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| <b>IMPORTANT INFORMATION</b> |
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**Legislative extracts for approval and continued approval under the family assistance law**

**Child Care Services' Obligations**

In order to pass on fee reductions to individuals a child care service must be approved for the purposes of the family assistance law. Individuals that elect to claim CCB as a lump sum rather than receiving Child Care Benefit (CCB) by fee reductions can only do so in relation to care provided by an approved child care service.

Many conditions of approval are set out in Part 2 of the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 ("the Eligibility Rules") (see **Attachment A**).

In order to remain approved a service must continue to comply with the obligations set out in the legislation and those set out in Part 3 of the Eligibility Rules. Failure to comply with those obligations may result in sanctions being imposed on a service and in many cases is also a criminal offence. Some obligations, such as reporting child care usage and availability, are also subject to civil penalties if not met.

Key legislation relating to approved child care services and CCB includes:

- *A New Tax System (Family Assistance) Act 1999* ("the Family Assistance Act")
- *A New Tax System (Family Assistance) (Administration) Act 1999* ("the Family Assistance Administration Act")
- *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Statements) Rules 2009* (No.1)
- *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006*
- *A New Tax System (Family Assistance) (Administration) (Child care benefit-when enrolment ceases (number of weeks)) Specification 2007*
- *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* ("the Eligibility Rules")
- *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000*
- *Child Care Benefit (Session of Care) Determination 2000*
- Applicable Commonwealth State or Territory child care laws and local government laws.

Please note that the following are key extracts from the Commonwealth legislation only and do not represent a comprehensive description of all obligations. All Commonwealth legislation, including relevant legislative instruments, can be found at <http://www.comlaw.gov.au/>.

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## *A New Tax System (Family Assistance) (Administration) Act 1999*

### 194 Application for approval

#### *Who may apply*

- (1) A person who operates, or proposes to operate, any of the following kinds of child care service:
  - (a) a centre based long day care service;
  - (b) a family day care service;
  - (ba) an in-home care service;
  - (c) an occasional care service;
  - (d) an outside school hours care service;may apply to the Secretary to have the service approved for the purposes of the family assistance law.

#### *Exception—person is a registered carer*

- (2) However, a person cannot make an application under subsection (1) if the person is a registered carer.

#### *Form of application*

- (3) An application under subsection (1) must:
  - (a) be made in a form and manner required by the Secretary; and
  - (b) state which of the kinds of service mentioned in subsection (1) the service is; and
  - (c) contain any information required by the Secretary; and
  - (d) be accompanied by any documents required by the Secretary; and
  - (e) in the case where a determination under section 206 is in force—be accompanied by the fee (if any) prescribed by the regulations for the making of applications under subsection (1).

**What this section is about:** Only the person who operates or proposes to operate the service may apply for its approval. The applicant cannot make the application for approval if they will not be the operator. An application must be complete in order to be considered.

Information in the application form will help you assess whether you are the right person to make an application for approval under section 194 of the Act. Please consider the information carefully. If the service is approved on your application you will be responsible for the service's compliance with its obligations relevant to continued approval.

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## 196 Conditions for continued approval—compliance with rules and laws

### *Eligibility requirements*

- (1) It is a condition for the continued approval of an approved child care service that the service satisfies any eligibility rules that are from time to time applicable to the service under paragraph 205(1)(b).

### *Compliance with family assistance law*

- (2) It is a condition for the continued approval of an approved child care service that the service not contravene an obligation imposed on the service by the family assistance law (whether or not such a contravention constitutes an offence or is of a civil penalty provision).

Note: Enforcement under this Division of this and other conditions is not limited or affected by other compliance measures in this Act (for example, infringement notices, proceedings for civil penalty orders and prosecutions).

- (2A) It is a condition for the continued approval of an approved child care service that the service cooperate with a person exercising powers under sections 219K and 219L.

### *Compliance with child care laws*

- (3) It is a condition for the continued approval of an approved child care service that the provision of care by the service complies with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care.

What this section is about: Subsection (1) requires a service to satisfy the rules for continued approval set out in the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 as amended from time to time (**see Attachment A**).

Subsection (2) requires a service to continue to comply with all requirements of the family assistance law, including the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* and the relevant instruments (these instruments are referred to in this document).

Subsection (2A) requires a service to co-operate with officers authorised under the Act to enter child care service premises to inspect records and monitor compliance with conditions of continued approval.

Subsection (3) requires a service to comply with all other applicable laws.

A service may also be subject to a civil penalty or be sanctioned for not complying.

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## **201A Immediate suspension for certain breaches**

- (1) The Secretary may, by notice given to an approved child care service, suspend the approval of the service if the Secretary reasonably believes that:
  - (a) the service is not complying with all applicable requirements imposed by a law of the Commonwealth, or of the State or Territory in which the service is situated, relating to child care; or
  - (b) there is an imminent threat to the health or safety of a child, or children, because of the care provided by the service to the child or children; or
  - (c) due to urgent circumstances, it is no longer appropriate for the service to provide child care.
- (2) The Secretary must, in the notice:
  - (a) specify a day, not earlier than the day on which the notice is given, on which the suspension is to take effect; and
  - (b) specify the grounds upon which the Secretary has suspended the service's approval; and
  - (c) inform the service of its rights under this Act to seek a review of the decision to suspend the service's approval.
- (3) If the Secretary suspends the approval of an approved child care service, the Secretary may at any time, by notice to the service, revoke the suspension with effect from the day specified in the notice.

What this section is about: This section provides for the immediate suspension of the approval of a child care service in the specified circumstances.

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## 204 Notification of matters affecting eligibility for approval

- (1) If an approved child care service has:
  - (a) after the service was approved, become aware of any matter existing when the service was approved as a result of which the service should not have been approved; or
  - (b) become aware of any matter occurring after the service was approved as a result of which a condition for the continued approval of the service has not been complied with;

the service must notify the Secretary in writing of the matter as soon as practicable after becoming aware of it.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*20 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$2 200 for an individual & \$11 000 for a body corporate.)

What this section is about: This section describes the obligation of an approved child care service to notify in writing any matter affecting its compliance with conditions of approval or continued approval.

Failure to comply with this obligation is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

## 219A Obligation to notify Secretary of enrolment of a child by an individual

- (1) An approved child care service must notify the Secretary of the enrolment of a child by an individual for care by the service.
- (2) A child is *enrolled* by an individual for care by an approved child care service if the individual enters into an arrangement with the service for the provision of care to the child by the service.

Note: If 2 individuals each enter into an arrangement for the provision of care to the child by the service, each enrolment will need to be notified to the Secretary.

- (3) If:
  - (a) an individual enters into an arrangement for the care of a child by an approved child care service (the *original arrangement*); and
  - (b) the enrolment of the child by the individual for care by the service ceases under section 219AD; and
  - (c) a session of care is, or sessions of care are, later provided to the child by the service under the original arrangement;the individual is taken to enter into a new arrangement for the provision of care to the child by the service at the time the session, or the first of the sessions, of care is provided.

Note: As a result, there will be a new enrolment which will need to be notified to the Secretary.

What this section is about: This section is about the obligation of an approved child care service to notify of all enrolments (including re-enrolments of children previously provided with care).

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## 219AA Obligation to notify Secretary of enrolment where approved child care service eligible

- (1) If an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session or sessions of care provided by the service to a child at risk during a period:
  - (a) for which the service has given a certificate under subsection 76(2) of that Act; or
  - (b) during which a determination by the Secretary under subsection 81(4) of that Act in circumstances mentioned in subparagraph 81(4)(b)(ii) of that Act is in effect;the service must notify the Secretary of the enrolment of the child for care by the service.
- (2) The child is taken to be *enrolled* for care by the service when the session, or the first of the sessions, of care begins.

What this section is about: This section requires a service to notify enrolments of children certified by the service, or determined by the Secretary, to be at risk.

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## **219AB When and how notice to be given**

- (1) A notice under section 219A or 219AA must:
  - (a) be given in the form, and in the manner or way, approved by the Secretary; and
  - (b) contain any information required by the Secretary.
- (2) Subject to subsection (3), the notice must be given no later than:
  - (a) if the child is enrolled after the day on which the Secretary approves the service—the last day of the week immediately following the first week in which care is provided as a result of the enrolment; or
  - (b) if the child is enrolled before that day, but after the day from which the approval is expressed to operate—7 days after the day on which the approval is given.
- (3) If:
  - (a) a child care service's approval is suspended at the time a child is enrolled by an individual for care by the service; and
  - (b) that suspension is later revoked;the service must give notice of the enrolment under subsection (1) within 7 days after the suspension is revoked.

**What this section is about:** This section imposes specific requirements on the giving of notice of enrolments by services. These requirements deal with the way a notice must be given, the information that must be included in the notice and when a service must give a notice.

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## **219AC Failure to notify**

### *Civil penalties*

- (1A) An approved child care service contravenes this subsection if:
  - (a) the service is required to give notice under section 219A; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (1B) An approved child care service contravenes this subsection if:
  - (a) the service is required to give notice under section 219AA; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

## *Offences*

- (1) An approved child care service commits an offence if:
  - (a) the service is required to give notice under section 219A; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (2) An approved child care service commits an offence if:
  - (a) the service is required to give notice under section 219AA; and
  - (b) the service does not give the notice in accordance with that section and section 219AB.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (3) Subsections (1) and (2) are offences of strict liability.

What this section is about: This section imposes a criminal penalty for failure to give notice of enrolments in accordance with the specified requirements. A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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## **219AF Obligation to update enrolment information**

- (1) If:
  - (a) an approved child care service gives notice of enrolment in accordance with sections 219A and 219AB, or sections 219AA and 219AB; and
  - (b) after the notice is given:
    - (i) information provided in the notice becomes incorrect; or
    - (ii) information becomes available that, had it been available at the time the notice was given, should have been included in the notice; or
    - (iii) information becomes available that, had it been available at the time the notice was given, would have required the notice to have been given in a different form;

the service must, within 7 days after the information becomes incorrect or becomes available, notify the Secretary of the correction or available information.

- (1A) Subject to subsection (1B), the notice must be given within 7 days after the information becomes incorrect or becomes available.

- (1B) If:
  - (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
  - (b) the payment is made because of the service's failure to give a report under subsection 219N(1) or (2) for a week (the *applicable week*); and
  - (c) for any enrolment, the last day of the period referred to in subsection (1A) of this section:
    - (i) is the last day of the period applicable under subsection 219N(5) in relation to the applicable week; or
    - (ii) occurs during the initial period;

the notice must be given no later than:

- (d) 7 days after the end of the initial period; or
  - (e) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.
- (2) The notice must be given in the form, and in the manner or way, approved by the Secretary.

**What this section is about:** This section imposes particular requirements, including time limits, on services to report updates and corrections to enrolment information. A service may be sanctioned for not complying with these requirements.

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## **219AG Failure to update enrolment information**

### *Civil penalty*

- (1A) An approved child care service contravenes this subsection if:
- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
  - (b) the service does not notify the Secretary in accordance with that section.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

### *Offence*

- (1) An approved child care service commits an offence if:
- (a) the service is required to notify the Secretary of a correction or available information under section 219AF; and
  - (b) the service does not notify the Secretary in accordance with that section.

Penalty: \*\*60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

**What this section is about:** This section imposes a criminal offence (financial penalty) for failure to report updates to enrolment information.

A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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## 219B Obligation to pass on fee reductions where individual conditionally eligible

- (1) This section applies if:
  - (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual (the *claimant*) and a child for a session of care provided by an approved child care service to the child in a week; and
  - (b) the Secretary calculates under section 50Z, or recalculates under section 50ZA, the amount of fee reduction applicable in respect of the session of care; and
  - (c) the Secretary has notified the service of the amount in accordance with subsection 50Z(3), or the recalculated amount in accordance with subsection 50ZA(2).
- (2) Subject to subsection (3), the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to the claimant, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.

Note 1: This amount must be passed on, even if the payment of amounts to the service in respect of fee reduction has been suspended under paragraph 200(1)(h).

Note 2: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2A) An approved child care service commits an offence if the service contravenes subsection (2).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (2B) Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) If:
  - (a) the Secretary, on recalculating under section 50ZA the amount in which the Secretary considers fee reduction is applicable in respect of the session of care (the *last recalculation*), reduces the amount; and
  - (b) the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N;the service must pass on to the claimant the amount as calculated, or recalculated, immediately before the last recalculation, rather than the amount last recalculated.

Note: The fact that the higher rather than the lower amount has been passed on will be taken into account when the determination of entitlement is made under section 51B.

- (4) If:
- (a) the service reduces the amount by which it charges the claimant in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of fee reduction for that session (the *anticipated fee reduction*); and
  - (b) the service was an approved child care service at the time the session of care was provided;
- the service is taken to have passed on to the claimant an amount equal to the anticipated fee reduction.
- (5) The amount is taken to have been passed on to the claimant on the day on which the Secretary notified the service of the amount in accordance with subsection 50Z(3).

