



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

I, JOCELYN MARGARET NEWMAN, Minister for Family and Community Services, make this Determination under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 26th June 2000.

Jocelyn Newman
Minister for Family and Community Services



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made under the

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

Contents

	Page
Part 1	Preliminary
1	Citation 4
2	Commencement 4
3	Interpretation 4
4	Delegation 5
5	Review of decisions 5
Part 2	Eligibility for approval
6	Approval rules 6
7	Suitability of applicant 6
8	Suitability of staff 7

9	Family day care services: suitability of carers	8
10	Provision of care	8
11	Compliance with child care laws	9
12	Insurance	9
13	Priority of access	10
14	Centre-based long day care services: registration to participate in QIAS	11

Part 3 Eligibility for continued approval

15	Continued approval rules	12
16	Continuing compliance with Part 2	12
17	Former childcare assistance agreement services	13
18	Continuity of operator	14
19	Notifiable events	14
20	Inspection	15
21	Information regarding child care services	15
22	Personal information	15
23	Centre-based long day care services: participation in QIAS	16
24	Family day care services: in-home care	16
25	24 hour care	17
26	Change of location	18
27	Standard hours family day care	18

Schedule

	Priority of access guidelines	20
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Part 1 Preliminary

1 Citation

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

2 Commencement

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

(1) In this determination, unless the contrary intention appears:

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 to provide child care;

Council means the National Childcare Accreditation Council;

in-home care means child care provided by a carer, or an employee of an approved child care service, in the home of a child;

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;

QIAS means the Quality Improvement and Accreditation System administered by the Council;

State includes Territory.

- (2) Unless the contrary intention appears, expressions used in this determination 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) Act 1999*.

4 Delegation

The Secretary may, in writing, delegate to an officer all or any of the powers of the Secretary under this determination.

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 may 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; and
 - (f) any relevant restraining orders that have been made against the applicant.
- (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; and
 - (c) any relevant restraining orders that have been made against a staff member.
- (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, 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; and
 - (c) any relevant restraining orders that have been made against the carer.
- (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 or a family 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.
- (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, 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.

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 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 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.
- (6) The approved child care service must comply with any undertaking given by the operator for the service under subsection 8(2), 9(2), 10(1), (2) or (3) or 13(1) of this determination.
- (7) The operator of the approved child care service must continue to comply with section 12 of this determination (insurance).

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) 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

If the operator is given a form by the Secretary for:

- (a) a census or survey of child care services, or
- (b) the collection of information regarding the operation of child care services,

the operator must accurately complete the form, and return it to the Secretary within any period required by the Secretary.

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 adopt principles based on the National Principles for the Fair Handling of Personal Information issued by the Privacy Commissioner 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 published by the Council; and
- (b) maintain good quality child care or make satisfactory progress to improve the quality of child care in accordance with the QIAS as assessed by the Council.

24 Family day care services: in-home care

- (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 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) should set out terms and conditions for the provision of in-home care, and may 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.

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

- (1) For the purposes of the definitions in section 3 of the Family Assistance Act, standard hours of family day care and non-standard hours of family day care shall be identified in accordance with the following provisions of this section.
- (2) An approved family day 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 apply for all purposes and in respect of all children in the service's care.
- (6) Non-standard hours of family day 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.