

Explanatory Statement

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017

Summary

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017* (the 2017 Rules) are made by the Minister for Education and Training under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act). They set out rules relating to the eligibility of:

- child care services to become approved for the purposes of the family assistance law
- approved child care services to continue to be approved for the purposes of the family assistance law.

The 2017 Rules continue the operation of the *Child Care Benefit (Eligibility of Child Care Services for Approved and Continued Approval) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Background

Division 1 of Part 8 of the Administration Act provides for the approval, for the purposes of the family assistance law, of child care services by the Secretary. Under subsection 205(1) of the Administration Act, the Minister may determine, by legislative instrument, rules relating to the eligibility of child care services to become approved and to continue to be approved.

It is a condition for the approval of a child care service that the service satisfies any eligibility rules relating to the eligibility of the service to become approved (paragraph 195(1)(c) of the Administration Act) and a condition for the continued approval of a child care service that the service satisfies any eligibility rules relating to the eligibility of the service to continue to be approved (subsection 196(1) of the Administration Act).

A failure of an approved child care service to comply with any conditions of approval may lead to the Secretary imposing one or more sanctions on the service under section 200 of the Administration Act. These sanctions include, among others, suspension or cancellation of the service's approval.

The 2017 Rules replicate the operation of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (2000 Determination). The 2000 Determination is repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new 2017 Rules will operate from 1 October 2017 until 2 July 2018, when they will be superseded.

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) was enacted on 4 April 2017. The Amendment Act gives effect to the legislative elements of the Government's new child care system, including the Child Care Subsidy and Additional Child Care Subsidy from 2 July 2018. The Amendment Act includes provisions to make subordinate legislation, known as Minister's and Secretary's Rules. Those Rules will replace many of the existing family assistance law subordinate legislative instruments.

In particular, the Amendment Act repeals and replaces the provisions in the Administration Act relating to eligibility rules for approval and continued approval of child care services, including section 205, and enables the making of Minister's Rules to prescribe criteria additional to those set out in the Amendment Act, related to providers and services to be considered as part of the eligibility requirements.

Consequently, the sole purpose of the 2017 Rules is to continue the operation of the current arrangements for eligibility requirements of child care service providers for approval and continued approval between the sunseting of the 2000 Determination on 1 October 2017 and the commencement of the new child care system on 2 July 2018.

Consultation

Prior to this instrument being made, targeted consultation was undertaken with child care stakeholders notifying them of the remaking of the instrument and inviting their comments. Targeted consultation was deemed appropriate as the remaking of the instrument was machinery in nature to continue the operation of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* until 2 July 2018. The instrument does not substantially alter existing arrangements.

Regulatory Impact Statement

The 2017 Rules do not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The 2017 Rules remake the 2000 Determination for a short period, and are machinery in nature and will not have more than minor regulatory impact. The Office of Best Practice Regulation (OBPR) agrees with this regulatory impact assessment (OBPR ID 22536).

Authority

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017* are made under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Explanation of Provisions

The numbering of provisions in the 2017 Rules is not consecutive. The provision numbers in the 2017 Rules align with the numbering of provisions in the 2000 Determination. This has been done to ensure references to the requirements of the Rules in extrinsic documents do not need to be updated, and to preserve familiarity with the requirements. Some provisions of the 2000 Determination, e.g., subsections 16B(1) to (3) and section 17, are not replicated in the 2017 Rules, as they are redundant or their operation has expired and they are no longer required. The 2017 Rules include some additional provisions for formal (e.g. section 2A) or transitional purposes (Part 4).

Part 1—Preliminary

Section 1 sets out that the name of the instrument is the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017*.

Section 2 provides that the instrument commences on 1 October 2017 and is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (i.e. on 2 July 2018).

Section 2A sets out that the authority for the instrument is the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Section 3 provides that for the purposes of this instrument the terms:

applicant for approval of a child care service means a person who has applied, under section 194 of the Family Assistance Administration Act, to have the service approved for the purposes of the family assistance law.

carer means a person employed, contracted, or otherwise engaged by a family day care service or an in-home care service to provide child care on behalf of the service.

CRN of a person, means the active customer reference number (CRN) of the person issued by the Department of Human Services.

FDC carer means a carer of an approved family day care service.

Inclusion Support Programme means the program referred to in item 109 of Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

key personnel: a person is **key personnel** of an applicant for approval of a child care service or an operator of an approved child care service if the person is:

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

registered software means software registered by the Secretary under subsection 4(3) of the Administration Act.