What this section is about: This section describes the obligation on a service to pass on amounts of fee reduction notified to the service. Failure to comply with the obligation is a criminal offence (financial penalty).

A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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#### **219BA Obligation to pass on fee reductions where approved child care service eligible**

- (1) This section applies if:
- (a) an approved child care service is eligible under section 47 of the Family Assistance Act for child care benefit by fee reduction for a session of care provided by the service to a child at risk; and
  - (b) the Secretary calculates under section 50ZB, or recalculates under section 50ZC, the amount of child care benefit by fee reduction applicable in respect of the session of care; and
  - (c) the Secretary has notified the service of the amount in accordance with subsection 50ZB(3), or the recalculated amount in accordance with subsection 50ZC(2).
- (2) Subject to subsection (3), the service must, within 14 days after being notified of the amount as calculated or recalculated, pass the amount on to itself, except to the extent that the service is required to remit the amount to the Secretary under section 219QB.
- (3) If:
- (a) the Secretary, on recalculating under section 50ZC the amount in which the Secretary considers child care benefit by fee reduction is applicable in respect of the session of care (the *last recalculation*), reduces the amount; and
  - (b) the amount is reduced for a reason other than the substitution or withdrawal by the service of a report given under section 219N;
- the service must pass on to itself the amount as calculated, or recalculated, immediately before the last recalculation, rather than the amount last recalculated.
- Note: The fact that the higher rather than the lower amount has been passed on will be taken into account when the determination of entitlement is made under section 54B.

- (4) If:
- (a) the service reduces the amount it charges in respect of the session of care in anticipation of the Secretary's calculation of the amount applicable in respect of child care benefit by fee reduction for that session (the *anticipated fee reduction*); and
  - (b) the service was an approved child care service at the time the session of care was provided;
- the service is taken to have passed on to itself an amount equal to the anticipated fee reduction.
- (5) The amount is taken to have been passed on the day on which the Secretary notified the service of the amount in accordance with subsection 50ZB(3).

What this section is about: This section describes the obligation on a service to pass on to itself amounts of fee reductions notified to the service when the service is eligible for sessions of care provided to a child at risk (usually referred to as 'Special Child Care Benefit').

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### **219BB Obligation to charge no more than usual fee—rate determined by child care service or Secretary**

- (1) If:
- (a) an approved child care service certifies under subsection 76(1) or (2) of the Family Assistance Act the hourly rate of fee reductions or child care benefit applicable for sessions of care provided by the service to a child during a period; or
  - (b) the Secretary determines under subsection 81(2), (3) or (4) of the Family Assistance Act the hourly rate of fee reductions or child care benefit for sessions of care an approved child care service provides to a child during a period;
- the service must ensure that the fees set for each of those sessions do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

What this section is about: This section prohibits a service from charging more than the normal fee to a person receiving what is informally referred to as Special Child Care Benefit (child at risk and hardship).

Failure to act in accordance with this section is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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### **219BC Obligation to charge no more than usual fee—special grandparent rate**

- (1) If a determination is in force under subsection 50T(1) with the effect that an individual is eligible for the special grandparent rate for a child in respect of a session of care provided to the child by an approved child care service, the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if that rate did not apply.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

What this section is about: This section prohibits a service from charging more than the normal fee to a person eligible for the special grandparent rate of CCB.

Failure to act in accordance with this section is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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### **219BD Obligation to charge no more than usual fee—Jobs Education and Training (JET) Child Care fee assistance**

- (1) If:
  - (a) a determination of conditional eligibility for child care benefit by fee reduction under section 50F is in force in respect of an individual and a child for a session of care provided by an approved child care service to the child; and
  - (b) the service becomes aware that the individual is eligible to receive Jobs Education and Training (JET) Child Care fee assistance in relation to the session of care;

the service must ensure that the fees set for the session do not exceed the amount of the fees that the service would charge an individual who was not eligible for that assistance for the same session for the same child.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) In subsection (1):

***Jobs Education and Training (JET) Child Care fee assistance*** means the payment of that name that is paid by the Commonwealth.

What this section is about: This section prohibits a service from charging more than the normal fee to a person receiving JET Child Care fee assistance.

Failure to act in accordance with this section is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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## 219E Obligation to provide statements

- (1) If:

- (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) a session or sessions of care are provided by an approved child care service to the child during a period (the ***statement period***) described in subsection (4); and
- (c) the service is required to pass on an amount under section 219B for the session or sessions;

the service must, before the end of one month starting on the day after the end of the statement period, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) An approved child care service commits an offence if:

- (a) a determination is in force under section 50F that an individual is conditionally eligible for child care benefit by fee reduction in respect of a child; and
- (b) a session or sessions of care are provided by the service to the child during a period (the ***statement period***) described in subsection (4); and

- (c) the service is required to pass on an amount under section 219B for the session or sessions; and
- (d) the service does not, before the end of one month starting on the day after the end of the statement period, give to the individual or some other person applicable under rules made under subsection (6) a statement setting out the matters specified in subsection (5) in relation to the session or sessions.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (3) Subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) The statement periods for the service are as follows:

- (a) the first statement period is the period of 3 months starting on the day (the **initial day**) that is:
  - (i) the day Schedule 2 to the *Family Assistance Legislation Amendment (Child Care) Act 2010* commences; or
  - (ii) if the Secretary approves the service under section 195 of this Act on a day later than the one described in subparagraph (i)—that later day; or, if before or during that 3-month period the service chooses a shorter period starting on the initial day, the shorter period;

- (b) each of the later statement periods is:

- (i) the period of 3 months starting on the day after the end of the immediately preceding statement period; or
- (ii) if before or during that 3-month period the service chooses a shorter period starting on that day—the shorter period.

- (5) The matters required to be set out in a statement for a statement period are:

- (a) the start and end of the statement period; and
- (b) the amount that would have been the fees payable for the session or sessions of care provided by the service to the child during the statement period if no amount had been passed on under section 219B for the session or sessions; and
- (c) the amount of fee reductions required to be passed on under section 219B for the session or sessions; and
- (d) any other information the Secretary specifies in the rules (if any) made under subsection (6).

Note: The amount of fee reductions required to be set out in the statement may be a nil amount (see section 4A).

- (6) The Secretary may, by legislative instrument, make rules dealing with any of the following matters:

- (a) how statements should be given;
- (b) to whom the statements should be given;
- (c) for particular approved child care services or classes of approved child care services—different statement periods;
- (d) other information that must be given in the statements.

*Correcting or reissuing statements*

(7) If:

- (a) an approved child care service has, under subsection (1), given an individual or other person a statement (the *earlier statement*) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the *notification day*) of a recalculated rate or amount in respect of any of those sessions;

the service must, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Note: This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(8) An approved child care service commits an offence if:

- (a) the service has, under subsection (1), given an individual or other person a statement (the *earlier statement*) relating to a session or sessions of care provided by the service to a child in the statement period; and
- (b) under section 50ZA, the service is notified on a day (the *notification day*) of a recalculated rate or amount in respect of any of those sessions; and
- (c) the service does not, before the end of the first statement period starting after the notification day, give the individual or other person either a statement setting out the matters specified in subsection (5) taking account of the recalculation or a statement amending the earlier statement so as to take account of the recalculation.

Penalty: \*\*\*60 penalty units.

(\*\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

(9) Subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

What this section is about: Approved child care services must issue statements as required. More detail about the statements requirements is contained in the A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Statements) Rules 2009 (No.1) as amended from time to time **(see Attachment B)**.

Failure to issue statements as required is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

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## 219F Obligation to keep records

### *Records must be kept*

- (1) An approved child care service must keep records as provided for in rules made under subsection (3) of information and events relating to the following matters:
  - (a) an individual's eligibility for payment of child care benefit under this Act;
  - (b) the service's eligibility for payment of child care benefit under this Act in respect of a child at risk;
  - (c) the service's compliance with the conditions for the continued approval of approved child care services;
  - (d) any other matter the Secretary specifies in the record keeping rules made under paragraph (3)(b).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### *Records to be kept for at least 36 months—civil penalty*

- (2) An approved child care service contravenes this subsection if the service stops keeping the records referred to in subsection (1) before the later of the following times:
  - (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related;
  - (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
    - (i) the period mentioned in paragraph (a); or
    - (ii) proceedings relevant to a previous application of this paragraph.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

*Records to be kept for at least 36 months—offence*

- (2A) An approved child care service commits an offence if the service stops keeping the records referred to in subsection (1) before the later of the following times:
- (a) the end of the period of 36 months starting at the end of the year in which the care was provided to which the information or event related;
  - (b) a time ordered by a court during proceedings for an offence against this Act, or for the contravention of a civil penalty provision, if an application for the order is made during:
    - (i) the period mentioned in paragraph (a); or
    - (ii) proceedings relevant to a previous application of this paragraph.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (2B) Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Secretary must make rules*

- (3) The Secretary must, by legislative instrument, make rules relating to the keeping of records specifying:
- (a) the kinds of records an approved child care service must keep in relation to a matter listed in subsection (1); and
  - (b) other matters (if any) in respect of which an approved child care service must keep records.

*Meaning of offence against this Act*

- (4) In this section:

*offence against this Act* includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

What this section is about: This section describes an approved child care service's record-keeping obligations. More detail about the kinds of records that must be kept is contained in the A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006 as amended from time to time (**see Attachment F**).

Failure to keep records in accordance with this section and with the Record Keeping Rules is a criminal offence (financial penalty). A service may also be subject to a civil penalty and may also be sanctioned for not complying.

## 219G Former approved child care service to keep records

### *Obligation to keep records*

- (1) A person who operates an approved child care service, immediately before the service ceases to be an approved child care service, must keep a record referred to in subsection (2) for the period for which the service would have been required, under section 219F, to keep the record if the service had not ceased to be an approved child care service.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### *Type of records to be kept*

- (2) The records the person is required to keep are the records that the service was required to keep under section 219F immediately before the service ceased to be an approved child care service.

### *Notification of premises at which records are kept*

- (3) The person must notify the Secretary in writing, within the period of 14 days beginning on the day after the cessation day, of the premises at which the records are kept on the day after the cessation day.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (3A) A person commits an offence if the person contravenes subsection (3).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (3B) Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Notification if premises changes*

- (4) If the premises at which the records are kept changes during the period:
- (a) beginning on the day after the cessation day; and
  - (b) ending on the last day the person is required to keep the records under subsection (1);

the person must notify the Secretary in writing of the new premises within the period of 14 days beginning on the day the records begin to be kept at the new premises.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (4A) A person commits an offence if the person contravenes subsection (4).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (4B) Subsection (4A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) In subsections (3) and (4):

*cessation day* means the day the service ceased to be an approved child care service.

What this section is about: This section describes the record keeping obligations on a person who has ceased to be the operator of an approved child care service, including keeping the Department informed of the location of the records while they continue to be required to be kept.

Failure to meet these obligations is a criminal offence (financial penalty). A person who does not comply may also be subject to a civil penalty. A person who does not comply may also be considered unsuitable to be the operator of another approved child care service.

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## **219K Power to enter premises to inspect records**

*Access to inspect records*

- (1) For the purposes of inspecting records referred to in section 219F or 219G, an authorised officer may enter:
- (a) in the case of records referred to in subsection 219F(1)—the premises of the approved child care service in respect of which the records are kept at any time during the service's hours of operation; or
  - (b) in the case of records referred to in subsection 219G(2)—the premises last notified under section 219G in respect of the records at any reasonable time of a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

*Access to monitor compliance*

- (1A) An authorised officer may enter the premises of an approved child care service, at any time during the service's hours of operation, for the purposes of monitoring the service's compliance with a condition for the continued approval of the service.

Note: The authorised officer could also inspect certain records while on the premises (see paragraph (1)(a)).

*Access must be by consent*

- (2) An authorised officer is not authorised to enter premises under subsection (1) or (1A) unless the occupier of the premises, or another person who apparently represents the occupier, has consented to the entry and the officer has shown his or her identity card to that occupier or person.
- (3) An authorised officer must, before obtaining the consent of the occupier or another person in accordance with subsection (2), inform that occupier or person that he or she may refuse consent.
- (3A) A consent has no effect unless the consent is voluntary.
- (3B) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (3C) A consent that is not limited as mentioned in subsection (3B) has effect until the consent is withdrawn.
- (3D) The authorised officer must leave the premises if the consent ceases to have effect.

*Services must cooperate with authorised officers*

- (4) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under this section. An approved child care service that refuses:
- (a) to consent to the entry of a person (after showing the person's identity card in the case of an authorised officer); or
  - (b) withdraws consent for the person to enter the premises;
- is not complying with the responsibility. Failure to comply with the responsibility can result in a sanction being imposed under section 200.

**What this section is about:** This section explains the powers of authorised officers and the responsibility of an approved child care service, as the case may be, to cooperate with officers exercising the powers. A service that does not cooperate may be sanctioned.

