benefit, by fee reduction and for a past period, if a weekly limit of up to 50 hours does not apply (subsection 53(3) of that Act). A weekly limit of up to 50 hours applies to such a claimant if both the claimant and claimant's partner satisfy the work/training/study test (subsection 54(2) of the Family Assistance Act).

Section 14 of the Family Assistance Act sets out the meaning of *satisfies the work/training/study test*. Subsection 14(1A) specifies extra requirements for satisfying the work/training/study test for the purpose of section 54 of that Act. Subsections 14(1B) and (1C) provide that the Minister may, by legislative instrument, determine circumstances in which individuals are not required to, and determine classes of individuals who must meet, the activity requirements under section 17A of the Family Assistance Act, respectively. Subsection 14(2) authorises the Minister to determine a class of person to be exempt from the

requirements of the work/training/study test. Subsection 14(3) provides that an individual included in the exempt class is taken to satisfy the test while the determination is in force.

Section 15 of the Family Assistance Act sets out provisions in relation to recognised work or work related commitments for the purpose of the work/training/study test. Subsection (2) gives the Minister power to determine, by legislative instrument, that individuals included in a specified class are individuals who are taken to have recognised work or work related commitments for the purposes of this section.

Section 17A of the Family Assistance Act specifies the activities individuals must engage in to meet the activity requirements to be eligible for child care benefit in respect of care by an approved child care service. Generally, these individuals must engage in one or more of the specified activities for 15 hours during the relevant week or an average of 30 hours over the relevant two-week period. The activities include paid work, a training course or a course of education for the purpose of improving work skills and/or employment prospects or other activities determined under subsection 17A(2).

Purpose

Part 2 of the Determination sets out the classes of individuals who must meet the activity requirements, the classes of individuals who have recognised work or work related commitments and the activities that count towards the activity requirements for the purposes of subsections 14(1C), 15(2) and 17A(2) of the Family Assistance Act respectively. Part 2 of the Determination replicates the operation of the:

- *A New Tax System (Family Assistance) (Child Care Benefit — Individuals who must meet activity requirements) Determination 2006*
- *A New Tax System (Family Assistance) (Child Care Benefit — Recognised Work or Work Related Commitments) Determination 2006*
- *A New Tax System (Family Assistance) (Child Care Benefit — Activities counting towards activity requirements) Determination 2006*

Part 3 of the Determination sets out the classes of individuals who are not required to meet the activity requirements and who are exempt from the requirements of paragraphs 14(1)(a), (b) and (c) of the Family Assistance Act for the purposes of subsections 14(1B) and (2) of that act respectively. Part 3 of the Determination replicates the operation of the:

- *A New Tax System (Family Assistance) (Child Care Benefit — Circumstances in which activity requirements do not apply) Determination 2006*
- *Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000*

The 2000 and 2006 Determinations are repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new Determination will operate from 1 October 2017 until 2 July 2018, when it will be superseded.

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) was enacted on 4 April 2017. The Amendment Act gives effect to the legislative elements of the Government's new child care system, including the Child Care Subsidy and Additional Child Care Subsidy from 2 July 2018. The Amendment Act includes provisions to make subordinate legislation, known as Minister's and Secretary's Rules (the Rules). The Rules will replace many of the existing family assistance law subordinate legislative instruments.

In particular, the Amendment Act repeals and replaces the provisions in the Family Assistance Act relating to activity requirements of persons in order to be eligible for child subsidy, including sections 14, 15 and 17A. The Amendment Act enables the making of Minister's Rules prescribing additional recognised activities to those set out in the

Amendment Act as well as the requirements that would apply to these activities, such as time limits and other limitations.

Consequently, the sole purpose of the Determination is to enable the operation of the current arrangements in relation to the activity requirements of persons in order to be eligible for child care benefit to continue between the sunseting of the 2000 and 2006 Determinations on 1 October 2017 and the commencement of the Amendment Act and new Minister's Rules on 2 July 2018.

Consultation

Prior to this instrument being made, targeted consultation was undertaken with child care stakeholders notifying them of the remaking of the instruments and inviting their comments. Targeted consultation was deemed appropriate as the remaking of the instrument was machinery in nature to continue the operation of the *A New Tax System (Family Assistance) (Child Care Benefit — Activities counting towards activity requirements) Determination 2006; A New Tax System (Family Assistance) (Child Care Benefit — Circumstances in which activity requirements do not apply) Determination 2006; A New Tax System (Family Assistance) (Child Care Benefit — Individuals who must meet activity requirements) Determination 2006; A New Tax System (Family Assistance) (Child Care Benefit — Recognised Work or Work Related Commitments) Determination 2006 and Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000* until 2 July 2018. The instrument does not substantially alter existing arrangements.