Section 5 specifies that for the purpose of subsection 108(2A) of the Administration Act, paragraph 108(2)(h) does not apply to a decision of an officer under this instrument, other than a decision under subsection 12(3), section 21 or section 21A. This means that a decision of an officer under this instrument, other than a decision under subsection 12(3), section 21 or section 21A, is reviewable on application under section 109A of the Administration Act.

Part 2—Eligibility for approval as a child care service

Section 6 specifies the purpose of Part 2 of the instrument is to set out rules relating to the eligibility of child care services to become approved for the purposes of the family assistance law. The Secretary can only approve a child care service if the Secretary is satisfied that the service satisfies the eligibility rules set out in Part 2 of the 2017 Rules (paragraph 195(1)(c) of the Administration Act).

Section 7 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.

Subsection 7(1) states that the applicant must be a suitable person to operate a child care service. Subsections (2) and (3) set out factors that a delegate should consider in making this assessment, however the matters referred to in subsections (2) and (3) are not exhaustive.

Subsection 7(3) ensures that a delegate can consider the matters listed in (2) as if they also applied to key personnel and others who influence the operation of the service.

Subsection 7(4) specifies that for the purpose of subsection (3), **person** includes a partnership and an unincorporated body.

Section 8 sets out rules regarding the suitability of the staff of a child care service which has applied for approval.

Subsection 8(1) states each member of the staff of a child care service for which an applicant has applied for approval must be a suitable person to provide child care. Under subsection 8(2) an applicant must undertake that the child care service will take reasonable steps to ensure that each member of its staff is a suitable person to provide child care.

Subsection 8(3) specifies, for the purpose of subsection (2), a child care service must undertake a check for any relevant criminal charges against the staff member pending before a court and convictions or findings of guilt against the staff member for an offence.

Subsection 8(4) specifies in considering whether a staff member is a suitable person to provide child care, the Secretary may consider any other matters relevant to the staff member in addition to the matters mentioned in subsection (3).

Section 9 sets out rules regarding the suitability of carers of family day care services and in-home care services to be suitable persons.

Subsection 9(1) specifies that each carer employed, contracted or otherwise engaged by a child care service for which an applicant has applied for approval must be a suitable person to provide child care. Under subsection 9(2) an applicant must undertake that the child care service will take reasonable steps to ensure that each carer employed, contracted or otherwise engaged by the service is a suitable person to provide child care.

Subsection 9(3) specifies, for the purpose of subsection (2), a child care service must undertake a check for any relevant criminal charges against the carer pending before a court and convictions or findings of guilt against the carer for an offence.

Subsection 9(4) specifies in considering whether a carer is a suitable person to provide child care, the Secretary may consider any other matters relevant to the carer in addition to the matters mentioned in subsection (3).

Section 10 requires applicants to make certain undertakings in relation to the operation of child care services. This section's subsections specify the undertakings for each type of child care service as follows:

- subsection 10(1) – undertakings for an applicant for approval of a centre-based long day care service
- subsection 10(1A) – undertakings for an applicant for approval of a family day care service
- subsection 10(1B) – undertakings for an applicant for approval of an in-home care service
- subsection 10(2) – undertakings for an applicant for approval of an occasional care service
- subsection 10(3) – undertakings for an applicant for approval of an outside school care service.

Section 10A sets out additional undertakings as to the operation of family day care services in relation to monitoring compliance with section 8 of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*. Subsection 10A(1A) specifies an applicant for approval of a family day care service must undertake to do the things set out in this section.

Section 10AB sets out additional undertakings as to the operation of family day care services in relation to monitoring compliance with section 9 of the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*. Subsection 10AB(1A) specifies an applicant for approval of a family day care service must undertake to do the things set out in this section.

Section 11 specifies that the operation of a child care 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 child care service operates. This provision works in concert with subsection 196(3) of the Family Assistance Administration Act to ensure that conditions of continued approval relating to meeting relevant child care laws also operate as conditions of initial approval and therefore are relevant for the assessment of applications for initial approval. A note to the provision enumerates what the law of the State or Territory includes and also clarifies that the Education and Care Services National Law regulates the operation of education and care services and identifies the kinds of child care service it regulates.