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**219L Occupier to provide authorised officer with access to records and assistance**

*Obligation to produce records referred to in subsection 219F(1)*

- (1) The occupier of premises referred to in paragraph 219K(1)(a), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219F(1).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Obligation to produce records referred to in subsection 219G(2)*

(2) The occupier of premises referred to in paragraph 219K(1)(b), or another person who apparently represents the occupier, must produce to an authorised officer, or any other person assisting the officer, who has entered premises under section 219K, the records referred to in subsection 219G(2).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

(2A) A person commits an offence if the person contravenes subsection (2).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

(2B) Subsection (2A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Obligation to provide reasonable facilities and assistance*

(3) The occupier, or another person who apparently represents the occupier, must assist the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under section 219K.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

(3A) A person commits an offence if the person contravenes subsection (3).

Penalty: \*\*\*10 penalty units.

(\*\*\*This is a criminal offence provision which imposes a financial penalty up to \$1 100 for an individual & \$5 500 for a body corporate.)

(3B) Subsection (3A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) Approved child care services have a responsibility under subsection 196(2A) to cooperate with a person exercising powers under subsection (1) or (3). An approved child care service that does not produce records or assist as provided for in those subsections is not complying with the responsibility. Failure to comply with the responsibility can result in a sanction being imposed under section 200.

What this section is about: This section describes the responsibilities of an occupier of the premises, or a person representing the occupier of the premises, where the records that are required to be kept are kept, to give records to an authorised officer or a person assisting that officer, and to provide all reasonable assistance.

Failure to meet these obligations is a criminal offence (financial penalty). A service that does not comply may also be subject to a civil penalty and may also be sanctioned.

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## **219M Obligations if operator decides to stop operating an approved child care service**

### *Obligation to notify Secretary*

- (1) If a person who operates an approved child care service decides to cease operating the service, the operator must, in the manner provided for in subsection (2), notify the Secretary of that decision:
  - (a) unless paragraph (b) applies—at least 42 days before the operator ceases to operate the service; or
  - (b) if the operator decides to cease operating the service:
    - (i) to avoid being in breach of a law of the Commonwealth, a State or a Territory; or
    - (ii) due to circumstances beyond the operator's control; as soon as possible after that decision.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) The notice must be given in the form, and in the manner or way, approved by the Secretary.
- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

*Obligation to give further information on request*

- (4) An operator of an approved child care service contravenes this subsection if:
- (a) the operator notifies the Secretary under subsection (1) of the operator's decision to cease operating the service; and
  - (b) the Secretary requests the operator, in writing, to give the Secretary specified information about the decision; and
  - (c) the operator fails to comply with the request in accordance with subsection (6).

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (5) A person commits an offence if the person contravenes subsection (4).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (6) Information requested under subsection (4) must be given:
- (a) in the form, and in the manner or way, approved by the Secretary; and
  - (b) within:
    - (i) if paragraph (1)(a) applies—7 days after the day on which the request was given; or
    - (ii) otherwise—the period specified in the request.

What this section is about: This section sets out the requirement for the operator of a service to notify the Department (using the template provided by the Department) at least 42 days before ceasing to operate the service, and to give further information to the Department on request. Failure to comply is a criminal offence (financial penalty). A service that does not comply may also be subject to civil penalties and may also be sanctioned.

Other notification requirements are imposed under the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 as amended from time to time (**see Attachment A**).

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## **219N Obligation to give reports to Secretary**

- (1) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:
- (a) notified to the Secretary in accordance with sections 219A and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;
- the service must give the Secretary a report in accordance with this section.

- (2) For each week in which a session of care is provided by an approved child care service to a child in relation to whom an enrolment has been:
- (a) notified to the Secretary in accordance with sections 219AA and 219AB; and
  - (b) confirmed by the Secretary in accordance with section 219AE;
- the service must give the Secretary a report in accordance with this section.
- (3) The report must be made in the form, and in the manner or way, approved by the Secretary.
- (4) The report must include:
- (a) any information required by the Secretary that is relevant to:
    - (i) determining whether a fee reduction is applicable in relation to the care and, if so, the rate and amount of that fee reduction; or
    - (ii) making a determination of entitlement, or no entitlement, in relation to the care under Division 4 of Part 3; and
  - (b) any other information required by the Secretary.
- (5) Subject to subsection (5AA), the report must be given no later than:
- (a) if the week in which the session of care was provided fell wholly before the day on which the enrolment was confirmed—the period of 7 days after the day on which the enrolment was confirmed; and
  - (b) otherwise—the end of the second week immediately following the week.
- (5AA) If:
- (a) a payment is made to the service under section 219RD in relation to a period (the *initial period*) notified to the service under subsection 219RD(4); and
  - (b) the payment is made because of the service's failure to give a report under subsection (1) or (2) of this section within the period applicable under subsection (5) of this section;
- the report must be given no later than:
- (c) 7 days after the end of the initial period; or
  - (d) if one or more other periods (that are consecutive with the initial period) are notified to the service under subsection 219RD(4)—7 days after the end of the last of those periods.
- (5) An approved child care service contravenes this subsection if:
- (a) the service is required to give a report under subsection (1) or (2); and
  - (b) the service does not give the report in accordance with this section.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (6) An approved child care service commits an offence if:
- (a) the service is required to give a report under subsection (1) or (2); and
  - (b) the service does not give the report in accordance with this section.

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (7) An approved child care service may:
  - (a) substitute the report with an updated report at any time; or
  - (b) if the report was given in circumstances where it was not required to be given—withdraw the report.

What this section is about: This section is about an approved child care service's electronic reporting obligations to the Secretary, concerning details of child care usage among other things. The use of software registered with the Secretary of the Department for Child Care Management System (CCMS) purposes is necessary to fulfil these obligations. The Secretary has approved the electronic manner of reporting.

Failure to meet these obligations is a criminal offence (financial penalty). A service that does not comply may also be subject to a civil penalty and may also be sanctioned.

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#### **219NA Obligation to provide information to Secretary about number of child care places**

- (1) The Secretary may give an approved child care service a written notice requiring the service to provide information required in order for the Secretary to determine whether to reduce the number of child care places allocated to the service.
- (2) The notice must specify all of these:
  - (a) the information required by the Secretary;
  - (b) the period, or each of the periods, in relation to which the information is required;
  - (c) when the information in relation to the period, or each of the periods, is required.
- (3) The notice may specify either or both of these:
  - (a) the form and manner in which the information is to be provided to the Secretary;
  - (b) the length of time for which the service must continue to comply with the notice.
- (4) The service must provide the required information to the Secretary, in relation to the period, or each of the periods, specified in the notice, at the time specified in the notice and in the form and manner (if any) specified in the notice.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (5) The Secretary may give the service a written notice terminating the effect of the notice under subsection (1).

What this section is about: This section is about the obligation on an approved child care service to provide information, if requested by the Secretary, about the number of its child care places.

A service that does not comply may also be subject to a civil penalty and may also be sanctioned.

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#### **219NB Obligation to provide further information to Secretary about enrolled children**

- (1) If the Secretary, by notice under section 57G, requires an approved child care service to provide further information to the Secretary (further information in relation to aspects of the care provided to children enrolled for care by the service), the service must comply with the notice.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

- (2) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

What this section is about: This section is about the obligation on an approved child care service to comply with a request for more information about enrolled children.

Failure to comply with this obligation is a criminal offence (financial penalty). A service that does not comply may also be subject to a civil penalty and may also be sanctioned.

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#### **219P Obligations of operators of former approved child care services**

- (1) If the approval of a child care service is suspended or cancelled, the person who operated the child care service immediately before the service's approval was suspended or cancelled must fulfil the obligations under the following provisions in respect of sessions of care that occurred before the approval was suspended or cancelled as if it had not been:
  - (a) section 219A;
  - (b) section 219AA;
  - (c) section 219AF;
  - (d) section 219B;
  - (e) section 219BA;
  - (f) section 219BB;
  - (g) section 219BC;
  - (h) section 219BD;
  - (i) section 219E;
  - (j) section 219N;
  - (k) section 219QB.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

What this section is about: This section is about the responsibility of the operator of a *former* approved child care service to fulfil a range of obligations, as if they were still the operator of the service.

The obligations referred to in paragraphs (a) to (j) appear earlier in this document. The obligation referred to in paragraph (k), 'section 219QB', appears below.

A former operator that does not fulfil these obligations is guilty of a criminal offence (financial penalty), and may also be subject to a civil penalty.

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### **219QB Remitting amounts that cannot be passed on**

(1) If:

(a) either:

- (i) an amount is paid to an approved child care service under section 219Q in relation to a session of care provided by an approved child care service to a child in a week; or
- (ii) such an amount would be paid, but for a set off under subsection 82(2) or section 219QA or 219RC or the imposition of a sanction under paragraph 200(1)(h); and

(b) it is not reasonably practicable for the service to pass on to the claimant or the service itself within the time required under subsection 219B(2) or 219BA(2) the fee reduction in respect of which the amount was or would have been paid; the service must immediately remit to the Secretary an amount equal to the amount that could not be passed on.

Note: \*This is a civil penalty provision. Part 8C provides for pecuniary penalties for breaches of civil penalty provisions.

(\*The maximum civil penalty for failing to comply with this obligation is \$22 000 for an individual and \$44 000 for a body corporate. If a service is issued with an infringement notice, a civil penalty may be avoided by payment of the amount set out in the infringement notice.)

(1A) An approved child care service commits an offence if the service contravenes subsection (1).

Penalty: \*\*60 penalty units.

(\*\*This is a criminal offence provision which imposes a financial penalty up to \$6 600 for an individual & \$33 000 for a body corporate.)

- (2) The amount must be remitted in the manner or way approved by the Secretary.
- (3) The service must notify the Secretary of the remittal of the amount.
- (4) The notice must:
  - (a) be given in the form, and in the manner or way, approved by the Secretary;  
and
  - (b) include any information required by the Secretary.

What this section is about: This section is about the obligation of an approved child care service to repay any amounts of fee reductions paid to it that could not be passed on. Failure to comply with this provision is a criminal offence (financial penalty). In addition a service may also be subject to a civil penalty and may also be sanctioned.

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## A New Tax System (Family Assistance) Act 1999

## 9 Session of care

- (1) The Minister must, by legislative instrument, determine what constitutes a *session of care* for the purposes of this Act.
- (2) A determination under subsection (1) may also deal with how a session of care that starts on one day and ends on another day is to be treated for the purposes of this Act.

What this section is about: This section requires the Minister to determine what constitutes a session of care. The session of care rules determined by the Minister are set out in the Child Care Benefit (Session of Care) Determination 2000 as amended from time to time (**see Attachment D**).

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## 10 Effect of absence of child from care of approved child care service other than an approved occasional care service

### *Absence from part of a session*

- (1) For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service (other than an approved occasional care service) the service is taken to have provided that part of the session of care to the child.

### *Initial 42 days absence*

- (2) For the purposes of this Act, if:
  - (a) a child is absent from all of one or more sessions of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service) on a day (even if the child is not absent from some or all of another session or sessions of care provided by the service or another service on the day); and
  - (b) the day does not fall:
    - (i) before the day the service has started providing care for the child; or
    - (ii) after the day the service has stopped providing care for the child (otherwise than temporarily); and
  - (c) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child; and
  - (d) before the day, not more than 41 days have elapsed in the same financial year on which a session of care is taken to have been provided under this subsection to the child;

the service is taken to have provided the session of care to the child.

*Additional absence days permitted*

- (3) For the purposes of this Act, if:
- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service (other than an approved occasional care service); and
  - (b) more than 42 days have elapsed in the same financial year on which a session of care is taken to have been provided under subsection (2) to the child; and
  - (c) one of the following applies:
    - (i) the absence is due to the illness of the child, the individual in whose care the child is, that individual's partner, or another individual with whom the child lives, and a medical certificate covering that illness is obtained from a medical practitioner and given to the service;
    - (ii) the absence is due to the child's attendance at a pre-school;
    - (iii) the absence is due to alternative care arrangements being made for the child because the child does not have to be at school on a pupil-free day;
    - (iv) the absence occurs in circumstances specified in a determination under section 11 as permitted circumstances for the purpose of this subparagraph; and
  - (d) one or more of the hours in the session of care would, if the session were taken to have been provided to the child, count towards the weekly limit of hours for which an individual or an approved child care service is eligible for child care benefit in respect of the care of the child;
- the service is taken to have provided the session of care to the child.

What this section is about: This section is about the treatment of absences from care for CCB purposes and describes various rules. Subsection 10(2)(b) does not permit an absence to be attributed to a day before a child starts receiving care or a day after care stops being provided.

This section should be read together with the Child Care Benefit (Absences from Care – Permitted Circumstances) Determination 2000 (**see Attachment C**) and the Child Care Benefit (Sessions of Care) Determination 2000 as amended from time to time (**see Attachment D**).

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**10A Effect of absence of child from care of approved child care service that is an approved occasional care service**

*Absence from part of a session*

- (1) For the purposes of this Act, if a child is absent from part only of a session of care provided by an approved child care service that is an approved occasional care service, the service is taken to have provided that part of the session of care to the child.

