

EXPLANATORY STATEMENT

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination (No. 1) 2000

Summary

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

The purpose of this determination is to amend the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 (the Approval Determination) that sets 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).

The Approval determination is amended to:

- set out rules relating to the eligibility of an in-home care service to become approved, and continue to be approved, as an approved in-home care service;
- restrict the Secretary's delegation powers under the Approval determination so that the powers are delegated only to officers of the Department and the Commonwealth Services Delivery Agency;
- make it obligatory for the Secretary to consider the matters affecting the suitability of the applicant, or the applicant's key personnel (if the applicant is not an individual), for the purpose of determining the application for approval of a child care service;
- remove the requirement that restraining orders against a staff member or a contracted carer must be checked by a service to ensure that the staff and the carers are suitable people;
- remove the requirement that restraining orders against an applicant must be taken into consideration by the Secretary when determining the applicant's suitability to operate a child care service; and
- remove the requirement for a family day care service that the service undertakes to provide care mostly to children who have not yet commenced school.

Explanation of the clauses

Name of the determination

Clause 1 states the name of this determination.

Commencement of the determination

Clause 2 states that this determination commences on 1 January 2001, immediately after the commencement of Schedule 2 to the ***Family and Community Services (2000 Budget and Related Measures) Act 2000***, which amends the Family Assistance Administration Act to enable the approval of in-home care services for the purposes of CCB.

Amendment

Clause 3 states that the Schedule amends the Approval Determination.

Explanation of the items in the Schedule

Amendments for the purposes of in-home care

Subsection 205(1) of the Family Assistance Administration 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, for the purposes of the family assistance law. Under paragraph 195(1)(c) of that 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. The rules are set out in the Approval Determination.

From 1 January 2001, the choice of child care services for which CCB may be available is extended to include in-home care. It will enable greater access to child care services for families who fall outside mainstream services, eg families in rural and remote locations, parents working shifts/non-standard hours or families where a parent or child has an illness or disability. To give effect to this measure, Schedule 2 of the ***Family and Community Services (2000 Budget and Related Measures) Act 2000*** amended the ***A New Tax System (Family Assistance) Act 1999*** (the Family Assistance Act) and the Family Assistance Administration Act. These amendments:

- enable the approval of in-home care services for the purposes of CCB;
- enable the payment of CCB for care provided by an approved in-home care service at the rate and amount applicable to care provided by a family day care service; and
- align the treatment of approved in-home services in other aspects with the treatment afforded to approved family day care services.

This determination amends the Approval Determination to provide rules for approval, and continued approval, of in-home care services. These rules are similar to the rules that apply for the family day care services.

Item 1 – definition of carer

For the purposes of the Approval Determination, “carer” is defined in subsection 3(1) of that determination as a person contracted by a family day care service to provide care. As in-home care services will also contract persons to provide care, item 1 amends this definition so that “carer” means a person contracted by a family day care service or an in-home care service.

Item 2 – definition of in-home care

To reflect the fact that in-home care may be provided to a group of children from different families in the home of one of the children being cared for, item 2 makes a technical amendment to the definition of “in-home care” in subsection 3(1) of the Approval Determination.

Item 7 – suitability of carers

Section 9 of the Approval Determination 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 and convictions. Item 7 amends section 9 so that the suitability requirements apply also to carers contracted by an in-home care service.

Item 10 – provision of care

Section 10 of the Approval Determination 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 the provision of care by those services.

Item 10 amends section 10 by inserting new subsections (1B) and (1C).

Subsection (1B) specifies the minimum operational requirements of an in-home care service. It provides that an applicant for approval of an in-home care service must undertake that the service:

- will provide child care places only to a child to whom no other approved child care service (other than an approved in-home care service) can provide care, or can provide care that is suitable for the child in any of the circumstances specified in new subsection (1C);
- will operate on all normal working hours in at least 48 weeks of the year;
- will be available for care to any child for at least 8 continuous hours on each normal working day on which the service operates; and
- in respect of a child who attends a session of care, the service will not prevent the child from attending any part of that session.

New subsection (1C) specifies circumstances in which a child may be provided care by an in-home care service. The circumstances are as follows:

- the child, or any other child with whom the child lives, has an illness or disability; this provision enables children with an illness or a disability and their siblings needing child care to have access to in-home care; it enables in-home care to be provided to all children needing care in the family, where at least one of the children in the family is ill or has a disability;
- the child's parent has an illness or disability that reduces the parent's capacity to care for the child;
- the child lives in a rural or remote area;
- work hours of the child's parent 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; this enables in-home care for the children of people whose work hours fall outside (either completely or partly) the operational hours of otherwise available approved child care services;
- the child's parent is caring for three or more children (including the child) who have not yet commenced school;
- the child, or any other child in the child's family, is breastfed by the mother working from home; this provision enables a breastfed child and his/her siblings needing child care, and where the mother is working from home, to have access to in-home care; it enables in-home care to be provided to all children needing care in the family, where at least one of the children in the family is a breastfed child of a mother working from home; or
- any other circumstances determined by the Secretary in relation to the child.