Regulatory Impact Statement

The Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination remakes the 2000 and 2006 Determinations for a short period, and is machinery in nature and will not have more than minor regulatory impact. The Office of Best Practice Regulation (OBPR) agrees with this regulatory impact assessment (OBPR ID 22536).

Authority

The *Child Care Benefit (Activity Requirements and Exemptions) Determination 2017* is made under sections 14, 15 and 17A of the Family Assistance Act. .

Explanation of Provisions

Part 1—Preliminary

Section 1 sets out that the name of the instrument is the *Child Care Benefit (Activity Requirements and Exemptions) Determination 2017*.

Section 2 provides that the instrument commences on 1 October 2017 and is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (i.e. on 2 July 2018).

Section 3 sets out that the authority for the instrument is the Family Assistance Act .

Section 4 provides that for the purposes of this instrument the terms:

parental leave for an individual means leave from an individual's employment associated with the birth or adoption of a child by the individual or the individual's partner, and includes leave taken in preparation for the birth or adoption.

Part 2— Activity requirements

Section 5 specifies for the purposes of the Family Assistance Act, Part 2 sets out:

- for subsection 14(1C) – the classes of individuals who must meet the activity requirements

- for subsection 15(2) – the classes of individuals who have recognised work or work related commitments
- for subsection 17A(2) – the activities that count towards the activity requirements.

Section 6 specifies the classes of individuals and activities that count towards the activity requirements. Subsection (1) specifies an individual must meet the activity requirements if the individual is undertaking any of the activities listed in this subsection.

Subsection (2) specifies an individual who is undertaking an activity mentioned in subsection (1) is taken to have recognised work or work related commitments. Subsection (3) states the activities mentioned in subsection (1) are activities that count towards the activity requirements.

Section 7 specifies matters for which an individual is also taken to have recognised work or work related commitments

Part 3—Individuals not required to meet activity requirements or exempt from work/training/study test

Section 8 specifies for the purposes of the Family Assistance Act, Part 3 sets out:

- for subsection 14(1B) – the categories of people who do not need to meet the activity test requirements
- for subsection 14(2) – the categories of people who are exempt from the activity test requirements under paragraphs 14(1)(a), (b), and (c) of the Act.

Section 9 sets out provisions in relation to individuals who are not required to meet the activity test requirements. Subsections (1) and (2) specify an individual is not required to meet the activity requirements for a week if the individual has been offered paid work and the individual is enrolled in a training course, or a course of education, for improving the individual’s work skills or employment prospects. The work, training course or course of education must be due to start within 14 days after the last session of care for the week was provided to a family tax benefit child or regular care child of the individual or the individual’s partner.

Section 10 specifies general requirements for an individual to be exempt from the work/training/study test requirements of paragraphs 14(1)(a), (b) and (c) of the Family Assistance Act which stipulate an individual satisfies the work/training/study test if the individual has recognised, work or work related, or training or study, commitments.

Section 11 sets out the rules relating to exemption from the work/training/study test requirements of paragraphs 14(1)(a), (b) and (c) of the Family Assistance Act in relation to principal carers of grandchildren. Subsection (1) specifies when an individual is exempt from the requirements of the test in relation to a related child. Subsection (2) specifies when an individual is exempt from the requirements of the test in relation to an unrelated child.

Subsection (3) specifies that for the purpose of this section *grandparent*, *great-grandparent* and *principal carer* of a person have the same meanings as in sections 50R and 50S of the Family Assistance Administration Act.

Statement of Compatibility with Human Rights

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

Child Care Benefit (Activity Requirements and Exemptions) Determination 2017

This instrument 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

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which individuals are not required to, and determine classes of individuals who must meet, the activity requirements under section 17A of the Family Assistance Act. Subsection 14(2) authorises the Minister to determine a class of person to be exempt from the requirements of the work/training/study test. Subsection 14(3) provides that an individual included in the exempt class is taken to satisfy the test while the determination is in force.

Section 15 of the Family Assistance Act sets out provisions in relation to recognised work or work related commitments for the purpose of the work/training/study test. Subsection (2) gives the Minister power to determine, by legislative instrument, that individuals included in a specified class are individuals who are taken to have recognised work or work related commitments for the purposes of this section.