*Absence from all of a session*

- (2) For the purposes of this Act, if:
- (a) a child is absent from all of a session of care that would otherwise have been provided to the child by an approved child care service that is an approved occasional care service; and
  - (b) the absence occurs in circumstances specified in a determination under section 11 as permitted circumstances for the purpose of this paragraph;
- the service is taken to have provided the session of care to the child.

What this section is about: This section is about the operation of absences from care for CCB purposes for approved occasional care services.

This section should be read together with the Child Care Benefit (Absences from Care – Permitted Circumstances) Determination 2000 **(see Attachment C)** and the Child Care Benefit (Sessions of Care) Determination 2000 as amended from time to time **(see Attachment D)**.

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## Attachment A

### **Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000**

#### Explanatory note

This instrument contains important rules on:

- suitability of operators, key personnel, staff and carers
- notification requirements
- minimum provision of care requirements
- insurance
- Child Care Quality Assurance
- the handling of personal information
- Priority of Access Guidelines and other matters.

Australian Government

# **Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000**

as amended

made under subsection 205(1) of the

*A New Tax System (Family Assistance) (Administration) Act 1999*

This compilation was prepared on 28 May 2007  
taking into account amendments up to *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2007 (No. 1)*

Prepared by the Legal Services Branch,  
Department of Families, Community Services and Indigenous Affairs,  
Canberra

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  - 26 Change of location
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- SCHEDULE

## Part 1 Preliminary

### 1 Citation [see Note 1]

This determination may be cited as the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

### 2 Commencement [see Note 1]

This determination commences on 1 July 2000, immediately after the commencement of Schedule 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

### 3 Interpretation

In this determination:

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

***applicant*** means a person who applies under section 194 of the Act for approval of a child care service for the purposes of the family assistance law;

***carer*** means a person contracted by a family day care service or an in-home care service to provide child care;

***Council*** means the National Childcare Accreditation Council;

***FDC QA*** means the Family Day Care Quality Assurance system administered by the Council for family day care services;

***in-home care*** means child care provided by a carer, or an employee of an approved child care service, in the home of one of the children being cared for;

***key personnel***, in relation to an applicant who is not an individual, means:

- (a) a member of the group of people who are responsible for the executive decisions of the applicant;
- (b) any other person who is concerned in, or who takes part in, the management of the applicant;

***OSHCQA*** means the Outside School Hours Care Quality Assurance system administered by the Council for outside school hours care services.

***QIAS*** means the Quality Improvement and Accreditation System administered by the Council for centre based long day care services;

***State*** includes Territory.

#### **4 Delegation**

The Secretary may, in writing, delegate to an officer of the agency all or any of the powers of the Secretary under this determination and for the purposes of this section “agency” means the Department or the Commonwealth Services Delivery Agency.

#### **5 Review of decisions**

For Part 5 of the Act, a decision of an officer under this determination is taken to be a decision of an officer under the family assistance law.

## **Part 2                    Eligibility for Approval**

### **6 Approval rules**

The following provisions of this Part are rules that a child care service must satisfy in order to become approved for the purposes of the family assistance law.

### **7 Suitability of applicant**

- (1) Where the applicant is an individual, the applicant must be a suitable person to operate a child care service.
- (2) Where the applicant is not an individual, and is not a State or local government, the applicant's key personnel must be suitable people to operate a child care service, and for the purposes of the following provisions of this section, any reference to an applicant also includes the applicant's key personnel unless the context otherwise requires.
- (3) In making a decision for subsections (1) and (2), the Secretary must consider:
  - (a) the applicant's expertise and experience in providing child care;
  - (b) the applicant's ability to meet and provide the appropriate quality of child care;
  - (c) if the applicant has been a provider of child care:
    - (i) the applicant's record of financial management relating to the provision of child care;
    - (ii) the applicant's conduct as a provider of child care;
    - (iii) the applicant's compliance with responsibilities as a provider of child care and obligations arising from the receipt of payments from the Commonwealth; and
    - (iv) whether the applicant has maintained the confidentiality of personal information about people who were liable to pay child care fees, and their families, including information that was in the applicant's possession after the expiry of any approval of a child care service through which the applicant provided the child care;
  - (d) any relevant criminal charges against the applicant pending before a court;
  - (e) any relevant convictions or findings of guilt against the applicant for an offence.
- (4) The Secretary may also consider other matters relevant to the applicant.

## **8 Suitability of staff**

- (1) The staff of the child care service must be suitable people to provide child care.
- (2) The applicant must undertake that the service will take reasonable steps to ensure that the staff of the child care service are suitable people to provide child care.
- (3) For the purposes of subsection (2), the child care service must undertake a check for the following:
  - (a) any relevant criminal charges against a staff member pending before a court;
  - (b) any relevant convictions or findings of guilt against a staff member for an offence.
- (4) In considering whether a staff member is a suitable person to provide child care, the Secretary may consider any other matters relevant to the staff in addition to the matters mentioned in subsection (3).

## **9 Family day care services: suitability of carers**

- (1) Where the applicant is applying for approval of a family day care service or an in-home care service, carers contracted by the service must be suitable people to provide child care.
- (2) The applicant must undertake that the service will take reasonable steps to ensure that carers contracted by the service are suitable people to provide child care.
- (3) For the purposes of subsection (2), the child care service must undertake a check for the following:
  - (a) any relevant criminal charges against the carer pending before a court;
  - (b) any relevant convictions or findings of guilt against the carer for an offence.
- (4) In considering whether a carer is a suitable person to provide child care, the Secretary may consider any other matters relevant to the carer in addition to the matters mentioned in subsection (3).

## **10 Provision of care**

- (1) Where the applicant is applying for approval of a centre-based long day care service, the applicant must undertake that:
  - (a) most of the children to be provided with child care will:
    - (i) not have commenced school; and
    - (ii) attend the service at least one day a week;

- (b) the service will operate on all normal working days in at least 48 weeks of the year;
  - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
  - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session.
- (1A) Where the applicant is applying for approval of a family day care service, the applicant must undertake that:
- (a) most of the children to be provided with child care will attend the service at least one day a week;
  - (b) the service will operate on all normal working days in at least 48 weeks of the year;
  - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
  - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session.
- (1B) Where the applicant is applying for approval of an in-home care service, the applicant must undertake that:
- (a) the service will provide in-home care only to a child:
    - (i) to whom a circumstance mentioned in subsection (1C) applies; and
    - (ii) to whom only an in-home care service can provide suitable care;
  - (b) the service will operate on all normal working days in at least 48 weeks of the year;
  - (c) the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day on which it operates; and
  - (d) where a child attends a session of care, the service will not prevent the child from attending any part of that session.
- (1C) For subparagraph (1B) (a) (i), the circumstances are:
- (a) the child, or any other child with whom the child lives, has an illness or disability;
  - (b) the individual in whose care the child is, or the individual's partner (if any), has an illness or disability that reduces the individual's, or the partner's capacity to care for the child;
  - (c) the child lives in a rural or remote area;
  - (d) work hours of the individual in whose care the child is, or the individual's partner (if any), are (or include) the hours during which no other approved child care service (other than an approved in-home care service) operates that could otherwise provide care;

- (e) the individual in whose care the child is or the individual's partner (if any) is caring for three or more children (including the child) who have not yet commenced school; or
  - (g) any other circumstances determined by the Secretary in relation to the child.
- (2) Where the applicant is applying for approval of an occasional care service, the applicant must undertake that:
- (a) most of the children to be provided with child care will not have commenced school; and
  - (b) the service will operate for a maximum of 9 hours per day.
- (3) Where the applicant is applying for approval of an outside school hours care service, the applicant must undertake that:
- (a) most of the children to be provided with child care will be attending school;
  - (b) if the service provides before or after school care, the service will operate on each school day; and
  - (c) if the service provides vacation care, the service will be available to provide care for any particular child for at least 8 continuous hours on each normal working day for at least 7 weeks of school holidays in a year.

## **11 Compliance with child care laws**

The construction of the child care service's premises and the equipment and operation of the service must comply with applicable legal requirements of the Commonwealth, and the State and local government where the child care service operates, including any licensing requirements.

## **12 Insurance**

- (1) The applicant must have:
- (a) workers compensation insurance for the child care service;
  - (b) public liability insurance for the child care service; and
  - (c) other appropriate insurance.
- (2) However, if the child care service does not exist when the application is made, insurance is not required until the child care service is established.
- (3) The applicant must give the Secretary, on request, a copy of any insurance policy required under subsection (1) and a certificate of currency for the policy.

### **13 Priority of access**

- (1) Where the applicant is applying for approval of a centre based long day care service, an in-home care service, a family day care service or an outside school hours care service, the applicant must undertake that the service will provide child care places for children in accordance with the following provisions of this section.
- (2) Where a child care service is funded by an employer in order to provide child care solely or primarily for the children of the employer's employees, the service may give priority to those children.
- (3) Where a child care service has entered into an agreement with an employer that, in exchange for payment made by the employer to the service, the service will provide access to a certain number of child care places for the children of the employer's employees, the service may give priority to those children to the extent of the agreed number of places.
- (4) Subject to subsections (2) and (3), when an outside school hours care service fills vacant places, it must give school children priority over children who have not yet commenced school.
- (5) Subject to subsections (2) and (3), where an outside school hours care service has no vacant places and is providing child care for a child who has not yet commenced school, the service may require that child to leave the child care service in order for the service to provide a place for a school child, but only if:
  - (a) the person who is liable to pay child care fees in respect of the child was notified when the child first occupied the child care place that the service followed this policy; and
  - (b) the service gives that person at least 14 days' notice of the requirement for the child to leave the child care service.
- (6) Subject to the preceding provisions of this section, when a child care service fills vacant places it must follow the priority of access guidelines in the Schedule.
- (7) Subject to the preceding provisions of this section, where the service has no vacant places and is providing child care for a child who is a third priority under Part 2 of the Schedule, the service may require that child to leave the child care service in order for the service to provide a place for a higher priority child, but only if:
  - (a) the person who is liable to pay child care fees in respect of the child was notified when the child first occupied the child care place that the service followed this policy; and
  - (b) the service gives that person at least 14 days' notice of the requirement for the child to leave the child care service.

#### **14 Centre based long day care services: registration to participate in QIAS**

Where the applicant is applying for approval of a centre based long day care service, the service must be registered with the Council as a participant in the QIAS.

#### **14A Family day care services: registration to participate in FDC QA**

Where the applicant is applying, on or after 1 July 2001, for approval of a family day care service from a day on or after 1 July 2001, the service must be registered with the Council as a participant in the FDC QA.

#### **14B Outside school hours care services: registration to participate in OSHCQA**

If an applicant applies, on or after 1 July 2003, for approval of an outside school hours care service (other than an approval that is to operate from a day before that date), the service must be registered with the Council as a participant in the OSHCQA.

*Note* See section 24B in relation to an applicant who applies, on or after 1 July 2003, for an approval that is to operate from a day before 1 July 2003.

## **Part 3                    Eligibility for Continued Approval**

### **15 Continued approval rules**

The following provisions of this Part are rules that an approved child care service must satisfy in order to continue to be approved for the purposes of the family assistance law.

### **16 Continuing compliance with Part 2**

- (1) Where the operator of the approved child care service is an individual, the operator must continue to be a suitable person to operate a child care service.
- (2) Where the operator of the approved child care service is not an individual, and is not a State or local government, the operator's key personnel must at all times be suitable people to operate a child care service.
- (3) The staff of the approved child care service must at all times be suitable people to provide child care.
- (4) Carers contracted by a family day care service or an in-home care service must at all times be suitable people to provide child care.
- (5) When a service employs a new member of staff, or a family day care service or an in-home care service contracts a new carer, the service must undertake the same checks in relation to that person as it was required to undertake under Part 2 of this determination in relation to staff and carers before the service was approved.
- (7) The operator of the approved child care service must continue to comply with section 12 of this determination (insurance).

### **16A Compliance with undertakings — general**

The approved child care service must comply with an undertaking given by the operator for the service under subsection 8 (2), 9 (2), 10 (1), (1A), (2) or (3) or 13 (1).

## **16B Approved in-home care services — compliance with certain undertakings**

### *Certain undertakings given before the specified date*

- (1) An approved in-home care service must, subject to subsections (2) and (3), comply with an undertaking given under subsection 10 (1B) before the specified date by the operator for the service.
- (2) On and after the specified date and before 1 July 2008, the approved in-home care service may provide in-home care to a child:
  - (a) to whom paragraph 10 (1C) (f) (as in force before the specified date) applies; and
  - (b) to whom no other paragraph of subsection 10 (1C) applies;only if the service was, immediately before the specified date, providing in-home care to the child.
- (3) On and after 1 July 2008, the approved in-home care service must not provide in-home care to a child:
  - (a) to whom paragraph 10 (1C) (f) (as in force before the specified date) applies; and
  - (b) to whom no other paragraph of subsection 10 (1C) applies.

