EXPLANATORY STATEMENT

Child Care Benefit (Work/Training/Study Test Exemption) Amendment Determination 2004 (No. 1)

Summary

This Determination is made under subsection 14(2) of the A New Tax System (Family Assistance) Act 1999 (the Family Assistance Act).

The purpose of this Determination is to amend the Child Care Benefit (Work Training/Study Test Exemption) Determination 2000 (the Exemption Determination). The Exemption Determination determines classes of persons to be exempt from the requirements of the work/training/study test, which individuals usually have to satisfy to be eligible for child care benefit for up to 50 hours of care provided in a week by an approved child care service to a child.

As a result of this Determination, a grandparent (natural, adoptive or step) or great grandparent (natural, adoptive or step) of a child, and that grandparent’s or great grandparent’s current or former partner, will be included in a class of persons to be exempt from the requirements of the work/training/study test in respect of their ‘grandchild’ (in a broad sense) if one of the partners is the principal carer of that child and is conditionally eligible, or eligible, for child care benefit for that child.

If a person in the new class of exempt persons is exempt from the requirements of the test in respect of a grandchild, the person will also be exempt in respect of any other child in respect of whom the person or the person’s partner is conditionally eligible, or eligible, for child care benefit for that other child.

A person who is exempt will be eligible for child care benefit for up to 50 hours in a week instead of 20 hours for which they are currently eligible in respect of a child in their care.

This Determination also makes consequential amendments to some of the existing provisions.

This Determination commences on 1 November 2004.
**Background**

Subdivision G of Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to working out the number of hours of child care provided in a week by an approved child care service to a child, for which an individual is eligible for child care benefit. A limit of 20 hours applies in a week to claimants for child care benefit by fee reductions, and to claimants for child care benefit for a past period, if a weekly limit of up to 50 hours does not apply (subsection 53(3) of the Family Assistance Act). A weekly limit of up to 50 hours applies to such a claimant if both the claimant and the claimant’s partner satisfy, at some time in the week, the work/training/study test (subsection 54(2) of the Family Assistance Act). A person satisfies the work/training/study test if the person meets the requirements specified in subsection 14(1) of the Family Assistance Act of having a recognised work, work-related, study or training commitment.

Subsection 14(2) of the Family Assistance Act authorises the Minister to determine a class of persons to be exempt from the requirements of the work/training/study test.

Subsection 14(3) provides that an individual included in the exempt class is taken to satisfy the test while the determination is in force.

Grandparents with grandchildren in their care often cannot meet the work/training/study test and, therefore, are eligible for child care benefit for only 20 hours of child care in a week.

The Government’s *Extra Assistance for Families, Supporting Grandparents Who Care for Children* policy announcement aims to enable grandparents to receive child care benefit for up to 50 hours of care provided in a week to a child in a grandparent’s care by an approved child care service, as opposed to the 20 hours currently available to grandparents and other carers if they are not working, studying or training.

To achieve this, this Determination amends the existing Exemption Determination to create a new class of persons exempt from the requirements of the work/training/study test, consisting of grandparents with grandchildren in their care.

**Explanation of the provisions**

*Name of the Determination*

Section 1 states the name of the Determination as the *Child Care Benefit (Work/Training/Study Test Exemption) Amendment Determination 2004 (No. 1).*
Commencement

Section 2 states that this Determination commences on 1 November 2004.

Amendment of Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000

Section 3 states that Schedule 1 amends the Child Care Benefit (Work/Training/Study Test Exemption) Determination 2000.

Schedule 1

Items 1 and 2 are consequential amendments to the existing sections 3 and 4 of the Exemption Determination, made to ensure that the intention of the requirement in paragraph 4(2)(b) is preserved. Paragraph 4(2)(b) prevents a person from being exempt under section 4 if the person’s partner is an ‘exempt person’. Section 3 defines the exempt person as the person exempt under the Exemption Determination. As the amendments made by item 3 create a new class of persons exempt under the Exemption Determination (in section 5), the definition of ‘exempt person’ in section 3 would capture exemptions under new section 5 and draw them into the meaning of paragraph 4(2)(b). This would be contrary to the intention of paragraph 4(2)(b), which is to prevent a person from being exempt under section 4 if the person’s partner is also exempt under this section. Therefore, item 2 amends paragraph 4(2)(b) to provide that the person would be prevented from receiving a section 4 exemption if the person’s partner is exempted under section 4 (as opposed to exemption under any provision of the Exemption Determination). As a result of this amendment, the definition of ‘exempt person’ in section 3 ceases to be required. Item 1 therefore omits that definition.

Item 3 inserts section 5 into the Determination.

Subsection 5(1) provides that a person is exempt from the requirements of the work/training/study test in relation to a child (the related child) if the person, or the person’s partner, is the grandparent or great grandparent of the child. Subsection 5(3) defines the grandparent and great grandparent by reference to a biological child-parent relationship. It also treats the relationship between an adopted child and the adoptive parent, and between a step child and the step parent, as a biological relationship.

Subsection 5(4) contains definitions relevant to the concept of a grandparent and great grandparent. ‘Adoptive parent’ is defined as the person who adopted the child under a law of any place relating to adoption (whether in Australia or not). ‘Step parent’ is defined as the current or former partner of the biological or adoptive parent of the child, the step parent not being the biological or adoptive parent of the child.
A grandparent or great grandparent of a child, as defined, and the partner of a
grandparent or great grandparent, are exempt from the requirements of the
work/training/study test in relation to a child (the related child) if the child is an
FTB child of any of the members of the couple, one of them is the primary
carer of the child, and one of them is conditionally eligible, or eligible, for child
care benefit for care provided to the child by an approved child care service.

‘FTB child’ is a term defined in subsection 3(1) of the Family Assistance Act.
A child for whom a person is conditionally eligible, or eligible, for child care
benefit will always be an FTB child of the person or the person’s partner.

‘Principal carer’ is defined in subsection 5(4) as the person who is the sole or
major provider of ongoing daily care for the child and who has substantial
autonomy for the day-to-day decisions about the child’s care, welfare and
development.

Subsection 5(2) operates to the effect that, if a person is exempt from the
requirements of the work/training/study test in relation to a child because the
person is a grandparent or great grandparent, or the grandparent’s or great
grandparent’s partner, the person is also exempt in relation to another child
(the unrelated child) if that unrelated child is an FTB child of the person or the
person’s partner and one of them is conditionally eligible, or eligible, for child
care benefit for that unrelated child.

The definitions in subsection 5(3), relating to the adoptive and step
relationships, and the definitions of adoptive parent and step parent in
subsection 5(4), apply also to the exemption in subsection 5(2).

The significance of the exemption in subsection 5(2) is that, if, generally, a
person is exempt from the requirements of the work/training/study test in
relation to a grandchild with the effect that a limit of 50 hours in a week will
apply to the person and the child, the same limit will apply to another child in
the person’s care (eg the person’s own child) for whom the person is
conditionally eligible, or eligible, for child care benefit.

Subsection 5(5) is the application provision. It states that section 5 applies to
hours of care occurring in a week commencing on or after 1 November 2004.