

## EXPLANATORY STATEMENT

### Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2006 (No. 1)

#### 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). It is a legislative instrument for the purposes of the **Legislative Instruments Act 2003**.

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 the rules for child care services to become, and remain, approved for the purposes of child care benefit (CCB).

Under the **A New Tax System (Family Assistance) Act 1999**, a person may be eligible for CCB for child care provided by an 'approved child care service'. An 'approved child care service' is a service approved under section 195 of the Family Assistance Administration Act. To continue to be approved, a child care service must comply with the eligibility rules (Approval Determination) determined by the Minister under section 205(1). Failure to comply with any of the eligibility rules may result in a sanction being imposed on the service at the Secretary's discretion (section 200 of the Family Assistance Administration Act refers).

This Determination amends the Approval Determination by:

- making consequential amendments as a result of amendments made to the Child Care Benefit (Allocation of Child Care Places) Amendment Determination 2006 (No 1);
- providing greater flexibility in how information regarding approved child care services can be requested and obtained; and
- incorporating a reference to a new quality assurance document in respect of which approved child care services will be required to comply.

#### Background

##### *Consequential amendments*

The Child Care Benefit (Allocation of Child Care Places) Determination 2000 (Allocation Determination) deals with the guidelines for allocation of child care places to child care services of the kind specified in that Determination.

As a result of the 2005-2006 Budget decision to remove, from 1 July 2006, the limits on the number of places provided by approved family day care (FDC) services and outside school hours care (OSHC) services, the Allocation Determination has been amended by the Child Care Benefit (Allocation of Child Care Places) Amendment Determination 2006 (No 1) (Amending Allocation Determination) to remove all references to approved FDC and OSHC services. The effect of the amendments is that the allocation regime will cease to apply to FDC and OSHC services from 1 July 2006.

Currently, the allocation of places to FDC services for the purposes of the JET Program results in the obligation of FDC services to provide those places in accordance with the terms of the allocation. These obligations are specified in the Approval Determination (sections 13 and 17A). As a result of amendments made in respect of FDC services by the Amending Allocation Determination these obligations will cease to apply. This Determination amends the Approval Determination to remove references to those obligations accordingly.

Consultation was unnecessary because the amendments give effect to the decision announced in the 2005-2006 Budget to remove the existing limitations on the number of places that FDC and OSHC services are able to provide.

The Office of Regulation Review (ORR) has advised that a Regulation Impact Statement (RIS) is not required for this Determination (ORR ID # 8094 and 8132).

#### *Information regarding approved child care services*

The amendments made by this Determination provide greater flexibility in how information regarding child care services can be requested and obtained.

One of the rules with which approved child care services must comply for continued approval is section 21 of the Approval Determination, dealing with information regarding child care services. Prior to this amendment section 21 provided that if the operator of a child care service was given a form by the Secretary for a census or survey of child care services, or for the collection of information regarding the operation of child care services, the operator had to accurately complete the form, and return it to the Secretary within the period required.

The requirement to 'give' a 'form' is not sufficiently broad enough to authorise the Secretary to seek or obtain the necessary information by telephone, electronically or on an ongoing basis.

The ***Electronic Transactions Act 1999*** (the ET Act) does not apply to the Approval Determination as the Electronic Transactions Regulations 2000 currently exempt certain provisions of the Family Assistance Administration Act from the application of the ET Act.

For this reason, child care services cannot rely on the ET Act to produce the requested information in electronic form without the approval of the Secretary.

This Determination amends the Approval Determination to provide greater flexibility in how information regarding child care services can be requested and obtained. In particular, it will enable the Secretary to:

- collect information about approved child care services by telephone or other electronic means; or
- require approved child care services to report up-to-date information relevant to the operation of child care services on an ongoing basis.

This Determination does not affect the scope of information that the Secretary may request. The information must still be for a census or survey of child care services, or regarding the operation of child care services (the amendments clarify that this may include information about contact details of FDC carers, or information concerning vacancies in approved child care services).

Information collected under this Determination is subject to the ***Privacy Act 1988*** and the confidentiality provisions in Part 6 of the Family Assistance Administration Act.

These amendments relate to the A New Tax System (Family Assistance)(Administration) (Child Care Benefit - Record Keeping) Rules 2006.

The Office of Regulatory Review has advised that a Regulation Impact Statement is not required for these Rules as these Rules are effectively amendments of a minor nature and do not substantially alter existing arrangements (RIS ID: 8260)

As this Determination is of a minor nature, and does not substantially alter existing arrangements, consultation on this Determination was considered unnecessary or inappropriate in accordance with section 18 of the ***Legislative Instruments Act 2003***.

#### *Reference to new quality assurance document*

One of the conditions of continued approval applicable to centre based long day care services, FDC services and OSHC services is the requirement to participate in the relevant quality assurance system in accordance with any requirements published by the National Childcare Accreditation Council (the Council) (sections 23, 23A, 23B, 24A, and 24B of the Approval Determination refer).