*Note* Paragraph 10 (1C) (f) (as in force before the specified date) was as follows:

- (f) the child, or any other child with whom the child lives, is breastfed by the mother working from home; or

### *Certain undertakings given on or after the specified date*

- (4) An approved in-home care service must comply with an undertaking given under subsection 10 (1B) on or after the specified date by the operator for the service.

### *Specified date*

- (5) In this section:

*specified date* means the date of commencement of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2007 (No. 1)*.

## **17 Former childcare assistance agreement services**

- (1) Where the service is treated as being an approved child care service by virtue of item 11 of Schedule 6 to the A New Tax System (Family Assistance and Related Measures) Act 2000 (childcare assistance agreement services to become approved child care services), the service must comply with the following provisions of this section.

- (2) Where the operator of the child care service is an individual, the operator must be a suitable person to operate a child care service.
- (3) Where the operator of the child care service is not an individual, and is not a State or local government, the operator's key personnel must be suitable people to operate a child care service, and for this purpose the definition of "key personnel" in section 3 applies as if the operator of the service were an applicant.
- (4) The staff of the child care service, and carers contracted by a family day care service, must be suitable people to provide child care.
- (5) When a service employs a new member of staff, or a family day care service contracts a new carer, the service must undertake the same checks in relation to that person as it would be required to undertake if it were making an application for approval under Part 2 of this determination.
- (6) The service must operate as it would have been required to operate if the operator of the service had given an undertaking in respect of the service under the relevant provision of section 10 of this determination (provision of care).
- (7) The operator of the approved child care service must comply with section 12 of this determination (insurance) as if the operator were an applicant.
- (8) Where the service is a centre based long day care service, a family day care service or an outside school hours care service, the service must provide child care places in accordance with subsections 13 (2) to (7) of this determination (priority of access).

## **18 Continuity of operator**

- (1) The approved child care service must continue to be operated by the person who made the application for approval of the service under section 194 of the Act.
- (2) Where a service is treated as being an approved child care service by virtue of item 11 of Schedule 6 to the A New Tax System (Family Assistance and Related Measures) Act 2000 (childcare assistance agreement services to become approved child care services), the child care service must continue to be operated by the person who was operating the service on 30 June 2000.

## **19 Notifiable events**

- (1) The operator must give the Secretary written notice of at least 30 days before:
  - (a) entering into a contract for the sale of premises where the child care service is conducted;
  - (b) terminating the lease of the premises;
  - (c) changing the address of the service given in the application for approval;or

- (d) ceasing to operate the service.
- (2) The operator must give the Secretary written notice within 14 days of any change to the details contained in the child care service's application for approval, other than the address of the service.
- (3) If the operator becomes aware of something about a member of the service's staff (or a carer, if the service is a family day care service or an in-home care service) that affects the suitability of the staff member or carer to provide child care, the operator must give the Secretary written notice within 7 days, setting out the action that the operator has taken or intends to take to deal with the situation.

## **20 Inspection**

The operator must, at any time during the approved child care service's hours of operation:

- (a) allow an officer of the agency to enter the premises of the service to ensure that the service is being operated in accordance with the family assistance law and this determination; and
  - (b) give the officer all reasonable assistance,
- and for the purposes of this section "agency" means the Department or the Commonwealth Services Delivery Agency.

## **21 Information regarding child care services**

- (1) The Secretary may request an operator or child care service to give information:
  - (a) for a census or survey of child care services; or
  - (b) regarding the operation of child care services.
- (2) Without limiting paragraph (1) (b), the information that the Secretary may request includes:
  - (a) personal details of each carer employed or contracted by a family day care service and the address and telephone number of the premises where child care is provided by that carer; and
  - (b) the number of child care places provided, or likely to be available, during a specified period or periods.
- (3) The Secretary may request information to be given on an ongoing basis.
- (4) The requested information must be:
  - (a) accurate; and
  - (b) given to the Secretary, or to a person specified by the Secretary:
    - (i) at the time, or within the period or periods, specified in the request; and

- (ii) in the form, manner or way specified in the request.
- (5) If the Secretary's request requires that information given be kept up to date, any updated information must be given within 14 days after a change affecting the information occurs.
- (6) The Secretary may terminate a request for information at any time.

### **21A Approval by Secretary**

The Secretary may approve a form, manner or way of requesting or giving information under section 21.

*Note* For the power of the Secretary to approve the form, manner or way of doing any thing that is required or permitted to be done under the family assistance law, see section 4 of the Act. Under that section, the Secretary may approve the use of a telecommunication system or other electronic equipment.

### **22 Personal information**

- (1) The operator and its officers, employees, agents and contractors engaged in the conduct of the approved child care service must not disclose to any person, other than the Secretary or the agency, personal information about clients.
- (2) Subsection (1) does not apply if the information is legally required to be disclosed.
- (3) The service must ensure that personal information about clients is securely stored and that staff respect the privacy of individuals using the service by not discussing their personal details other than as needed for the administration of the service.
- (4) The service must comply with the National Privacy Principles under the *Privacy Act 1988* for handling personal information about clients.
- (5) An approved child care service must not provide a client with any information that may identify a child as being at risk of serious abuse or neglect.
- (6) In this section "client" means any person who is or has been liable to pay child care fees, and any member of the family of such a person.

### **23 Centre based long day care services: participation in QIAS**

An approved centre based long day care service must:

- (a) participate in the QIAS in accordance with any quality improvement and accreditation requirements contained in the following documents, published by the Council and as in force on 14 October 2006:
  - (i) 'Quality Improvement and Accreditation System Quality Practices Guide', 1st edition, 2005;

- (ii) 'Quality Improvement and Accreditation System Handbook', 4th edition, 2006;
- (iii) 'Quality Improvement and Accreditation System Self-study Report', 3rd edition, 2005;
- (iv) 'Child Care Quality Assurance Compliance Requirements', 2nd edition, 2006; and

*Note* Information about these documents is available at the Council's website at [www.ncac.gov.au](http://www.ncac.gov.au).

- (b) maintain quality child care or make satisfactory progress to improve the quality of child care in accordance with the QIAS as assessed by the Council.

### **23A Family day care services: participation in FDC QA**

If section 14A (registration to participate in FDC QA) applies to an approved family day care service, the service must:

- (a) participate in the FDC QA in accordance with any quality assurance requirements contained in the following documents, published by the Council and as in force on 14 October 2006:
  - (i) 'Family Day Care Quality Assurance Quality Practices Guide', 2nd edition, 2004;
  - (ii) 'Family Day Care Quality Assurance Handbook', 3rd edition, 2006;
  - (iii) 'Family Day Care Quality Assurance Self-study Report', 2nd edition, 2004;
  - (iv) 'Child Care Quality Assurance Compliance Requirements', 2nd edition, 2006; and

*Note* Information about these documents is available at the Council's website at [www.ncac.gov.au](http://www.ncac.gov.au).

- (b) maintain quality child care or make satisfactory progress to improve the quality of child care in accordance with the FDC QA as assessed by the Council.

### **23B Family day care services: registration and participation in FDC QA**

- (1) If section 14A (registration to participate in FDC QA) does not apply to an approved family day care service, this section applies to the service from the registration day.
- (2) If this section applies to an approved family day care service, the service must:
  - (a) be registered with the Council as a participant in the FDC QA;
  - (b) participate in the FDC QA in accordance with any quality assurance requirements contained in the documents mentioned in paragraph 23A (a); and

- (c) maintain quality child care or make satisfactory progress to improve the quality of child care in accordance with the FDC QA as assessed by the Council.
- (3) In this section, “the registration day” is the day, later than 1 July 2001, specified by the Council in a written notice given to an approved family day care service to which this section applies.

## **24 Family day care services and in-home care services: in-home care agreement**

- (1) It is a condition for the continued approval of a family day care service which provides in-home care for a child or children, or an in-home care service, that the service enters into a written agreement with the in-home carer and the person who is, or the persons who are, liable to pay child care fees in respect of the child or children.
- (2) The agreement referred to in subsection (1) must set out terms and conditions for the provision of in-home care, and must include:
- (a) details of the care to be provided to the child, including any particular requirements of children with disabilities, and provision for emergencies;
  - (b) the names of the children for whom and the period for which the care will be provided;
  - (c) arrangements for insurance;
  - (d) confirmation that the carer is not required to carry out any duties other than child care;
  - (e) details of any training and support that the service will provide to the carer;
  - (f) any safety requirements to be met by the premises where the care is to be provided;
  - (g) details of the fees to be charged for the care;
  - (h) details of alternative arrangements if the usual carer is unavailable for any reason.
- (3) For the purposes of this section “in-home carer” means:
- (a) the carer; or
  - (b) the employee of the approved child care service,
- who provides in-home care.

## **24A Outside school hours care: participation in OSHCQA**

- (1) This section applies to an approved outside school hours care service to which section 14B applies.

- (2) The service must:
- (a) participate in the OSHCQA in accordance with any quality assurance requirements contained in the following documents, published by the Council and as in force on 14 October 2006:
    - (i) 'Outside School Hours Care Quality Assurance Quality Practices Guide', 1st edition, 2003;
    - (ii) 'Outside School Hours Care Quality Assurance Handbook', 2nd edition, 2006;
    - (iii) 'Outside School Hours Care Quality Assurance Self-study Report', 1st edition, 2003;
    - (iv) 'Child Care Quality Assurance Compliance Requirements', 2nd edition, 2006; and
- Note* Information about these documents is available at the Council's website at [www.ncac.gov.au](http://www.ncac.gov.au).
- (b) maintain quality child care, or make satisfactory progress to improve the quality of child care, in accordance with the OSHCQA, as assessed by the Council.

## **24B Outside school hours care: registration and participation in OSHCQA**

- (1) This section applies to an approved outside school hours care service if:
- (a) the service was approved before 1 July 2003; or
  - (b) the service is approved on or after 1 July 2003, and the approval is expressed to operate from a day before the day when the service is approved.
- (2) The service must, from the registration day:
- (a) be registered with the Council as a participant in the OSHCQA; and
  - (b) participate in the OSHCQA in accordance with any quality assurance requirements contained in the documents mentioned in paragraph 24A (2) (a); and
  - (c) maintain quality child care, or make satisfactory progress to improve the quality of child care, in accordance with the OSHCQA, as assessed by the Council.
- (3) In this section:
- registration day**, for an approved outside school hours care service, means the day, later than 1 July 2003, determined by the Council and specified in a written notice given to the service by the Council.

## **25 24 hour care**

- (1) A an approved child care service must not provide 24 hour care to a child unless the period of 24 hour care has been approved.
- (2) Where the period of 24 hour care was not approved at the time the care was provided, but:
  - (a) is subsequently approved; and
  - (b) the approval is given before the service's next report is due,for the purposes of subsection (1) the approval shall be taken to have been given before the care was provided.
- (3) For the purposes of this section a period of 24 hour care is approved if either –
  - (a) the child care service has given a certificate in respect of the period under subsection 56(3) or (4) of the Family Assistance Act; or
  - (b) the Secretary has made a decision in respect of the period under subsection 56(6) or (8) of that Act.
- (4) In paragraph (2)(b) “next report” means the first report of the service under section 219N of the Act following the provision of the 24 hour care.

## **26 Change of location**

- (1) Where an approved child care service has been allocated child care places under section 207 of the Act, it is a condition of continued approval that the service must not change its location unless the Secretary has approved the new location.
- (2) In considering whether to approve a service's proposed new location for the purposes of subsection (1), the Secretary shall take into account any determination made under subsection 7(1) of the *Child Care Benefit (Allocation of Child Care Places) Determination 2000*.

## **27 Standard hours family day care and standard hours in-home care**

- (1) For the purposes of the definitions in section 3 of the Family Assistance Act, standard hours of family day care, standard hours of in-home care, non-standard hours of family day care and non-standard hours of in-home care shall be identified in accordance with the following provisions of this section.
- (2) An approved family day care service or an approved in-home care service shall, in accordance with subsection (3), identify its standard hours in its publications, and in information given to people using the service, as being its standard hours of care.
- (3) The following hours only may be identified by a service as standard hours:
  - (a) subject to subsection (4), hours between 7am and 6.30pm;

- (b) 10 continuous hours each day, on Monday to Friday (inclusive); and
  - (c) hours during which the service normally provides care for the greatest number of children.
- (4) A service's standard hours of care may be at times other than those specified in paragraph (3)(a) if the Secretary approves the provision of standard hours of care at other specified times.
- (5) For the avoidance of doubt, an approved family day care service's standard hours of care, or an approved in-home care service's standard hours of care, apply for all purposes and in respect of all children in that service's care.
- (6) Non-standard hours of family day care or in-home care shall be any hours that are not standard hours in accordance with the previous provisions of this section.

