

EXPLANATORY STATEMENT

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

Summary

This determination is made under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act).

The purpose of this determination is to set out rules relating to the eligibility of child care services to become, and remain, approved child care services for the purposes of child care benefit (CCB).

Background

The *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) introduced CCB, which is a payment towards a family's child care costs. A person may be eligible for CCB under the Family Assistance Act for child care provided by an "approved child care service". An "approved child care service" is a service which is approved by the Secretary in accordance with Division 1 of Part 8 of the Administration Act. Subsection 205(1) of that Act provides that the Minister may determine rules relating to the eligibility of child care services to become approved, and to continue to be approved. Under paragraph 195(1)(c) of the Administration Act, a child care service must satisfy these rules in order to be approved, and under subsection 196(1) the approved service must satisfy the rules in order for its approval to continue.

Explanation of the provisions

Part 1

Section 1 of the determination states the name of the determination and section 2 states that the determination commences on 1 July 2000, which is the date that the CCB provisions of the Family Assistance Act will begin to operate. Section 3 contains interpretation provisions. Section 4 contains a provision which allows the Secretary to delegate powers under the instrument. Section 5 provides that decisions made under delegated powers are reviewable in the same way as decisions made under the Administration Act.

Part 2

Section 6 provides that the rules in Part 2 must be satisfied in order for a child care service to become approved for the purposes of CCB.

Section 7 sets out rules regarding the suitability of the applicant to operate a child care service. Where the applicant is a body rather than an individual, the suitability rules apply to the people who are responsible for the body's management. Factors to be considered in relation to a person's suitability include the person's expertise and previous record in providing child care, and any relevant criminal charges, convictions or restraining orders against the person.

Section 8 provides that the staff of a child care service must be suitable people to provide child care. The applicant is required to undertake that it will take reasonable steps to ensure that the staff are suitable, including checks for any relevant criminal charges, convictions or restraining orders against the person.

Section 9 provides that carers contracted by a family day care service must be suitable people to provide child care. The applicant is required to undertake that it will take reasonable steps to ensure that the carers are suitable, including checks for any relevant criminal charges, convictions or restraining orders against the person.

Section 10 sets out rules relating to the provision of care. Depending on the kind of child care service for which approval is sought, the applicant must give various undertakings in relation to matters such as the opening hours of the service, and whether the majority of children for whom care is to be provided will be attending school or will be under school age.

Section 11 provides that the construction, equipment and operation of the service must comply with all relevant laws. Section 12 provides that the service must have various kinds of insurance, although insurance cover is not required before the service is established.

Section 13 sets out rules relating to the priority of access. The applicant must undertake that the service will provide access to child care places in accordance with these rules. Subsections 13(2) and (3) provide that, where a service is funded or paid by an employer in order to provide child care places for the employer's staff, the service may give priority to the children of the staff. Subsections 13(4) and (5) provide that outside school hours care services should give school children priority over children who are under school age. Subsection 13(6) provides that, apart from where the service gives priority to children as above, the priority of access guidelines in the Schedule must be followed when a service fills vacant places. Subsection 13(7) provides that a lowest priority child (under the Schedule) may be required to leave the service in order to make room for a higher priority child in certain circumstances.

Section 14 provides that applicants for approval of centre based long day care services must be registered with the National Childcare Accreditation Council as a participant in the Council's Quality Improvement and Accreditation System (QIAS).

Part 3

Section 15 provides that the rules in Part 3 must be satisfied in order for an approved child care service to continue to be approved for the purposes of CCB.

Section 16 provides that the service must continue to satisfy the conditions of Part 2: the operator, or its key personnel, must continue to be suitable people to operate a child care service; staff and carers, including members of staff or carers taken on after the service was approved, must continue to be suitable people to provide child care, and appropriate checks must be carried out; the service must comply with any undertakings given by the operator before the service was approved, and must continue to have appropriate insurance.

Section 17 provides rules relating to continued approval for former childcare assistance services. Before the introduction of CCB, assistance with the cost of child care was available under the childcare assistance scheme. Child care services that were operating under this scheme immediately before CCB came into force are treated as being approved child care services for CCB; there is no formal approval process. These services are therefore not required to comply with Part 2 of this determination in order to become approved. Section 17 requires these services to comply with the relevant conditions as if they had gone through the Part 2 approval process. The effect is that all approved child care services are subject to the same conditions for continued approval, regardless of the way in which they became approved.

Section 18 provides that the operator must continue to be operated by the same person who operated the service when it was first approved. The purpose of this is to prevent transfers of approved child care services to new operators who have not been approved.

Section 19 provides that the operator of the service must give the Secretary written advance notice of certain events. The operator must also notify the Secretary if anything affects the suitability of a member of the service's staff, or a contracted carer, to provide child care.

Section 20 provides that the operator must allow officers of the Department or Centrelink to enter the service's premises to ensure that the service is being properly operated.

Section 21 provides that the operator must provide certain information, including information for a census or survey, if required to do so by the Secretary.

Section 22 sets out rules regarding the disclosure of personal information. The service must not disclose personal information about its clients, unless the information is legally required to be disclosed. The service must ensure that personal information about clients is adequately protected, and must adopt principles based on the National Principles for the Fair Handling of Personal Information. The service must not disclose to a client any information that may suggest that the client's child has been identified as being at risk of serious abuse or neglect.

Section 23 provides that a centre based long day care service must participate in the QIAS.

Section 24 provides that where a family day care service provides in-home care (a carer or an employee of the child care service providing care in the home of a child), the service must enter into an agreement with the care provider and the child's parent, setting out terms and conditions for the provision of the care. Subsection 24(2) sets out a list of matters which may be included in the agreement.

Section 25 provides that a service must not provide 24 hour care to a child unless the provision of that care has previously been approved under the Family Assistance Act. Where the 24 hour care is approved retrospectively, the service will be treated as though the care had been approved in advance.

Section 26 provides that a service which has been allocated places under section 207 of the Administration Act must not change its location without prior approval of the Secretary. This is to ensure that the Secretary retains control over the distribution of child care places.

Section 27 sets out rules for standard hours and non-standard hours family day care. Under the Family Assistance Act, standard hours and non-standard hours family day care (which are defined in section 3 of that Act) attract different rates of CCB. Section 27 provides that a service must set its own standard hours, within the limits set out in the section, for 50 hours per week. The service must have the same standard hours for all purposes. “Non-standard” hours are any hours which are not identified as standard hours.

Schedule

The Schedule sets out the priority of access guidelines (see section 13). Part 1 contains definitions of terms used in the Schedule. Part 2 lists the priorities: the first priority is children at risk of abuse or neglect, followed by children of parents who satisfy the work/training/study test under the Family Assistance Act. Any other child is a third priority child. Part 3 of the Schedule lists groups of children who are to be given priority within the categories set out in Part 2. The groups in Part 3 are not themselves in any order of priority.