

## EXPLANATORY STATEMENT

### ***A New Tax System (Family Assistance) (Administration) (Exemption from Eligibility Rules—Child Care Services of Specified Classes) Determination 2011 (No. 1)***

#### **Authority**

The *A New Tax System (Family Assistance) (Administration) (Exemption from Eligibility Rules—Child Care Services of Specified Classes) Determination 2011 (No. 1)* (this Determination) is made under paragraph 205(3)(b) of the ***A New Tax System (Family Assistance) (Administration) Act 1999*** (the Act), which forms part of the family assistance law.

Paragraph 205(3)(b) gives the Secretary power to determine that one or more of the rules relating to eligibility of child care services to become approved, and to continue to be approved, for the purposes of the family assistance law, do not apply to child care services of a specified class or specified classes.

This Determination is a legislative instrument for the purposes of the ***Legislative Instruments Act 2003***.

#### **Purpose of this Determination**

Subsection 205(1) of the Act provides for the Minister to determine by legislative instrument:

- (a) rules relating to the eligibility of child care services to become approved for the purposes of the family assistance law; and
- (b) rules relating to the eligibility of those services to continue to be so approved.

The current rules under subsection 205(1) are the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (the Eligibility Rules).

Paragraph 205(3)(b) authorises the Secretary to determine that one or more of the Eligibility Rules do not apply to child care services of a specified class or of specified classes. Subsection 205(4) provides that such a determination is a legislative instrument.

Sections 14, 14A and 14B of the Eligibility Rules make it a condition for approval for a centre based long day care service, a family day care service and an outside school hours care service, respectively, that the service be registered with the National Childcare Accreditation Council (NCAC) as a participant in the child care quality assurance system relevant to the kind of service. If a service does not satisfy this condition, it cannot be approved for the purposes of the family assistance law. Child care benefit and child care

rebate (payments under the family assistance law) cannot be paid in respect of care provided to children by a child care service that is not so approved.

Once a service is approved for the purposes of the family assistance law, sections 23, 23A and 24A of the Eligibility Rules make it a condition for continued approval of the service to participate in the child care quality system for that kind of the service. The NCAC assesses services' progress against the relevant child care quality systems.

In anticipation of the commencement on 1 January 2012 of the Education and Care Services National Law establishing the National Quality Framework replacing the quality assurance systems administered by the NCAC, and establishing a new statutory authority to oversee its administration (the Australian Children's Education and Care Quality Authority), the NCAC is winding down its operation. The NCAC's registration function will cease on 31 October 2011 and the quality assessment function will be then progressively reduced to cease on 31 December 2011. Therefore, from 1 November 2011, centre based long day care services, family day care services and outside school hours care services will not be able to meet the condition for approval and continued approval requiring these services to be registered with the NCAC and participate in its quality assurance systems.

The purpose of this Determination is to exempt centre based long day care services, family day care services and outside school hours care services from the requirement to register with the NCAC and to participate in the relevant child care quality systems administered by the NCAC. The exemption will apply only if the determination of the application for the service's approval for the purposes of the family assistance law is made on or after 1 November 2011.

This Determination will enable approval and continued approval of these services for the purposes of the family assistance law in the period after 1 November 2011 and until the commencement of the Education and Care Services National Law in the State or Territory in which the service operates.

Once the Education and Care Services National Law commences, the compliance with this law, including its National Quality Framework, will be a condition of the services' approval and continued approval for the purposes of the family assistance law.

In the period before the commencement of the Education and Care Services National Law, the family assistance law requires these services, as a condition of their approval and continued approval, to comply with the licensing law, including its quality requirements, of the State/Territory in which the service operates.

## **Consultation statement**

As this Determination removes the conditions of approval of child care services for the family assistance law purposes, with which the services in the specified class could not otherwise comply due to the cessation of the NCAC operation, consultation on this particular measure with child care services was considered unnecessary. Extensive consultations have been conducted during the development of the National Quality Framework that will replace the NCAC quality assurance systems.

Regulation Impact Statement consultations on the National Quality Framework were undertaken from July to September 2009, including: consultation documents, open public forums in all capital cities and a number of regional centres, a call for written submissions and focus group discussions. The "*Regulation Impact Statement for Early Childhood Education and Care Quality Reforms, COAG Decision RIS, December 2009*" based on this consultation process was released publicly in December 2009.