## SCHEDULE

Section 13

### PRIORITY OF ACCESS GUIDELINES

#### PART 1 – DEFINITIONS

In this Schedule:

*family*, for a child, means the child, the individual in whose care the child is, that individual's partner (if any), and any other individual with whom the child lives;

*parents* means the individual in whose care a child is, and that individual's partner;

*single parent* means an individual in whose care a child is, and who has no partner.

#### PART 2 – PRIORITIES

- |                    |   |
|--------------------|---|
| 1. First priority  | A child at risk of serious abuse or neglect.  |
| 2. Second priority | A child of a single parent who satisfies, or of parents who both satisfy, the work/training/study test under section 14 of the Family Assistance Act. |
| 3. Third priority  | Any other child.  |

#### PART 3 – PRIORITIES WITHIN EACH

##### CATEGORY OF PRIORITY

Within each category mentioned in Part 2 the following children are to be given priority:

children in Aboriginal and Torres Strait Islander families;

children in families which include a disabled person;

children in families which include an individual whose taxable income % under clause 7 of Schedule 2 to the Family Assistance Act is 100%;

children in families with a non-English speaking background;

children in socially isolated families;

children of single parents.

## Notes to the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*

### Note 1

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (in force under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of Instruments

| Title   | Date of notification in Gazette or FRLI registration  | Date of commencement   | Application, saving or transitional provisions |
|---|---|--|--|
| <i>Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000</i>                   | 29 June 2000 (see <i>Gazette</i> 2000, No. S 351)     | 1 July 2000, immediately after the commencement of Schedule 6 to the <i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>           |  |
| <i>Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination (No. 1) 2000</i> | 22 December 2000 (see <i>Gazette</i> 2000, No. S 667) | 1 January 2001, immediately after the commencement of Schedule 2 to the <i>Family and Community Services (2000 Budget and Related Measures) Act 2000</i> | —  |
| <i>Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2001 (No. 1)</i> | 27 June 2001 (see <i>Gazette</i> 2000, No. S 228)     | 1 July 2001  | —  |
| <i>Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2002 (No. 1)</i> | 30 October 2002 (see <i>Gazette</i> 2002, No. S 408)  | 30 October 2002  | —  |

|   |   |  |                           |
|---|---|--|---------------------------|
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2003 (No. 1)</i> | 5 February 2003<br>(see <i>Gazette</i> 2003,<br>No. S 30) | 5 February 2003  | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2003 (No. 2)</i> | 27 June 2003 (see<br><i>Gazette</i> 2003, No. S<br>235)   | 1 July 2003  | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2003 (No. 2)</i> | 27 June 2003 (see<br><i>Gazette</i> 2003, No. S<br>235)   | 1 July 2003  | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2005 (No. 1)</i> | 14 October 2005<br>(see F2005L03086)                      | 15 October 2005<br>the day after<br>registration on the<br>Federal Register of<br>Legislative<br>Instruments | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2005 (No. 2)</i> | 20 December 2005<br>(see F2005L04174)                     | 1 January 2006   | s.4 (see Note 2<br>below) |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2006 (No. 1)</i> | 29 June 2006 (see<br>F2006L02030)                         | 1 July 2006  | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2006 (No. 2)</i> | 13 October 2006<br>(see F2006L03342)                      | 14 October 2006  | —                         |
| <i>Child Care Benefit<br/>(Eligibility of Child Care<br/>Services for Approval and<br/>Continued Approval)<br/>Amendment Determination<br/>2007 (No. 1)</i> | 14 May 2007 (see<br>F2007L01374)                          | 15 May 2007  | —                         |

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## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision affected           | How affected  |
|------------------------------|---|
| Part 1, s.3(1) .....         | am. 2000 No. S 667; 2001 No. S 228; 2003 No. S 30; 2003 No. S 235;<br>2005 F2005L03086; 2006 F2006L02030; 2007 F2007L01374; |
| Part 1, s.3(2) .....         | rep. 2007 F2007L01374;  |
| Part 1, s.4.....             | rs. 2000 No. S 667;   |
| Part 2, s.7(3) .....         | am. 2000 No. S 667;   |
| Part 2, s.8(3) .....         | am. 2000 No. S 667;   |
| Part 2, s.9(1) .....         | am. 2000 No. S 667;   |
| Part 2, s.9(3) .....         | am. 2000 No. S 667;   |
| Part 2, s.10(1) .....        | am. 2000 No. S 667;   |
| Part 2, s.10(1A).....        | ad. 2000 No. S 667;   |
| Part 2, s.10(1B).....        | ad. 2000 No. S 667;<br>am. 2007 F2007L01374;  |
| Part 2, s.10(1C).....        | ad. 2000 No. S 667;<br>am. 2007 F2007L01374;  |
| Part 2, s.13(1) .....        | am. 2000 No. S 667; 2003 No. S 30;  |
| Part 2, s.13(1A).....        | ad. 2003 No. S 30;<br>rep. 2006 F2006L02030;  |
| Part 2, s.14A .....          | ad. 2001 No. S 228;   |
| Part 2, s.14B .....          | ad. 2003 No. S 235;   |
| Part 3, s.16(4) .....        | am. 2000 No. S 667;   |
| Part 3, s.16(5) .....        | am. 2000 No. S 667;   |
| Part 3, s.16(6) .....        | am. 2000 No. S 667;<br>rep. 2007 F2007L01374;   |
| Part 3, s.16A .....          | ad. 2007 F2007L01374;   |
| Part 3, s.16B .....          | ad. 2007 F2007L01374;   |
| Part 3, s.17(8) .....        | am. 2003 No. S 30; 2006 F2006L02030;  |
| Part 3, s.17A .....          | ad. 2003 No. S 30;<br>rep. 2006 F2006L02030;  |
| Part 3, s.19(3) .....        | am. 2000 No. S 667;   |
| Part 3, s.21.....            | rs. 2006 F2006L02030;   |
| Part 3, s.21A .....          | ad. 2006 F2006L02030;   |
| Part 3, s.22(4) .....        | rs. No. S 408, 2002;  |
| Part 3, s.23.....            | am. 2003 No. S 235; 2005 F2005L03086; 2005 F2005L04174; 2006<br>F2006L02030; 2006 F2006L03342; 2007 F2007L01374;            |
| Part 3, s.23A .....          | ad. 2001 No. S 228;<br>am. 2003 No. S 235; 2005 F2005L03086; 2006 F2006L02030; 2006<br>F2006L03342; 2007 F2007L01374;       |
| Part 3, s.23B .....          | ad. 2001 No. S 228;<br>am. 2003 No. S 235; 2005 F2005L03086;  |
| Part 3, s.24 (Heading) ..... | rs. 2000 No. S 667;   |
| Part 3, s.24(1) .....        | am. 2000 No. S 667;   |
| Part 3, s.24(2) .....        | am. 2000 No. S 667;   |
| Part 3, s.24A .....          | ad. 2003 No. S 235;   |

|                              |  |
|------------------------------|--|
| Part 3, s.24A(2).....        | am. 2005 F2005L03086; 2006 F2006L02030; 2006 F2006L03342;<br>2007 F2007L01374; |
| Part 3, s.24B .....          | ad. 2003 No. S 235;<br>am. 2005 F2005L03086;                                   |
| Part 3, s.27 (Heading) ..... | rs. 2000 No. S 667;  |
| Part 3, s.27(1) .....        | am. 2000 No. S 667;  |
| Part 3, s.27(2) .....        | am. 2000 No. S 667;  |
| Part 3, s.27(5) .....        | am. 2000 No. S 667;  |
| Part 3, s.27(6) .....        | am. 2000 No. S 667;  |

## Note 2

Section 4 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2005 (No. 2)* provided:

### 4 Transitional — self-study reports submitted before 1 February 2006

- (1) Despite the amendment made by Schedule 1, section 23 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* as in force immediately before 1 January 2006 continues to apply in relation to an approved centre based long day care service in respect of a self-study report that:
  - (a) is prepared in accordance with the document titled ‘Quality Improvement and Accreditation System Self-study Report’, 2nd edition, 2001, published by the Council; and
  - (b) either:
    - (i) is due on or after 1 January 2006 but that is submitted to the Council by the service before 1 January 2006; or
    - (ii) is due before 1 January 2006 but that is submitted to the Council by the service on or after 1 January 2006 and before 1 February 2006.
- (2) For the avoidance of doubt, the amendment made by Schedule 1 applies in relation to an approved centre based long day care service in respect of a self-study report that:
  - (a) is prepared in accordance with the document titled ‘Quality Improvement and Accreditation System Self-study Report’, 3rd edition, 2005, published by the Council; and
  - (b) is due on or after 1 January 2006 but that is submitted to the Council by the service before 1 January 2006.
- (3) For subsections (1) and (2), a self-study report that is sent by prepaid post to the Council is taken to have been submitted to the Council at the time the report is posted.
- (4) In this section:

***Council*** means the National Childcare Accreditation Council.

## **Attachment B**

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

#### Explanatory note

This instrument contains important rules about the giving of statements by child care services, and the information that is required to be included on them.

The rules are to be read together with section 219E of the *Act*.

Australian Government

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

*A New Tax System (Family Assistance) (Administration) Act 1999*

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I, LISA MARIAN PAUL, Secretary of the Department of Education, Employment and Workplace Relations, make these Rules under subsections 4 (1) and 219E (6) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 2 March 2009

Lisa Marian Paul  
Secretary  
Department of Education, Employment and Workplace Relations

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## Contents

- 1 Name of Rules
- 2 Commencement
- 3 Revocation
- 4 Saving of revoked Rules
- 5 References to revoked Rules
- 6 Application
- 7 Definitions
- 8 How statement should be given
- 9 Persons to whom statements should be given
- 10 Additional information to be provided in statement

### 1 Name of Rules

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

### 2 Commencement

These Rules commence on the day after they are registered.

### 3 Revocation

The *A New Tax System (Family Assistance) (Administration) (Child care benefit — receipts) Rules 2008* are revoked.

### 4 Saving of revoked Rules

- (1) 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:
  - (a) during a week beginning before or on the application day for the service; and
  - (b) before the first statement period (as described in paragraph 219E (4) (a) of the Act) in relation to the service.
- (2) The *A New Tax System (Family Assistance) (Administration) (Child care benefit — receipts) Rules 2008* 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) in relation to the service.

*Note* Section 6 of the *A New Tax System (Family Assistance) (Administration) (Child care benefit — receipts) Rules 2008* provides for the application of those Rules.

### 5 References to revoked Rules

- (1) A reference in an instrument to the *Child Care Benefit (Receipts) Rules 2000* or the *A New Tax System (Family Assistance) (Administration)*

*(Child care benefit – receipts) Rules 2008* is taken, after the commencement of these Rules, to include a reference to these Rules.

- (2) A reference in an instrument to a provision of the *Child Care Benefit (Receipts) Rules 2000* or a provision of the *A New Tax System (Family Assistance) (Administration) (Child care benefit – receipts) Rules 2008* (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.
- (3) In this section:  
**instrument** includes a contract, deed, undertaking or agreement, but does not include a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

*Note* For references in a legislative instrument, see section 10 of the *Acts Interpretation Act 1901* and paragraph 13 (1) (a) of the *Legislative Instruments Act 2003*.

## 6 Application

These Rules apply to a session or sessions of care provided by an approved child care service to a child during a statement period (as described in subsection 219E (4) of the Act) in relation to the service.

## 7 Definitions

In these Rules:

**ABN** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**Act** means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

**application day** has the meaning given by subitem 91 (1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

**Department** means the Commonwealth Department responsible for administering child care benefit under the family assistance law.

*Note* **Approved child care service** and **Family Assistance Act** are defined in subsection 3 (1) of the Act. **Session of care** and **week** are defined in the Family Assistance Act and have the same meaning in these Rules as in that Act — see subsection 3 (2) of the Act and paragraph 13 (1) (b) of the *Legislative Instruments Act 2003*.

## 8 How statement should be given

- (1) A statement must be given in writing.
- (2) An individual who gives a statement on behalf of an approved child care service must sign the statement.
- (3) For subsection 4 (1) of the Act, a statement may be given by means of an electronic communication if:
  - (a) the person to whom the statement is to be given consents to the statement being given by way of electronic communication; and

- (b) if subsection (2) applies to the statement — the individual's signature complies with subsection 10 (1) of the *Electronic Transactions Act 1999*.

- (4) In this section:

*electronic communication* has the meaning given in subsection 5 (1) of the *Electronic Transactions Act 1999*.

## **9 Persons to whom statements should be given**

- (1) For subsection 219E (1), an approved child care service must give a statement:
  - (a) to the person who is conditionally eligible for child care benefit by fee reduction; and
  - (b) if some other person has requested the statement and the approved child care service is satisfied that the person has an interest in the payment of fees for the child or children to whom the statement relates — that person.

*Note* For the purposes of paragraph 9(1)(a), more than one person could be conditionally eligible for child care benefit by fee reduction in relation to a particular child. Where more than one person is conditionally eligible, the statement for each person should only relate to the sessions of care for which that person is conditionally eligible for child care benefit.