Section 12 sets out insurance requirements for child care services. Subsection 12(1) requires that an applicant for approval of a child care service must ensure that the child care service is covered by workers compensation insurance as required by law and public liability insurance.

Subsection 12(2) allows that, if the service does not exist when the application is made, that insurance is not required until the service is established. Under subsection 12(3), applicants are required to give the Secretary, on request, a copy of any insurance policy required under subsection (1) and a certificate of currency for the policy.

Section 13 sets out rules in relation to certain child care services giving priority of access to certain children. Subsection 13(1) specifies an applicant applying for approval of a centre-based long day care service, an in-home care service, a family day care service or an outside school hours care service must undertake that the service will provide child care places for children in accordance with provisions set out in this section.

Section 14C sets out rules in relation to child care services having capacity to use electronic interface. Subsection 14C(1) specifies an applicant for approval of a child care service must undertake that the service will be equipped to use the electronic interface, including by having registered software, for the purpose of compliance with the condition imposed on an approved child care service by subsection 196(2) of the Administration Act.

Subsection 14C(2) specifies an applicant must undertake that the service will have the operational capacity to use the electronic interface for the purpose of compliance with the condition imposed on an approved child care service by subsection 196(2) of the Administration Act.

Subsection 14C(3) sets out, for the purpose of this section, that *electronic interface* means electronic equipment, the use of which is approved by the Secretary or another officer, under a provision of the family assistance law to which subsection 4(1) of the Administration Act relates, as the form, manner or way of:

- making an application or claim that the service is required or permitted to make under a provision of the family assistance law; or
- withdrawing an application or claim that the service is required or permitted to withdraw under a provision of that law; or
- doing any other thing that the service is required or permitted to do under a provision of that law; or
- giving notices by the Secretary under a provision of that law.

Part 3—Eligibility for continued approval as a child care service

Section 15 specifies the purpose of Part 3 of the instrument is to set out rules relating to the eligibility of child care services to continue to be approved for the purposes of the family assistance law. It notes that obligations imposed on an approved child care service under this Part are taken to be imposed on the operator of the service (section 195A of the Administration Act).

Section 16 sets out rules in relation to approved child care services continuing to comply with suitability requirements as required at the time an applicant applied to be approved for the purposes of the family assistance law.

Subsection 16(1) states that an operator of an approved child care service must be a suitable person to operate the service. Subsection (2) states that 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.

Subsections (3) and (4) require each staff member of, and carer employed, contracted or otherwise engaged by, an approved child care service must at all times be a suitable person to provide child care.

Subsection 16(5) specifies that when a service employs a new member of staff, or employs, contracts or otherwise engages a new carer, the service must undertake the same checks in relation to that person as it was required to undertake under section 8 or 9 in relation to staff and carers before the service was approved.

Subsection 16(7) specifies an approved child care service must continue to comply with section 12 in relation to insurance requirements.

Section 16A sets out rules in relation to approved child care services complying with undertakings. Subsection 16A(1) requires approved child care services to comply with all undertakings given by the applicant for approval of the service under subsections 8(2), 9(2) and 13(1), and section 14C.

Subsection 16(2) requires approved child care services to comply with the undertakings of the operator of an approved centre based long day care service (subsection 10(1)), family day care service (subsection 10(1A), sections 10A and 10AB), an occasional care service (subsection 10(2)) or an outside school service (subsection 10(3)).

Section 16B specifies an approved in-home care service must comply with an undertaking given under subsection 10(1B).

Section 18 specifies an approved child care service must continue to be operated by the applicant who made the application for approval of the service under section 194 of the Administration Act.

Section 19 sets out rules in relation to certain events, for which an approved child care service must, in writing, notify the Secretary about including the timeframes for the provision of the written notice.

Section 20 specifies an approved child care service must, at any time during the service's hours of operation, allow an officer of the agency to enter its premises to ensure the service is being operated in accordance with the family assistance law and these Rules. The service must give the officer all reasonable assistance.

Section 21 sets out rules in relation to the provision of certain information to the Secretary by approved child care services. Subsection 21(1) specifies that the Secretary may request an approved child care service to give information for a census or survey, or regarding the operation, of child care services.

Without limiting subsection 21(1), subsection 21(2) outlines that the information the Secretary may request includes personal details of each family day care carer of the service and the address and telephone number of the premises where the child care is provided by that carer. The information requested may also include the number of child care places provided by, or likely to be available at, the service during a specified period or periods.