Public information forums were also conducted in April and May 2010 in metropolitan and some regional locations across Australia. Additional information and consultation forums that focused on the processes for quality assessment and ratings of services and the Education and Care Services National Law were held in November and December 2010. Further forums and a public submission process were held in the first half of 2011 to consult on the exposure draft of the Education and Care Services National Regulations made under the Education and Care Services National Law.

A Stakeholder Reference Group of the Early Childhood Development Working Group (established under the Ministerial Council for Education, Early Childhood Development and Youth Affairs) is a key consultation mechanism that helps to inform implementation of the National Quality Framework.

This Determination reflects the transitional arrangements for a progressive winding down of the NCAC operation before its cessation on 31 December 2011. The NCAC has been part of these consultations.

## Regulation impact statement

Office of Best Practice Regulation was consulted in the preparation of this Determination and assessed that no Regulation Impact Statement was required as the Determination is consequential to the implementation of the National Quality Framework, for which the “*Regulation Impact Statement for Early Childhood Education and Care Quality Reforms, COAG Decision RIS, December 2009*” was published in December 2009. This Determination removes the conditions of approval for the family assistance law purposes with which the services in the specified class could not otherwise comply due to the cessation of the NCAC operation.

## Explanation of Provisions

### *Section 1 – Name of Determination*

**Section 1** sets out the name of this Determination, which is the *A New Tax System (Family Assistance) (Administration) (Exemption from Eligibility Rules—Child Care Services of Specified Classes) Determination 2011 (No. 1)*.

### *Section 2 – Commencement*

**Section 2** specifies that this Determination commences on the day after it is registered.

### *Section 3 - Definitions*

**Section 3** sets out definitions of terms used in this Determination. It provides that a reference to ‘Act’ means the ***A New Tax System (Family Assistance) (Administration) Act 1999*** and a reference to ‘eligibility rules’ means the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

### *Section 4 – Exemption from eligibility rules*

**Section 4** provides for exemption of a child care service from the eligibility rules specified in section 6, 7 and 8 of this Determination, so that these rules will not apply as a condition of approval and continued approval of that service, if the service is the one to which section 5 of this Determination applies.

### *Section 5 – Specified classes*

**Section 5** applies to:

- a centre based long day care service,
- a family day care service, and
- an outside school hours care service

but only if an application for approval of such a service for the purposes of the family assistance law is determined on or after 1 November 2011, (irrespective of whether the application for approval is made before or after 1 November 2011). Application for a service's approval is made under section 194 of the Act and a determination of the application is made under section 195 of the Act.

A note to section 5 informs the reader about the operation of sections 194 and 195 of the Act. Section 194 of the Act provides that a person who operates or proposes to operate a kind of a child care service specified in that section, including a centre based long day care service, family day care service and outside school hours care service, may apply for approval of the service for the purposes of the family assistance law. Section 195 specifies when the Secretary must approve, or must refuse to approve, a child care service, for the purposes of the family assistance law.

#### *Section 6 – Centre based long day care services*

**Section 6** provides that a centre based long day care service is exempt from:

- the condition for approval in section 14 of the eligibility rules; this condition is that the service is registered as a participant in the Quality Improvement and Accreditation System (QIAS); and
- the condition for continued approval in section 23 of the eligibility rules; this condition is that the service participates in the QIAS.

#### *Section 7 – Family day care services*

**Section 7** provides that a family day care service is exempt from:

- the condition for approval in section 14A of the eligibility rules; this condition is that the service is registered as a participant in the Family Day Care Quality Assurance system (FDC QA); and
- the condition for continued approval in section 23A of the eligibility rules; this condition is that the service participates in the FDC QA.

#### *Section 8 – Outside school hours care services*

**Section 8** provides that a outside school hours care service is exempt from:

- the condition for approval in section 14B of the eligibility rules; this condition is that the service is registered as a participant in the Outside School Hours Care Quality Assurance system (OSHCQA); and
- the condition for continued approval in section 24A of the eligibility rules; this condition is that the service participates in the OSHCQA.