The Council administers the Quality Improvement and Accreditation System (QIAS) for centre based long day care services, the Family Day Care Quality Assurance system (FDCQA) for FDC services, and the Outside School Hours Care Quality Assurance system (OSHCQA) for OSHC services. The systems are being continually developed and improved, and up-to-date information about the requirements of the systems is communicated by the Council to approved child care services through the Council's publications.

This Determination amends the Approval Determination to include specific references to the *Child Care Quality Assurance Compliance Requirements*, 1<sup>st</sup> edition, 2006 (the Compliance document), a publication that sets out and clarifies the consequences of non-compliance with the main quality assurance requirements applicable to services participating in the QIAS, the FDCQA and the OSHCQA.

Amendments made in this Determination will strengthen child care services' compliance with quality assurance requirements as a condition of services' continued approval by specifying the circumstances in which a breach of the quality assurance requirements will result in the Council reporting the service to the Secretary as being non-compliant with the relevant quality assurance system.

The quality assurance requirements, as they relate to each quality assurance system, are contained in the following documents published by the Council and specified in the Approval Determination as currently in force:

- *QIAS Quality Practices Guide*, 1<sup>st</sup> edition, 2005
- *QIAS Handbook*, 3<sup>rd</sup> edition, 2005
- *QIAS Self-study Report*, 3<sup>rd</sup> edition, 2005
  
- *FDCQA Quality Practices Guide*, 2<sup>nd</sup> edition, 2004
- *FDCQA Handbook*, 2<sup>nd</sup> edition, 2004
- *FDCQA Self-study Report*, 2<sup>nd</sup> edition, 2004
  
- *OSHCQA Quality Practices Guide*, 1<sup>st</sup> edition, 2003
- *OSHCQA Handbook*, 1<sup>st</sup> edition, 2003
- *OSHCQA Self-study Report*, 1<sup>st</sup> edition, 2003

Where the Secretary is satisfied that a service has failed to participate in the relevant system in accordance with any quality assurance requirements specified in the publications, the Secretary may decide to impose a sanction on the service, such as the suspension or cancellation of the service's approval for CCB purposes (section 200 of the Family Assistance Administration Act). In relation to services that do not comply with the relevant quality assurance requirements, reporting of services to the Secretary, by the Council, may trigger the sanctioning process.

The Compliance document sets out the main quality assurance requirements (as specified in the quality assurance publications referred to in the Approval Determination) applicable to all services participating in the quality assurance systems. It also clarifies for services the existing policy of the Council with respect to the circumstances in which a service will be reported by the Council to the Secretary for a failure to comply with the relevant quality assurance requirements.

The publications referred to in the Approval Determination specify that the Council may report a service to the Secretary where the service has breached its quality assurance obligations. However, given the adverse effects that flow from the sanctions that may result from the breach (for example, cancellation of a service's approval for CCB purposes), the Council identified the need to provide all approved services with a single document that clearly specifies the circumstances in which a breach of the requirements will result in the Council reporting a service to the Secretary.

As a result of these amendments, the Compliance document will form part of the quality assurance systems and an approved child care service will be required to comply with the relevant system as a condition of the service's continued approval.

Consultation was unnecessary as the amendments are of a minor nature and do not substantially alter existing arrangements.

The Office of Regulatory Review (ORR) has advised that a Regulation Impact Statement (RIS) is not required for this Determination (ORR ID # 7899).

## **Explanation of the sections**

### *Name of Determination*

Section 1 states the name of this Determination.

### *Commencement*

Section 2 states that this Determination commences on 1 July 2006.

### *Amendment of the Approval Determination*

Section 3 states that Schedule 1 amends the Approval Determination.

## **Explanation of the items in Schedule 1**

### ***Consequential amendments resulting from amendments to the Allocation Determination – items 1 to 4***

#### *Item 1- definition of ‘JET child care place’*

Section 3 of the Approval Determination defines the terms used in that Determination. Item 1 omits the definition of ‘JET child care place’ from subsection 3(1) as a consequence of the amendment made by items 2 and 4.

#### *Item 2- amendment to subsection 13(1A)*

As a condition of approval of an FDC service, subsection 13(1A) requires the service to observe the priority of access relevant to the allocation of JET places. As from 1 July 2006 there will be no allocation of places to FDC services, subsection 13(1A) no longer serves any purpose and is omitted by item 2.

#### *Item 3- amendment to subsection 17(8)*

Item 3 amends cross-references in subsection 17(8) as a consequence of the amendments made by item 2.

#### *Item 4- amendment to section 17A*

As a condition of continued approval of an FDC service, section 17A prevents an approved FDC service from providing a JET child care place otherwise than in accordance with the terms of the allocation. As from 1 July 2006 there will be no allocation of places to FDC services, subsection 17A no longer serves any purpose and is omitted by item 4.

### ***Information regarding approved child care services – item 5***

#### *Item 5 – amendment to section 21*

This item substitutes section 21 with a new section 21 incorporating new subsections to provide greater flexibility in how information regarding child care services can be requested and obtained.

Subsection 21(1) allows the Secretary to request an operator or child care service to give information: (a) for a census or survey of child care services; or (b) regarding the operation of child care services. This subsection now enables the Secretary to ‘request’ information, rather than giving a form. While the scope of the type of information that can be requested has not been expanded with these amendments, it has always been the intention of the Australian Government to interpret the phrase ‘regarding the operation of child care services’ broadly.