Subsection 21(3) specifies the Secretary may request information to be given on an ongoing basis. Subsection 21(4) stipulates the requested information must be accurate and given to the Secretary at the time, or within the period or periods, and in the form, manner and way specified in the request.

Subsection 21(5) specifies if the Secretary's request requires information given to be kept up to date; any updated information must be given within 14 days after a change affecting the information occurs. Subsection 21(6) allows the Secretary to terminate a request for information at any time.

Section 21A specifies that the Secretary may approve a form, manner or way of requesting or giving information under section 21.

Section 22 sets out rules requiring an approved child care service to protect personal information including the service having to comply with the Australian Privacy Principles under the *Privacy Act 1988*.

Section 24 sets out rules requiring approved family day care services and approved in-home care services to have in-home care agreements. Subsection 24(1) specifies that an approved family day care service that provides in-home care for a child and an in-home care service that provides care for a child must enter into a written agreement with the in-home carer for

the child, and the person who is, or the persons who are, liable to pay child care fees in respect of the child.

Subsection 24(2) specifies that the agreement must set out terms and conditions for the provision of in-home care and provides matters which must be included in the agreement.

Section 25 requires child care services to only provide 24 hour care where a 24 hour limit applies. Subsection 25(1) specifies that an approved child care service must not provide 24 hour care to a child unless the period of 24 hour care has been approved.

Subsection 25(2) states where the period of 24 hour care was not approved at the time the care was provided but is subsequently approved and the approval is given before the service's next report is due that for the purposes of subsection (1) the approval is taken to have been given before the care was provided. The meaning of *next report* for the purposes of this subsection is provided in subsection (4) being the first report of the service under section 219N of the Administration Act following the provision of the 24 hour care.

Subsection 25(3) outlines, for the purposes of this section, when a period of 24 hour care is approved.

Section 26 specifies where an approved child care service has been allocated child care places under section 207 of the Administration Act, the service must not change its location unless the Secretary has approved the new location (subsection 26(1)). Subsection (2) states in considering whether to approve a service's proposed new location for the purposes of subsection (1) the Secretary must take into account any determination made under subsection 6(1) of the *Child Care Benefit (Allocation of Child Care Places) Guidelines 2017*.

Section 27 sets out standard hour's family day care, standard in-home care, non-standard hour's family day care and non-standard in-home care for the purposes of the definitions of those terms in section 3 of the Family Assistance Act.

Part 4—Savings and transitional provisions

Section 28 provides that in this Part the term *old instrument* means the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

Section 29 specifies that notwithstanding the repeal of the old instrument, Part 2 of the old instrument continues to apply for the purposes of considering an application for approval of a child care service for the purposes of the family assistance law under section 194 of the Administration Act that was made before the repeal of the old instrument.

Section 30 specifies matters which the Secretary is taken to have done for the purposes of this instrument immediately after the commencement of this instrument.

Schedule 1—Priority of access guidelines

Item 1 provides that in this Schedule the terms:

family of a child means the child, the individual in whose care the child is, that individual's partner (if any), and any other individual with whom the child lives.

parents of a child means the individual in whose care a child is, and that individual's partner.

single parent means an individual in whose care a child is who has no partner.

Item 2 provides the following priorities for filling vacant child care places for subsection 13(6):

- (a) first priority—a child at risk of serious abuse or neglect;
- (b) second priority—a child of a single parent who satisfies, or of parents who both satisfy, the work/training/study test under section 14 of the Family Assistance Act;
- (c) third priority—any other child.

Item 3 specifies that within each priority mentioned in item 2, the following children are to be given priority for filling vacant child care places:

- (a) children in Aboriginal and Torres Strait Islander families;
- (b) children in families which include a disabled person;
- (c) children in families which include an individual whose taxable income % under clause 7 of Schedule 2 to the Family Assistance Act is 100%;
- (d) children in families with a non-English speaking background;
- (e) children in socially isolated families;
- (f) children of single parents.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017* (the 2017 Rules) are made by the Minister for Education and Training under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Administration Act). They set out rules relating to the eligibility of:

- child care services to become approved for the purposes of the family assistance law
- approved child care services to continue to be approved for the purposes of the family assistance law.

