



## Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005

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## **Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005**

**Date Introduced:** 9 November 2005

**House:** House of Representatives

**Portfolio:** Family and Community Services

**Commencement:** On Royal Assent.

### **Purpose**

The Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005 (the Bill) amends provisions of *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance)(Administration) Act 1999* concerning the work/training/study test that determines the maximum number of hours of child care for which Child Care Benefit (CCB) may be paid. The amendments will apply from 3 July 2006.

### **Background**

#### **Welfare to Work**

Part of the Welfare to Work package of measures announced in the 2005 Budget was concerned with increasing the provision of child care to assist people moving from welfare to work. The following child care measures were announced:

The Government will provide \$266.4 million over four years to increase the number of child care places to support parents who are obliged to seek work under the new workforce participation obligations. Increases will be provided for Outside School Hours Care (84,300 places), Family Day Care (2,500 places), In-Home Care (1,000 places) and Jobs, Education and Training (JET) fee assistance.

The Government will focus the operation of the JET fee assistance programme on employment outcomes. JET provides child care fee assistance to eligible jobless parents undertaking study, job search activities and those who have commenced paid or unpaid work. Under this measure, parents who are studying will be eligible for assistance only if they undertake courses up to 12 months duration which provide for specific workforce preparation outcomes.

The Government will also modify the childcare work, training and study test. The number of hours of Child Care Benefit (CCB) a family will be eligible to receive without meeting the work test will be increased from 20 to 24 a week. To be eligible

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for more than 24 hours of CCB per week, both members of the couple or sole parent will need to demonstrate that they have an ongoing work, or work related activity, equalling at least 15 hours per week.<sup>1</sup>

The Bill deals with changes to the CCB work/training/study test as it applies to approved child care. It makes two major changes:

- It limits access to 25 to 50 hours per week per child of CCB to families where both parents spend at least 15 hours per week engaged in work, training or study. It is only the child care benefit (CCB) in approved child care that is affected.
- It increases the limit on the number of hours of CCB available to families that do not pass the work/training/study test from 20 to 24 hours per week.

### **Approved Child Care**

Approved care is that provided by centre-based long day care centres, family day care, outside school hours care, in-home child care, vacation care and occasional care.

### **Registered care**

The changes in this Bill will not apply to registered care.<sup>2</sup> Registered care is care provide by a person who registers with the Department of Family and Community Services (FACS). Nannies and relatives often fall into this category. CCB for registered child care is only paid where the work/training/study test is satisfied. This will not change, but the current test will continue to apply for registered care.

### **Activities that satisfy the test**

At present the work/training/study test is used to determine which families can access between 21 and 50 hours of approved care. However, the parents only need to satisfy the test 'at some time' in a week and there is no minimum number of hours of the activity that must be performed. There is a long list of activities that allow a person to satisfy the test. It includes:

- Paid work or self employment
- Setting up a business
- Casual or call employment
- Looking for work
- Studying or training to improve work skills or employment prospects
- Voluntary work
- Annual leave

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- Sick leave
- Long service leave
- Paid leave
- Paid or unpaid parental leave
- Self-employment leave
- Self-employment sick leave
- Carer leave
- Carer sick leave
- Receiving Carer Payment
- Receiving Carer Allowance for a disabled adult or a disabled child
- Caring for a disabled person<sup>3</sup>

Certain exceptions to the test also apply as follows:

- Customer or their partner is in prison or otherwise lawfully detained
- Customer or their partner is disabled.
- Customer or their partner is living overseas.
- Customer or their partner is the grandparent or great grandparent of the child
- Child is at risk of serious abuse or neglect.
- Exceptional circumstances
- An approved service is the only provider of a particular type of care in an area.

Most of these activities and exemption are set out in disallowable instruments, but a few are specified in the *Family Assistance Act 1999*.

Under the Bill, parents will only be eligible for CCB for 25 to 50 hours per week in approved child care if they satisfy the new section 17A activity requirement. These require that at least 15 hours of ‘activities’ are undertaken ‘for the week’.

### **Work related child care**

The 2004 Census of Child Care Services conducted by FACS indicates that, in 2004, 90 per cent of child care hours in long day care were used for work related care.<sup>4</sup> For outside school hours care and vacation care for school age children, the proportion was higher at 97 per cent and 93 per cent respectively and, for occasional care, it was much lower at about 49 per cent.

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The issue of priority of access to often scarce child care places has been raised in the media from time to time, with the current work/training/study test sometimes being blamed for not adequately giving priority to working families.<sup>5</sup>

The measures in this Bill answer those criticisms by ensuring that those undertaking work, training or study for less than 15 hours per week will be limited to 24 hours of CCB per week. The new limit of 24 hours per week ensures that those who have commitments of up to 14 hours per week have adequate travelling time added. However, it is difficult to predict whether the changes will significantly change the level of child care use by people without substantial work, training or study commitments.