Nonetheless, subsection 21(2), without limiting the scope of subsection 21(1), lists examples of the types of requests for information that fall within the definition of 'regarding the operation of child care services'. The examples include requesting information about vacancies in child care services and about personal details of carers employed or contracted by a FDC services.

A FDC service is a kind of approved child care service, comprising a network of carers who provide child care in their own homes for other people's children. The operator of a FDC service (usually a community organisation) supports and administers the network of carers and is responsible for the effective operation of all components of the service. The individual carers may be employees or contractors of the organisation operating the service.

These amendments relate to the A New Tax System (Family Assistance) (Administration) (Child Care Benefit - Record Keeping) Rules 2006 which extended the already existing record keeping requirements to oblige operators of approved FDC services to keep current contact details (for example telephone numbers and addresses) of carers employed, or contracted, by the services.

Information collected under this Determination is subject to the ***Privacy Act 1988*** and the confidentiality provisions in Part 6 of the Family Assistance Administration Act.

These examples are for information purposes only and are not indicative of the scope or intention of the section and in no way narrow the application of section 21.

Subsection 21(3) states that the Secretary may require information to be given on an ongoing basis.

Subsection 21(4) states that the requested information must be given to the Secretary, or to a person specified by the Secretary: (a) accurately; and (b) within the time, or at the time, required by the Secretary and (3) in the form, manner or way specified in the request. This enhances the original wording of section 21 to clarify that the Secretary can request the information to be given to a specified person and in a specified form.

Subsection 21(5) states that the Secretary may terminate a request for information at any time.

Section 21A states that the Secretary may approve the form, manner or way of requesting or giving information under section 21. The note to this section also states that for the power of the Secretary to approve the form, manner or way of doing any thing that is required or permitted to be done under the family assistance law (section 4 of the Family Assistance Administration Act refers). Under that section, the Secretary may approve the use of a telecommunication system or other electronic equipment. Basically, this provision confirms that information can be obtained by telephone or other electronic means.

**Reference to new quality assurance document – items 6 to 14**

*Item 6 - amendment to paragraph 23(a)*

Item 1 amends paragraph 23(a) to substitute the reference to '1 January 2006:' with a reference to '1 July 2006:' as the date in respect of which the publications are in force.

As a result, it will be a condition of the continued approval of a centre based long day care service that the service complies with the requirements specified in the publications referred to in section 23, as in force on 1 July 2006. These publications include the Compliance document.

*Item 7 - amendment to subparagraph 23(a)(iii)*

Paragraph 23(a) includes references to the current QIAS publications. Item 2 makes a stylistic amendment to subparagraph 23(a)(iii) to facilitate the inclusion of the new Compliance document in the paragraph.

*Item 8 - amendment to paragraph 23(a)*

Item 3 inserts new subparagraph 23(a)(iv) to include the *Child Care Quality Assurance Compliance Requirements*, 1<sup>st</sup> edition, 2006, as the additional publication relevant to the QIAS from 1 July 2006.

*Item 9 - amendment to paragraph 23A(a)*

Item 4 amends paragraph 23A(a) to substitute the reference to 'at the commencement of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2005 (No 1)*;' with a reference to 'on 1 July 2006:' as the date in respect of which the publications are in force.

As a result, it will be a condition of the continued approval of a family day care service that the service complies with the requirements specified in the publications referred to in section 23A, as in force on 1 July 2006. These publications include the Compliance document.

*Item 10 - amendment to subparagraph 23A(a)(iii)*

Paragraph 23A(a) includes references to the current FDCQA publications. Item 5 makes a stylistic amendment to subparagraph 23A(a)(iii) to facilitate the inclusion of the new Compliance document in the paragraph.

*Item 11 - amendment to paragraph 23A(a)*

Item 6 inserts new subparagraph 23A(a)(iv) to include the *Child Care Quality Assurance Compliance Requirements*, 1<sup>st</sup> edition, 2006, as the additional publication relevant to the FDCQA from 1 July 2006.



*Item 12- amendment to paragraph 24A(2)(a)*

Item 7 amends paragraph 24A(2)(a) to substitute the reference to 'at the commencement of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2005 (No 1)*;' with a reference to 'on 1 July 2006:' as the date in respect of which the publications are in force.

As a result, it will be a condition of the continued approval of an outside school hours care service that the service complies with the requirements specified in the publications referred to in section 24A, as in force on 1 July 2006. These publications include the Compliance document.

*Item 13- amendment to subparagraph 24A(2)(a)(iii)*

Paragraph 24A(2)(a) includes references to the current OSHCQA publications. Item 8 makes a stylistic amendment to subparagraph 24A(2)(a) to facilitate the inclusion of the new Compliance document in the paragraph.

*Item 14- amendment to paragraph 24A(2)(a)*

Item 9 inserts new subparagraph 24A(2)(a)(iv) to include the *Child Care Quality Assurance Compliance Requirements*, 1<sup>st</sup> edition, 2006, as the additional publication relevant to the OSHCQA from 1 July 2006.