

EXPLANATORY STATEMENT

A New Tax System (Family Assistance) (Child Care Benefit - Children in respect of whom no-one is eligible) Determination 2006

Summary

This Determination is made under subsection 49(3) of the **A New Tax System (Family Assistance) Act 1999** (the Family Assistance Act). It is a legislative instrument for the purposes of the **Legislative Instruments Act 2003**.

The purpose of this Determination is to determine a class of children in respect of whom no-one is eligible for child care benefit (CCB).

As a result of this Determination, from 3 July 2006, the legislation will be aligned with current policy and practice which is that a family day carer or an in-home carer is not eligible for CCB in respect of a session of care provided to the child by the carer, if the child is an FTB child of the carer or the carer's partner.

Background

An individual may be eligible for CCB in respect of a session of care provided to a child by a child care service approved for the purposes of the family assistance law. An 'approved child care service' includes a 'family day care service' and an 'in-home care service' (as defined in subsection 3(1) of the *A New Tax System (Family Assistance)(Administration) Act 1999* (the Family Assistance Administration Act).

Family day care service

A family day care service is a kind of approved child care service, comprising a network of family day carers who provide child care in their own homes for other people's children. The operator of a family day care service, typically a community organisation, supports and administers the network of family day carers and is responsible for the effective operation of all aspects of the service, including the contracting or employment of individual carers.

In-home care service

An in-home care service is another kind of approved child care service. In-home care is a form of child care where care is provided to a child in the child's home by an in-home carer. The operator of the in-home care service supports and administers a network of in-home carers, and individual carers may either be employed or contracted by the operator of the service.

Eligibility for care provided to own child

Division 4 of Part 3 of the Family Assistance Act sets out the provisions relating to an individual's eligibility for CCB. An individual is eligible for CCB in respect of a session of care provided by an approved child care service if, amongst other things, the child is an FTB child of the individual or the individual's partner (paragraphs 42(1)(a) and 44(1)(a) of the Family Assistance Act refer).

'FTB child' is defined in subsection 3(1) of the Family Assistance Act. In relation to CCB, 'FTB child' has the meaning given in Subdivision A of Division 1 of Part 3.

There may be cases in which a carer who works for an approved child care service provides care for his or her own (FTB) child while he or she simultaneously provides care to other children. Currently, the carer, or the carer's partner, may be eligible for CCB for care provided by the carer to the carer's FTB child, or the FTB child of the partner.

However, registered carers who care for their own children are not eligible for CCB in respect of that care (paragraph 45(1)(c) of the Family Assistance Act refers).

Limitations on eligibility for CCB

Subsection 49(3) of the Family Assistance Act (*Exempt class of children*) provides that the Minister may determine that children included in a specified class are children in respect of whom no-one is eligible for child care benefit under Division 4, Part 3. The Minister has not previously specified any class of children under subsection 49(3).

The policy intent and practice is not to allow family day carers or in-home carers to claim CCB for providing care to their own children. This policy is based on the inequity that would result if these individuals were able to claim CCB in respect of their own FTB children, based on the carer charging him or herself a fee for providing the care.

This Determination made under subsection 49(3) has the effect that, from 3 July 2006, if a family day carer or an in-home carer provides care to the carer's or the partner's FTB child, nobody (neither the carer nor the partner) is eligible for CCB for sessions of care provided by the carer.

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

The Office of Regulation Review (ORR) has advised that a Regulation Impact Statement (RIS) is not required for this Determination (ORR ID # 8194).

Explanation of the sections

Name of Determination

Section 1 states the name of this Determination.

Commencement

Section 2 states that this Determination commences on 3 July 2006.

Definitions

Section 3 states the definitions of the words 'Act' and 'carer' for the purposes of the Determination. 'Act' is defined to mean the *A New Tax System (Family Assistance) Act 1999*, and 'carer' is defined to mean 'a person who is employed or contracted by an approved family day care service to provide family day care' (paragraph 3(a)), or 'a person who is employed or contracted by an approved in-home care service to provide in-home care' (paragraph 3(b)).

Note 1 directs the reader to the definitions of 'approved family day care service' and 'approved in-home care service' as defined in subsection 3(1) of the Family Assistance Administration Act. These expressions are used in this Determination and they have the same meaning as in the Family Assistance Administration Act.

Note 2 signposts the definition of 'FTB child' in subsection 3(1) of the Family Assistance Act.

FTB children of carers

Subsection 4(1) states that, for the purposes of subsection 49(3) of the Act, the children included in the class of children to whom subsection 4(2) applies are children in respect of whom no-one is eligible for CCB under Division 4 of Part 3 of the Act.

Subsection 4(2) operates to the effect that no-one will be eligible for CCB in respect of a session of care provided to the child if the session of care is provided by a carer (paragraph 4(2)(a)) and the child is an FTB child of the carer or of the partner of the carer (paragraph 4(2)(b)).

For example, in a situation where a child is an FTB child of a resident mother and non-resident father, and the mother provides care to the child in her capacity as a family day carer, section 4 will prevent both the mother and the father from being eligible for CCB for sessions of care provided by the mother.

The mother or the father in this example could be eligible for CCB for care provided to the child if the care is provided by another carer (not the mother).