### Child Care Tax Rebate

The work/training/study test will influence eligibility for the new Child Care Tax Rebate. The Taxation Law Amendment (2005 Measures No. 4) Bill that will provide for that rebate is currently before the Parliament. Eligibility for the rebate would be restricted to families that satisfy the work/training/study test including the amendments to it proposed in this Bill.

The Labor opposition has criticised the Government for failing to recognise that the new section 17A requirements in this bill will prevent some parents from obtaining the rebate. However, the Treasurer has indicated that amendments will be made to ensure that the current test will apply for the purposes of the Child Care Tax Rebate.<sup>6</sup>

## Main Provisions

**Schedule 1** removes references to the 20 hour per week limit for non work related care and substitutes a 24 hour per week limit.

It also includes transitional arrangements for those with an existing 20 hour determination. These transitional provisions require the Secretary to give notice to the CCB claimant and the approved child care service that an existing 20-hour determination will be a 24-hour determination from 3 July 2006.

**Schedule 2 Item 9** inserts **new section 17A** into the *A New Tax System (Family Assistance) Act 1999*. It includes the new activity requirements to be incorporated into the work/training/study/ test for those claiming CCB from approved child care services. **Item 4** inserts **new section 14(1A)** which provides that for the purposes of determining whether a limit of 50 hours applies to approved child care, the work/training/study test is only satisfied if the activity requirements of the **new section 17A** are met, unless the person is otherwise exempt.

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**New sub-section 17A(1)** sets out two ways to satisfy the test: by doing one activity for at least 15 hours per week or by doing a combination of activities for a total of at least 15 hours per week.

**New sub-section 17A(2)** allows the secretary to determine, by legislative instrument, activities that count towards meeting the activity requirements. The Explanatory Memorandum gives some examples of activities that are likely to be included, such as setting up a business or caring for a child with a disability. However, it is unclear how or if the hours spent in these activities could be verified. The Bill does amend section 157 of the *A New Tax System (Family Assistance) (Administration) Act 1999* which enables the Secretary of FACS to verify the number of hours of employment (Item 32), work or work related commitments and training (Item 3). For many employment and training activities, verification could be sought from an employer or training institution but it may be more difficult to verify the number of hours involved in, for example, setting up a business.

**New sub-section 17A(4)** provides for the averaging of hours over any two successive weeks so that the 15 hours per week requirement can be met by performing acceptable activities for at least 30 hours in a fortnight. However none of the hours from the weeks in a fortnight where hours have been averaged to meet the activity requirements can be carried over into any subsequent week to help meet the activity requirement for that week.<sup>7</sup> So if, for example, over a three week period a person worked ten hours in one week, 25 hours in the next and then ten hours in the third week, the excess hours in the second week could only be used to top up the hours worked in one of the other weeks.

**Items 11 and 13 of Schedule 2** provide that the new test with its section 17A activity requirements does not replace the current test for those for whom the activity requirements in **new section 17A** do not apply.

## Endnotes

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- 1 *Budget Measures 2005-06*, Budget Paper No.2, p. 143.
- 2 Department of Family and Community Services, Submission to the Senate Community Affairs Legislation Committee examining the Family and Community Services Legislation Amendment (Welfare to work) Bill 2005, para. 15.
- 3 Department of Family and Community Services, *Family Assistance Guide*, para. 2.6.3.10 Eligibility Requirements for Up to 50 Hours CCB, at: <http://www.facs.gov.au/faguide/guide/26310.htm>
- 4 Department of Family and Community Services, *2004 Census of Child Care Services*, p. 15. Full text at: [http://www.facs.gov.au/internet/facsinternet.nsf/childcare/04\\_census.htm](http://www.facs.gov.au/internet/facsinternet.nsf/childcare/04_census.htm) .

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- 5 For example see: S. Dunlevy, 'Working Parents Demand Priority', *Daily Telegraph*, 2 March 2005 p.22. For full text see [http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressclp&Criteria=CITATION\\_ID:YLCF6%3B](http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=pressclp&Criteria=CITATION_ID:YLCF6%3B) and S. Dunlevy, 'Money for Nothing', *Daily Telegraph*, 28 February 2005, p. 5. For full text see: [http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=PRESSCLP&Criteria=CITATION\\_ID:9UBF6%3B](http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=PRESSCLP&Criteria=CITATION_ID:9UBF6%3B) .
- 6 Hon. P. Costello MP, 'Child Care Tax Rebate Will Continue For Part Time Workers after 1 July 2006', *Media Release*, 23 June 2005. For full text see: <http://www.treasurer.gov.au/tsr/content/pressreleases/2005/064.asp> .
- 7 See the Explanatory Memorandum, p.11-12 for detail and examples. Full text at: [http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=EMS&Criteria=BILL\\_ID:r2457%3BEM\\_TYPE:EM%3BSOURCE:House%3B](http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=EMS&Criteria=BILL_ID:r2457%3BEM_TYPE:EM%3BSOURCE:House%3B) .

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