Section 17A of the Family Assistance Act specifies the activities individuals must engage in to meet the activity requirements to be eligible for child care benefit in respect of care by an approved child care service. Generally, these individuals must engage in one or more of the specified activities for 15 hours during the relevant week or an average of 30 hours over the relevant two-week period. The activities include paid work, a training course or a course of education for the purpose of improving work skills and/or employment prospects or other activities determined under subsection (2).

The Determination replicates the operation of the:

- *A New Tax System (Family Assistance) (Child Care Benefit — Activities counting towards activity requirements) Determination 2006*
- *A New Tax System (Family Assistance) (Child Care Benefit — Circumstances in which activity requirements do not apply) Determination 2006*
- *A New Tax System (Family Assistance) (Child Care Benefit — Individuals who must meet activity requirements) Determination 2006*
- *A New Tax System (Family Assistance) (Child Care Benefit — Recognised Work or Work Related Commitments) Determination 2006*
- *Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000 (2000 and 2006 Determinations).*

The 2000 and 2006 Determinations are repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new Determination will operate from 1 October 2017 until 2 July 2018, when it will be superseded.

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In particular, the Amendment Act repeals and replaces the provisions in the Family Assistance Act relating to activity requirements of persons in order to be eligible for child subsidy, including sections 14, 15 and 17A. The Amendment Act enables the making of Minister's Rules prescribing additional recognised activities to those set out in the Amendment Act as well as the requirements that would apply to these activities, such as time limits and other limitations.

Consequently, the sole purpose of the Determination is to allow the operation of the current arrangements in relation to the activity requirements of persons in order to be eligible for child care benefit to continue between the sunseting of the 2000 and 2006 Determinations on 1 October 2017 and the commencement of the Amendment Act and new Minister's Rules on 2 July 2018.

Human Rights Implications

The making of the Determination is machinery in nature to enable current legislative requirements set out in the 2000 and 2006 Determinations to continue until 2 July 2018. The instrument does not substantially alter existing arrangements and will not have more than minor regulatory impact or change any human rights implications under the current instrument.

The Determination engages the following rights:

- *The rights of the child*– Article 3 of the Convention of the Rights of the Child (CRC)
- *The right to social security* – Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- *Rights of equality and non-discrimination* – Articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Articles 10 and 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The rights of the child

Article 3 of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. Further, Article 29 establishes the child's right to education and recognises that learning and education begins with responsive and intellectually engaging adult-infant interaction in an early childhood educational setting. Early childhood development and care programs in the early years can do much to promote the healthy development of children, socially, emotionally and physically. Participation in structured early childhood programs also promotes cognitive development in the short term, preparing children to succeed in school.

The Determination promotes this right by making approved child care more accessible to more children. By prescribing activities, which may not be conventionally regarded as an activity (e.g. being on leave from work or in a semester break or undertaking voluntary work), to be counted towards the activity requirements, child care benefit for up to 50 hours of care may be provided by an approved child care service in a week.

Further, by assisting grandparents and great-grandparents who have care of certain children to access additional hours of child care for those children by providing child care benefit for up to 50 hours of care provided by an approved child care service in a week, this instrument advances the rights of the child.

The right to social security

Article 9 of the ICESCR recognises the right of everyone to social security. The right to social security requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

This instrument promotes the right to social security and right of children to benefit from social security by exempting particular child care benefit recipients from the

work/training/study test. The best interests of the child are concurrently promoted by making approved child care more accessible to more children. Extending the work/training/study test means reduced child care fees for more hours of child care in a week for certain children advances these rights.

The right to be free from discrimination

Article 26 of the ICCPR and Article 2 of the CRC requires that persons are equal before the law and that the law shall provide equal and effective protection against discrimination on any grounds. Articles 10 and 11 of the CEDAW mandates that State Parties take all appropriate measures to eliminate discrimination against women in the field of education and employment, by providing, amongst other things, the same conditions for career advancement and vocational guidance.

This instrument promotes these important rights by prescribing activities, which may not be conventionally regarded as an activity (e.g. being on leave from work or in a semester break or undertaking voluntary work), to be counted towards the activity requirements to be provided child care benefit for up to 50 hours of care provided by an approved child care service in a week.

The instrument further promotes these rights by prescribing individuals to be exempt, under certain circumstances, from the work/training/study test requirements, allowing them to access reduced child care fees.

Conclusion

The Determination is compatible with human rights because they promote the protection of human rights, particularly the rights of children, the right to social security and the right to be free from discrimination.

Simon Birmingham
Minister for Education and Training