- (2) However, subsection (1) does not apply if the statement is for a session of care, or for a statement period that includes a session of care, to which 1 of the following applies:
  - (a) a certificate given by the service under subsection 76 (1) of the Family Assistance Act for a reason set out in subparagraph 76 (1) (b) (i) of that Act;
  - (b) a determination made by the Secretary under subsection 81 (3) of the Family Assistance Act.

## **10 Additional information to be provided in statement**

- (1) For paragraph 219E (5) (d) of the Act, an approved child care service must provide the following information in a statement given under subsection 219E (1) of the Act for a session of care provided to a child by the service during a statement period:
  - (a) the name of the service;
  - (b) the service's ABN (if any);
  - (c) the unique identifier assigned to the service by the Department for the purpose of the child care management system operated by the Department;
  - (d) the name of the person to whom the statement is given;
  - (e) the name of the child to whom the session of care was provided;
  - (f) 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;
  - (g) subject to subsection (2), the number of hours in the session of care;

- (h) the weekly total of the number of hours in the session of care for which fees were reduced;
  - (i) for the statement period — the sum of:
    - (i) 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 Family Assistance Act; and
    - (ii) 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 Family Assistance Act;
  - (j) the date of issue of the statement.
- (2) If the statement is for 2 or more sessions of care, the service must provide in the statement the total number of hours of care provided to the child, listed as daily and weekly totals for the statement period.
- (3) If the statement is for sessions of care provided to 2 or more children, the service must provide in the statement the information in paragraphs (1) (e) to (j) for each child.

## **Attachment C**

### **Child Care Benefit (Absence from Care – Permitted Circumstances) Determination 2000**

#### Explanatory note

This instrument specifies the circumstances in which additional absences may be attributed for CCB purposes. It also covers rules about absences from occasional care and also contains relevant key definitions.

Australian Government

# **Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000**

as amended

made under section 11 of the

*A New Tax System (Family Assistance) Act 1999*

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This compilation was prepared on 1 April 2008  
taking into account amendments up to *Child Care Benefit (Absence From Care — Permitted Circumstances) Amendment Determination 2007 (No. 1)*

Prepared by the Public Law Branch,  
Department of Families, Housing, Community Services and Indigenous  
Affairs, Canberra



## **Contents**

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- 6 Permitted circumstances – occasional care

### **Notes**

## Part 1 Preliminary

### 1 Citation [see Note 1]

This Determination may be cited as the *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000*.

### 2 Commencement [see Note 1]

This Determination commences on 1 July 2000, immediately after the commencement of Part 2 of Schedule 1 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*.

### 3 Interpretation

(1) In this Determination:

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

**claimant** means:

- (a) in a case where an individual is a fee reduction claimant or a past period claimant within the meaning of section 52 of the Act, that individual; or
- (b) in a case where an approved child care service is a fee reduction claimant within the meaning of section 52 of the Act, the individual in whose care the child last was before the week in which the absence occurred,

and any reference to the claimant includes the claimant's partner (if any);

**parenting order** means a parenting order within the meaning of section 64B of the *Family Law Act 1975*.

**period of local emergency** means a period determined by the Secretary in respect of which an event has occurred which:

- (a) is affecting a widespread area and having a severe impact on the lives of a significant number of the inhabitants of the area, and has effects which prevent children from attending an approved child care service, or make attendance hazardous; or
- (b) prevents the provision of child care in most approved child care services of a particular kind in the area;

**public holiday**, for an approved child care service, means:

- (a) a public holiday observed in the State or Territory where the service is operated; or

- (b) another day on which the service is closed, for example a religious holiday, if the service deems the day to be a public holiday and prepares and retains a written statement recording the date of, and reason for, the deemed public holiday.
- (2) Unless the contrary intention appears, expressions used in this instrument shall have the same meanings as in the primary legislation, and for this purpose “the primary legislation” means the Act and the *A New Tax System (Family Assistance) (Administration) Act 1999*.

#### **4 Delegation**

The Secretary may, in writing, delegate to an officer of the agency all or any of the powers of the Secretary under this determination and for the purposes of this section “agency” means the Department or the Commonwealth Services Delivery Agency.

## **Part 2 Permitted circumstances**

### **5 Permitted circumstances — care provided by an approved child care service (other than an approved occasional care service)**

- (1) For subparagraph 10 (3) (c) (iv) of the Act, the following circumstances are permitted circumstances:
  - (a) the absence is due to the service or the claimant not allowing the child to attend the session of care because of an outbreak of an infectious disease at the service for which the child has not been immunised and the service holds a written statement given by the service or the claimant explaining why the child is absent;
  - (b) the absence is due to the claimant having a rostered day off or a day off as part of a rotating shift and the service holds a written statement from the claimant's employer confirming that the claimant has rostered days off or works rotating shifts;
  - (c) the absence is due to the school attended by the child, or the child's brother or sister, being closed (other than because of a public holiday or school holidays);
  - (d) the absence is due to a court order, a registered parenting plan, a parenting plan or a parenting order:
    - (i) that is in force in relation to the child; and
    - (ii) that requires the child to spend time with a person other than the claimant; and
    - (iii) a copy of which is held by the service;
  - (e) the absence is due to the service being closed because of a period of local emergency;
  - (f) the absence is due to the child being unable to travel to the service because of a period of local emergency;
  - (g) the absence is due to the claimant deciding the child should not attend the service because of a period of local emergency;
  - (h) the absence from a session of care on more than 30 of the 42 days that have elapsed in the same financial year in which a session of care is taken to have been provided under subsection 10 (2) of the Act to the child was due to any of the following circumstances:

- (i) the illness of the child and a medical certificate covering the illness was obtained from a medical practitioner and given to the service;
  - (ii) a circumstance mentioned in paragraph (b) or (d).
- (2) A circumstance mentioned in paragraph (1) (h) is only a permitted circumstance if not more than 19 days have elapsed in the same financial year in which a session of care is taken to have been provided under subsection 10 (3) of the Act because of that paragraph.

## **6 Permitted circumstances – occasional care**

Where the session of care from which the child was absent has been booked and paid for by the claimant, this is a permitted circumstance for the purposes of paragraph 10A(2)(b) of the Act (absence from care of approved occasional care service).

## Notes

### Note 1

The *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000* (in force under section 11 of the *A New Tax System (Family Assistance) Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of Instruments

| Title  | Date of notification in Gazette or FRLI registration  | Date of commencement   | Application, saving or transitional provisions |
|--|---|--|--|
| <i>Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000</i>                   | 2 June 2000 (see <i>Gazette</i> 2000, No. S 292)      | 1 July 2000, immediately after the commencement of Part 2 of Schedule 1 to the <i>A New Tax System (Family Assistance and Related Measures) Act 2000</i> |  |
| <i>Child Care Benefit (Absence From Care – Permitted Circumstances) Amendment Determination (No. 1) 2000</i> | 22 December 2000 (see <i>Gazette</i> 2000, No. S 670) | 1 January 2001   | —  |
|  | 31 October 2007 (see F2007L04266)                     | 1 November 2007  | Section 4 [see Table A]                        |

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision affected | How affected          |
|--------------------|-----------------------|
| Part 1, s.3 .....  | am. 2007 F2007L04266; |
| Part 1, s.4 .....  | rs. 2000 No. S 670;   |
| Part 2, s.5 .....  | rs. 2007 F2007L04266; |

**Table A      Application, saving or transitional provisions**

**Child Care Benefit (Absence From Care – Permitted Circumstances)  
Amendment Determination 2007 (No. 1)**

**4            Application**

(1) This Determination applies to a child's absence from all of a session of care that would otherwise have been provided to the child by an approved child care service during a week falling wholly after the application day for the service.

(2) In this section:

*application day* has the meaning given by subitem 91 (1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

## **Attachment D**

### **Child Care Benefit (Session of Care) Determination 2000**

#### Explanatory note

This instrument defines the meaning of a 'session of care' and contains rules about sessions.

**Australian Government**

# **Child Care Benefit (Session of Care) Determination 2000**

**as amended**

made under section 9 of the

*A New Tax System (Family Assistance) Act 1999*

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This compilation was prepared on 2 April 2008  
taking into account amendments up to *Child Care Benefit (Session of Care)  
Amendment Determination 2007 (No. 1)*

Prepared by the Public Law Branch,  
Department of Families, Housing, Community Services and Indigenous  
Affairs, Canberra

## Contents

### **Part 1 Preliminary**

- 1 Citation [see Note 1]
- 2 Commencement [see Note 1]
- 3 Interpretation

### **Part 2 Sessions of Care**

- 4 What is a *session of care*?
- 5 Session of care starting on one day and ending on the next day

### **Part 3 Sessions of care before and after school**

- 6 Definition for this Part
- 7 Sessions of before school care
- 8 Sessions of after school care

## Notes

## **Part 1                      Preliminary**

### **1 Citation** [see Note 1]

This Determination may be cited as the *Child Care Benefit (Session of Care) Determination 2000*.

### **2 Commencement** [see Note 1]

This Determination commences on 1 July 2000, immediately after the commencement of section 9 of the Act.

### **3 Interpretation**

- (1) In this Determination *the Act* means the *A New Tax System (Family Assistance) Act 1999*.
- (2) Unless the contrary intention appears, expressions used in this instrument shall have the same meanings as in the primary legislation, and for this purpose “the primary legislation” means the Act and the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## **Part 2                      Sessions of Care**

### **4            What is a *session of care*?**

- (1) For the purposes of the Act, a session of care is the minimum period of time in respect of which an approved child care service charges a fee for providing child care in any particular case.
- (2) A session of care may start on one day and end on the next day.
- (3) However, a session of care must not exceed 12 hours.

### **5            Session of care starting on one day and ending on the next day**

A session of care that starts on one day (the first day) and ends on the next day is to be treated as having occurred on the first day.

## **Part 3                      Sessions of care before and after school**

### **6            Definition for this Part**

In this Part *approved child care service* does not include an approved occasional care service.

### **7            Sessions of before school care**

- (1) In this section *standard period* means the period of 2 hours ending immediately before school starts.
- (2) A *standard session* is the minimum period for which an approved child care service charges a fee for providing before school care to a child in the standard period.
- (3) A standard session must not exceed 2 hours.
- (4) If a child attends a standard session exceeding one hour, and on the same day the approved child care service provides an additional period of care for the child immediately before or after the standard period, a session of care during the additional period must not exceed half an hour.

### **8            Sessions of after school care**

- (1) In this section *standard period* means the period of 3 and a half hours starting immediately after school finishes.
- (2) A *standard session* is the minimum period for which an approved child care service charges a fee for providing after school care to a child in the standard period.
- (3) A standard session must not exceed 3 and a half hours.
- (4) If a child attends a standard session exceeding one hour, and on the same day the approved child care service provides an additional period of care for the child immediately before or after the standard period, a session of care during the additional period must not exceed half an hour.

## Notes

### Note 1

The *Child Care Benefit (Session of Care) Determination 2000* (in force under section 9 of the *A New Tax System (Family Assistance) Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of Instruments

| <b>Title</b>   | <b>Date of notification in Gazette or FRLI registration</b> | <b>Date of commencement</b>  | <b>Application, saving or transitional provisions</b> |
|--|---|--|---|
| <i>Child Care Benefit (Session of Care) Determination 2000</i>                   | 2 June 2000 (see <i>Gazette</i> 2000, No. S 291)            | 1 July 2000, immediately after the commencement of section 9 of the <i>A New Tax System (Family Assistance) Act 1999</i> |   |
| <i>Child Care Benefit (Session of Care) Amendment Determination 2007 (No. 1)</i> | 31 October 2007 (see F2007L04267)                           | 1 November 2007  | Section 4 [see Table A]                               |

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## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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**Provision affected**

**How affected**

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Part 4 (s.9)..... rep. 2007 F2007L04267;

**Table A      Application, saving or transitional provisions**

**Child Care Benefit (Session of Care) Amendment Determination 2007  
(No. 1)**

**4            Application**

(1) This Determination applies 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.

(2) In this section:

*application day* has the meaning given by subitem 91 (1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

What Table A is about:

The effect of this Table is that the session of care rules appearing above are the rules that apply to a service that has transitioned to the Child Care Management System.

**A service that does not operate under the CCMS is subject to a different version of the rules.**

## **Attachment E**

### Explanatory note

This instrument specifies the number of weeks after which, if no care is reported, an enrolment is taken to have ceased.

Australian Government

**A New Tax System (Family Assistance)  
(Administration) (Child care benefit —  
when enrolment ceases (number of weeks))  
Specification 2007**

*A New Tax System (Family Assistance) (Administration) Act 1999*

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I, JEFF HARMER, Secretary of the Department of Families, Community Services and Indigenous Affairs, make this Specification under subsection 219AD (3) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 17 October 2007

JEFF HARMER

Secretary

Department of Families, Community Services and Indigenous Affairs

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**1 Name of Specification**

This Specification is the A New Tax System (Family Assistance) (Administration) (Child care benefit — when enrolment ceases (number of weeks)) Specification 2007.

