



Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2011 (No. 2)

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

I, KATE ELLIS, Minister for Employment Participation and Childcare, make this Determination under subsection 205 (1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated 16 November 2011

KATE ELLIS

Minister for Employment Participation and Childcare

1 Name of Determination

This Determination is the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2011 (No. 2)*.

2 Commencement

This Determination commences on 1 January 2012.

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

Schedule 1 amends the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

4 Saving of existing eligibility rules for approval to applications made before commencement of amendments in Schedule 1

For the assessment of eligibility of a child care service to become approved for the purposes of the family assistance law, Parts 1 and 2 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* as in force immediately before the commencement of this Determination continue to apply to applications under section 194 of the *A New Tax System (Family Assistance) (Administration) Act 1999* made before that commencement.

5 Application of amendment made by Item 6 of Schedule 1

Despite section 4 of this Determination, subsection 12 (1) of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* as amended by Item 6 of Schedule 1 applies to applications under section 194 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that were made, but were not determined under section 195 of that Act, before the commencement of this Determination.

Schedule 1 Amendments

(section 3)

[1] Subsection 3 (1), after definition of *carer*

insert

Education and Care Services National Law means the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

[2] Subsection 3 (1), definitions of *Council, FDC QA, OSHCQA, QIAS and State*

omit

[3] Subsection 3 (1), definition of *key personnel*

substitute

key personnel of an applicant for approval of a child care service or operator of an approved child care service means:

- (a) an officer (within the meaning given by section 9 of the *Corporations Act 2001*) of the applicant or operator; and
- (b) a member of the group of people that is responsible for the executive decisions of the applicant or operator; and
- (c) any other person who is concerned in, or who takes part in, the management of the applicant or operator; and
- (d) any person who, under an arrangement with the applicant or operator, manages or supervises the child care service.

[4] Section 7

substitute

7 Suitability of applicant

- (1) The applicant must be a suitable person to operate a child care service.
- (2) In making an assessment for subsection (1), the Secretary may consider the following matters:
 - (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) the applicant's governance arrangements, including:
 - (i) any arrangements with other persons for the management or supervision of the child care service; and
 - (ii) any arrangements relating to ensuring compliance by the applicant with the laws and standards mentioned in paragraph (d);
 - (d) the applicant's record of compliance with:
 - (i) the family assistance law; and
 - (ii) a law of the Commonwealth or of a State or Territory relating to the requirements mentioned in section 11; and
 - (iii) quality standards relating to child care services;
 - (e) the applicant's record of financial management, including:
 - (i) any instances of bankruptcy, insolvency or external administration; and
 - (ii) any debts due to the Commonwealth by the applicant in relation to the operation of child care services;
 - (f) subject to Part VIIC of the *Crimes Act 1914*, any convictions or findings of guilt against the applicant for an offence (including an offence against children, or relating to dishonesty or violence);
 - (g) any relevant criminal charges against the applicant pending before a court;
 - (h) any other matter relevant to the suitability of the applicant.
- (3) In making the assessment for subsection (1), the Secretary may also consider the matters mentioned in subsection (2) in relation to the following persons:
 - (a) any of the applicant's previous, current or proposed key personnel; and
 - (b) any person connected with the applicant, who affects, or is likely to affect, the operation of the service by the applicant; and

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- (c) any person connected with any of the applicant's previous, current or proposed key personnel, who affects, or is likely to affect, the operation of the service by the applicant.

Examples

In assessing whether an applicant is a suitable person to operate a child care service, the Secretary may consider such matters as:

- (a) criminal convictions of the applicant's key personnel;
 - (b) the record of financial management of the holding company of the applicant, or the bankruptcy of a proposed director of the applicant;
 - (c) the record of compliance with the family assistance law of a body corporate a director of which is one of the applicant's key personnel.
- (4) For the purposes of subsection (3), the reference to 'person' includes a reference to a partnership or an unincorporated body.

[5] Section 11

substitute

11 Compliance with child care laws

The operation of the service, the provision of care by the service, the construction of the premises of the service and the equipment at the premises of the service must comply with all applicable legal requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the service operates.

Note

The law of the State or Territory includes:

- (a) a licensing law applying in the State or Territory;
- (b) the Education and Care Services National Law applying as a law of the State or Territory;
- (c) a law of the State or Territory that applies the Education and Care Services National Law as the law of that State or Territory or that substantially corresponds to the provisions of the Education and Care Services National Law.

The Education and Care Services National Law regulates the operation of education and care services, which include child care services of the following kinds: centre based long day care services, family day care services and outside school hours care services.

[6] Subsection 12 (1)

substitute

- (1) The applicant must ensure that the child care service is covered by:
 - (a) workers compensation insurance as required by law; and
 - (b) public liability insurance.

[7] Sections 14, 14A and 14B

omit

[8] Subsections 16 (1) and (2)

substitute

- (1) An operator of an approved child care service must be a suitable person to operate the service.
- (2) In making an assessment for subsection (1), the Secretary may consider the matters mentioned in subsections 7 (2) and (3) in relation to the operator.

[9] Subsections 17 (2) and (3)

substitute

- (2) The operator of the child care service must be a suitable person to operate the service.
- (3) In making an assessment for subsection (2), the Secretary may consider the matters mentioned in subsections 7 (2) and (3) in relation to the operator.

[10] Paragraphs 19 (1) (c) and (d)

substitute

- (c) changing the address of the service.

[11] Sections 23, 23A, 23B, 24A and 24B

omit