Item 11 – priority of access

Section 13 of the Approval Determination sets out rules relating to the priority of access of centre based long day care services, family day care services and outside school hours care services. The applicant must undertake that the service will provide access to child care places in accordance with these rules. For example, 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. 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.

Item 11 amends section 13 so that the priority access rules also apply to in-home care services.

Items 12, 13 and 14 – continuing compliance with Part 2

Section 16 of the Approval Determination provides that the service must continue to satisfy the conditions of Part 2 of that determination. That is, 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.

Items 12, 13 and 14 amend section 16 to ensure that the continuing compliance requirements apply to in-home care services.

Item 15 – notifiable events

Section 19 of the Approval Determination 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.

Item 15 amends section 19 to ensure that the operator of in-home care is also subject to the notification obligations.

Items 16, 17, 18 and 19 – in home care agreement

Section 24 of the Approval Determination provides that where a family day care service uses vacant family day care places to provide in-home care, 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.

Item 17 amends subsection 24(1) to ensure that an in-home care service is also under the obligation to enter into an agreement for in-home care.

Item 16 amends the heading to section 24 to reflect the fact that the section applies to family day care services and in-home care services.

Items 18 and 19 amend subsection 24(2) to make it obligatory for a service to include in an agreement all the matters specified in that subsection.

Items 20, 21, 22, 23 and 24 – standard hours

Section 27 of the Approval Determination 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.

Items 21, 22, 23 and 24 amend section 27 so that the same standard hours and non-standard hours rules apply to an in-home care service.

Item 20 amends the heading to section 27 to reflect the fact that the section applies to family day care services and in-home care services.

Amendment to the Secretary's delegation power

Item 3 – delegation

Section 4 of the Approval Determination allows the Secretary to delegate powers under that instrument to an “officer”. As section 3 of the Family Assistance Administration Act defines “officer” as the officer of an ‘agency’ and the “agency” is defined as the Department, the Commonwealth Services Delivery Agency, the Australian Taxation Office or the Health Insurance Commission, the delegation power is broader than necessary.

Therefore, item 3 substitutes a new section 4 of the Approval Determination. New section 4 restricts the delegation of the powers under the Approval Determination to officers of the Department and the Commonwealth Services Delivery Agency.

Amendment to suitability provisions

Section 7 of the Approval Determination 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.

Items 4 and 5 – suitability of the applicant

In considering an applicant's suitability, the Secretary “may” consider a number of matters specified in subsection 7(3) of the Approval Determination (eg. the person's expertise and previous record in providing child care, and any relevant criminal charges, convictions or restraining orders against the person). As it is intended that the Secretary will consider these matters, item 4 of the Schedule amends subsection 7(3) to specify that the Secretary must consider these matters.

One of the factors to be considered by the Secretary in relation to a person's suitability is whether any relevant restraining orders have been made against the person as referred to in paragraph 7(3)(f) of the Approval Determination. Item 5 omits the requirement that restraining orders must be taken into consideration when the Secretary considers an application for approval of a service. The amendment is made as a consequence of the amendment made by item 4 which removes any discretion the Secretary currently has when making a decision to approve a service. Paragraphs 7(3)(d) and (e) of the Approvals determination, the outcomes of which must be considered by the Secretary, adequately cover the requirement to check the criminal history of the applicant.

Items 6 and 8 – suitability of staff and carers

Section 8 of the Approval Determination provides that the staff of a child care service must be suitable people to provide child care and 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 to take reasonable steps to ensure that the staff, or carers (as the case may be), are suitable, including checks for any relevant criminal charges, convictions or restraining orders against the person.

The requirement concerning restraining orders was intended to align the suitability requirements for staff or carers contracted by child care services with the requirements under the State and Territory licensing laws. However, as not all State and Territory requirements include checking for restraining orders, the services cannot be expected to make these checks as a condition of approval. Therefore, items 6 and 8 remove the requirement specified in paragraphs 8(3)(c) and 9(3)(c) respectively that the service undertakes a check of any restraining orders made against a staff member or a carer.

Amendments to approval requirements for family day care services

Items 9 and 10 – Provision of care

Section 10 of the Approval Determination 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 the provision of care by those services.

Subparagraph 10(1)(a)(i) specifies that a centre based long day care service and the family day care service must undertake that, among other things, most of the children will not have commenced school. Although this requirement does not cause any problems for most of the family day care services, it may have an impact on the viability of some services, particularly those in rural and remote areas. Some of these services would not continue to be viable unless they are able to provide care to a significant number of older children. To assist those services, the requirement that most of the children in the care of a family day care service will not have commenced school is removed. To achieve this, item 9 amends subsection 10(1) to limit its application to centre based long day care services and item 10 inserts a new subsection 10(1A), applying to family day care services, which does not include the requirement to provide care mostly to children who have not yet commenced school.