**2 Commencement**

This Specification commences on the day after it is registered.

*Note* This Specification is made under section 219AD of the *A New Tax System (Family Assistance) (Administration) Act 1999*. Section 219AD and this Specification apply to an enrolment of a child for care by an approved child care service that occurs on or after the application day for the service — see items 91 and 93 of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

### 3 Number of weeks

For subsection 219AD (3) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the *Act*), the number of weeks is:

- (a) for the enrolment of a child for care by an approved centre based long day care service, an approved family day care service or an approved in-home care service:
  - (i) if an enrolment advance was paid to the service under section 219RA of the Act for the enrolment — 6 weeks; or
  - (ii) in any other case — 26 weeks; and
- (b) for the enrolment of a child for care by an approved occasional care service — 26 weeks; and
- (c) for the enrolment of a child for care by an approved outside school hours care service:
  - (i) if the enrolment is not for a school holiday session and an enrolment advance was paid to the service under section 219RA of the Act for the enrolment — 10 weeks; or
  - (ii) in any other case — 26 weeks.

*Note* **Approved centre based long day care service, approved family day care service, approved in-home care service, approved occasional care service** and **approved outside school hours care service** are defined in subsection 3 (1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*. **School holiday session** is defined in the *A New Tax System (Family Assistance) Act 1999* and has the same meaning in this Specification as in that Act — see subsection 3 (2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* and paragraph 13 (1) (b) of the *Legislative Instruments Act 2003*.

## Attachment F

### **A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006**

#### Explanatory note

This instrument contains important rules about record keeping for child care services.

The rules are to be read together with section 219F of the *Act*.

**Australian Government**

**A New Tax System (Family Assistance)  
(Administration) (Child Care Benefit — Record  
Keeping) Rules 2006**

**as amended**

made under subsection 219F (3) of the

*A New Tax System (Family Assistance) (Administration) Act 1999*

This compilation was prepared on 21 November 2008 taking into account amendments up to *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Record Keeping) Amendment Rules 2008 (No. 1)* (F2008L00955).

Prepared by the Department of Education, Employment and Workplace Relations.

## 1 Name of Rules

These Rules are the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Record Keeping) Rules 2006*

## 2 Commencement

These Rules commence on 1 July 2006.

## 3 Revocation

The *Child Care Benefit (Record Keeping) Rules 2000* are revoked.

## 4 Interpretation

(1) In these Rules:

*Act* means the *A New Tax System (Family Assistance) (Administration) Act 1999*.

*approval rules* means the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

(2) An expression used in these Rules that is also used in the Act or the Family Assistance Act has the same meaning in these Rules as it has in the Act or the Family Assistance Act.

## 5 References to revoked Rules

(1) A reference in an instrument to the *Child Care Benefit (Record Keeping) Rules 2000* is taken, after commencement of these Rules, to include a reference to these Rules.

(2) A reference in an instrument to a provision of the *Child Care Benefit (Record Keeping) Rules 2000* (the **revoked provision**) is taken, after commencement of these Rules, to include a reference to a provision of these Rules that corresponds to the revoked provision.

(3) In this section:

*instrument* includes a contract, deed, undertaking and a funding or other agreement, but does not include a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

*Note* For references in a legislative instrument, see section 10 of the *Acts Interpretation Act 1901* and paragraph 13 (1) (a) of the *Legislative Instruments Act 2003*.

## 6 Records to be kept by approved child care services

An approved child care service must keep the following kinds of records:

(a) if applicable, the licence to operate a child care service issued by the State or Territory in which the service operates;

- (b) records of attendance for each child to whom care is provided (whether or not any person is currently eligible or conditionally eligible for child care benefit in respect of the child), including records of any absences from care;
- (ba) any statements or other documents prepared or obtained by the service in relation to an absence mentioned in subsection 10 (3) of the Family Assistance Act;
- (c) copies of any certificates given by the child care service under the family assistance law;
- (d) copies of reports given by the child care service to the Secretary under section 219N of the Act;
- (e) any notice of determination, or notice of variation of determination, given to the service by the Secretary under the family assistance law for the purposes of child care benefit;
- (ea) any written nominations of the kind mentioned in subsection 7 (1) of the *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006*;
- (f) copies of receipts issued to people who have paid child care fees;
- (g) enrolment forms;
- (h) copies of notices of enrolment given to the Secretary by the child care service under section 219A or 219AA of the Act;
- (i) insurance policies and any other documentation relating to insurance;
- (j) accounting records, including cash books and journals;
- (k) copies of any agreements made in accordance with section 24 of the approval rules (family day care services and in-home care services: in-home care agreement).

## **7 Additional records to be kept by approved family day care services**

An approved family day care service must keep current records of:

- (a) the full name, residential address and contact telephone number of each carer employed or contracted by the approved family day care service; and
- (b) if child care is provided by a carer at a place other than the carer's residence — the address and telephone number of the premises where that care is provided.

Notes to the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Record Keeping) Rules 2006*

### **Note 1**

The *A New Tax System (Family Assistance) (Administration) (Child Care Benefit — Record Keeping) Rules 2006* in force under section 219F (3) of the *A New Tax System (Family Assistance) (Administration) Act 1999* as shown in this compilation is amended as indicated in the Tables below.

## **Table of Instruments**

| Title   | FRLI registration number | Date of notification in Gazette or FRLI registration | Date of commencement | Application, saving or transitional provisions |
|---|--------------------------|--|----------------------|--|
| <i>A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006</i>                   | F2006L02036              | 29 June 2006   | 1 July 2006          |  |
| <i>A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Amendment Rules 2008 (No. 1)</i> | F2008L00955              | 25 March 2008  | 26 March 2008        | s. 4 (see note 2 below)                        |

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision affected | How affected         |
|--------------------|----------------------|
| S. 4 (1)           | am. 2008 F2008L00955 |
| S. 6 (b)           | rs. 2008 F2008L00955 |
| S. 6 (ba)          | ad. 2008 F2008L00955 |
| S. 6 (ea)          | ad. 2008 F2008L00955 |
| S. 6 (h)           | rs. 2008 F2008L00955 |

### Note 2

Section 4 of the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Amendment Rules 2008 (No. 1)* provided:

#### 4 Application

- (1) The amendments made by these Rules apply to an approved child care service as follows:
  - (a) if the application day for the service is before the commencement of these Rules — on and after the first day of the first week falling wholly after that commencement;
  - (b) in any other case — on and after the first day of the first week falling wholly after the application day for the service.
- (2) In this rule:

**application day** has the meaning given by subitem 91 (1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.

## Attachment G

### **A New Tax System (Child Care Benefit – Eligible Hours of Care (Determination) 2006**

#### Explanatory note

This instrument sets out the method by which hours of care are to be calculated towards the weekly limit for the purposes of child care benefit (CCB).

**Australian Government**

**A New Tax System (Family Assistance)  
(Child Care Benefit — Eligible Hours of  
Care) Determination 2006**

as amended

made under section 57A of the

*A New Tax System (Family Assistance) Act 1999*

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This compilation was prepared on 5 December 2008  
taking into account amendments up to *A New Tax System (Family  
Assistance) (Child Care Benefit — Eligible Hours of Care) Amendment  
Determination 2007 (No. 1)*

Prepared by the Public Law Branch,  
Department of Families, Housing, Community Services and Indigenous  
Affairs, Canberra

## Contents

Section

- 1**                    **Name of Determination** [see Note 1]
- 2**                    **Commencement** [see Note 1]
- 3**                    **Revocation**
- 4**                    **References to revoked Determination**
- 5**                    **Interpretation**
- 6**                    **Order of approved child care services**
- 7**                    **Nominated hours in sessions of care to count  
towards weekly limit**
- 8**                    **Order of hours in sessions of care provided by  
an approved child care service**

**Notes**

**1 Name of Determination** [see Note 1]

This Determination is the *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006*.

**2 Commencement** [see Note 1]

This Determination commences on 3 July 2006.

**3 Revocation**

The *Child Care Benefit (Eligible Hours of Care) Determination 2000* is revoked.

**4 References to revoked Determination**

(1) A reference in an instrument to the *Child Care Benefit (Eligible Hours of Care) Determination 2000* is taken, after commencement of this Determination, to include a reference to this Determination.

(2) A reference in an instrument to a provision of the *Child Care Benefit (Eligible Hours of Care) Determination 2000* (the **revoked provision**) is taken, after commencement of this Determination, to include a reference to a provision of this Determination that corresponds to the revoked provision.

(3) In this section:

**instrument** includes a contract, deed, undertaking, and a funding or other agreement, but does not include a legislative instrument within the meaning of the *Legislative Instruments Act 2003*.

*Note* For references in a legislative instrument, see section 10 of the *Acts Interpretation Act 1901* and paragraph 13 (1) (a) of the *Legislative Instruments Act 2003*.

**5 Interpretation**

(1) In this Determination:

**Act** means the *A New Tax System (Family Assistance) Act 1999*.

**claimant** means a fee reduction claimant or a past period claimant within the meaning of section 52 of the Act.

**weekly report** means a report given by an approved child care service to the Secretary under section 219N of the Family Assistance Administration Act for a child for a week.

(2) An expression used in this Determination that is also used in the Act or the *A New Tax System (Family Assistance) (Administration) Act 1999* has the same meaning in this Determination as it has in the Act or the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## **6 Order of approved child care services**

For section 57A of the Act, the hours in sessions of care provided by an approved child care service to a child in a week are to count towards the weekly limit of 24, 50 or more than 50 hours applicable to a claimant for the care of the child in the following order:

- (a) first — the hours in sessions of care, worked out in accordance with sections 7 and 8, provided by the service whose weekly report is the first weekly report for the child for the week that the Secretary receives;
- (b) second — the hours in sessions of care, worked out in accordance with sections 7 and 8, provided by any other approved child care services to the child in the week in the order in which the Secretary receives the weekly report given by each service for the child for the week.

## **7 Nominated hours in sessions of care to count towards weekly limit**

- (1) Subject to subsection (2), if an approved child care service reports in the weekly report for a child for a week that the individual who enrolled the child for care by the service has nominated in writing the number of hours in sessions of care provided by the service to the child that are to count towards the claimant's weekly limit for the child for the week, only the number of hours in sessions of care provided to the child in the week up to the nominated number of hours are to count towards the weekly limit.
- (2) If, for a week, the hours worked out in accordance with this section are less than the claimant's weekly limit for the child, any hours (other than the hours worked out in accordance with subsection (1)) in sessions of care provided to the child by a service to whom that subsection applies are to count towards the weekly limit in the order in which the Secretary receives the weekly report given by each service for the child for the week.

## **8 Order of hours in sessions of care provided by an approved child care service**

- (1) The hours in sessions of care provided by an approved child care service to a child in a week are to count towards the weekly limit in the following order:
  - (a) if the care is provided by an approved family day care service:
    - (i) first — non-standard hours family day care; and
    - (ii) second — part-time family day care; and
    - (iii) third — other hours of care provided by the service to the child;
  - (b) if the care is provided by an approved in-home care service:
    - (i) first — non-standard hours in-home care; and
    - (ii) second — part-time in-home care; and
    - (iii) third — other hours of care provided by the service to the child;

- (c) if the care is provided by an approved centre based long day care service:
    - (i) first — hours of part-time long day care; and
    - (ii) second — other hours of care provided by the service to the child;
  - (d) if the care is provided by an approved occasional care service or an approved outside school hours care service — the hours in sessions of care provided to the child in the week up to the applicable weekly limit.
- (2) In this section:
- part-time long day care*** means care for which the part-time % is more than 100% under subclause 2 (2) of Schedule 2 to the Act.

## Notes

### Note 1

The *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006* (in force under section 57A of the *A New Tax System (Family Assistance) Act 1999*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of Instruments

| <b>Title</b>   | <b>Date of FRLI registration</b>  | <b>Date of commencement</b> | <b>Application, saving or transitional provisions</b> |
|--|-----------------------------------|-----------------------------|---|
| <i>A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006</i>                   | 3 July 2006 (see F2006L02028)     | 3 July 2006                 |   |
| <i>A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Amendment Determination 2007 (No. 1)</i> | 31 October 2007 (see F2007L04269) | 1 November 2007             | Section 4 [see Table A]                               |

## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

| Provision affected | How affected          |
|--------------------|-----------------------|
| S. 5(1) .....      | am. 2007 F2007L04269; |
| S. 6 .....         | rs. 2007 F2007L04269; |
| S. 7 .....         | ad. 2007 F2007L04269; |
| S. 8 .....         | ad. 2007 F2007L04269; |

### Table A    Application, saving or transitional provisions

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

#### **4        Application**

(1)        The amendments made by this Determination apply to sessions of care provided by an approved child care service to a child during a week falling wholly after the application day for the service.

(2)        In this section:

***application day*** has the meaning given by subitem 91 (1) of Schedule 1 to the *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*.