The 2017 Rules continue the operation of the *Child Care Benefit (Eligibility of Child Care Services for Approved and Continued Approval) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Division 1 of Part 8 of the Administration Act provides for the approval, for the purposes of the family assistance law, of child care services by the Secretary. Under subsection 205(1) of the Administration Act, the Minister may determine, by legislative instrument, rules relating to the eligibility of child care services to become approved and to continue to be approved.

It is a condition for the approval of a child care service that the service satisfies any eligibility rules relating to the eligibility of the service to become approved (paragraph 195(1)(c) of the Administration Act) and a condition for the continued approval of a child care service that the service satisfies any eligibility rules relating to the eligibility of the service to continue to be approved (subsection 196(1) of the Administration Act).

A failure of an approved child care service to comply with any conditions of approval may lead to the Secretary imposing one or more sanctions on the service under section 200 of the Administration Act. These sanctions include, among others, suspension or cancellation of the service's approval.

The 2017 Rules replicate the operation of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (2000 Determination). The 2000 Determination is repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new 2017 Rules will operate from 1 October 2017 until 2 July 2018, when they will be superseded.

The *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) was enacted on 4 April 2017. The Amendment Act gives effect to the legislative elements of the Government's new child care system, including the Child Care Subsidy and Additional Child Care Subsidy from 2 July 2018. The Amendment Act includes provisions to make subordinate legislation, known as Minister's and Secretary's Rules. Those Rules will replace many of the existing family assistance law subordinate legislative instruments.

In particular, the Amendment Act repeals and replaces the provisions in the Administration Act relating to eligibility rules for approval and continued approval of child care services, including section 205, and enables the making of Minister's Rules to prescribe criteria additional to those set out in the Amendment Act, related to providers and services to be considered as part of the eligibility requirements.

Consequently, the sole purpose of the 2017 Rules is to continue the operation of the current arrangements for eligibility requirements of child care service providers for approval and continued approval between the sunseting of the 2000 Determination on 1 October 2017 and the commencement of the new child care system on 2 July 2018.

Human Rights Implications

The making of the 2017 Rules is machinery in nature to enable current legislative requirements set out in the 2000 Determination to continue until 2 July 2018. The instrument does not substantially alter existing arrangements and will not have more than minor regulatory impact or change any human rights implications under the current instrument.

The 2017 Rules engage the following rights:

The rights of the child – Article 3 of the Convention of the Rights of the Child (CRC) and Article 24(1) of the International Covenant on Civil and Political Rights (ICCPR)

Prohibition on interference with privacy and attacks on reputation – Article 17 of the ICCPR.

The rights of the child

Article 3 of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration in all actions concerning children, including ensuring that children receive necessary protection and care (Article 3(2)) and Article 18(2) of the CRC requires States Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children.

The UN Committee has also emphasised that provision of early childhood services must be appropriate to the circumstances, age and individuality of young children and that all staff be properly trained to work with specific age groups and their changing developmental priorities.

These 2017 Rules impose eligibility rules for approval and continued approval for child care services to ensure that services are providing prior to approval, and continue to provide, quality care for children and families. The 2017 Rules engage and promote the rights of the child by establishing rigorous suitability criteria and obligations to report changes or events that affect these criteria.

In particular, the 2017 Rules provide that any conditions that are imposed on a service's approval by the National Law will be conditions that the service must also comply with under the family assistance law. The purpose of this requirement is to ensure a consistent approach to approval conditions where these are imposed by State or Territory Regulatory Authorities and to assist Regulatory Authorities and the Secretary in monitoring services' compliance with the imposed conditions. The consistent approach to approval conditions and monitoring of services and the comprehensive, integrated strategy for early childhood program standards and quality criteria will ensure appropriate child-centred care practices and consistency of care across services. The 2017 Rules are in furtherance of the principle of the best interests of the child in that the measures it contains actively protect children's rights and promote their growth and well-being as well as support and assist parents and others who have day-to-day responsibility for realising children's rights.

Right to privacy

Article 17 in the ICCPR provides the right to protection against arbitrary and unlawful interferences with privacy, family, home and correspondence.

To the extent that personal information may be disclosed to a service or provided to the Secretary when she or he is notified of matters relating to the suitability of staff, carers and key personnel of child care services, the right to privacy is engaged and may be limited in a way which is permissible and justifiable. Any limitation deriving from the disclosure of personal information in this limited and specific context is reasonable and proportionate and directed to a legitimate and paramount policy objective of protecting the interests of children in care. Further, any such disclosures are strictly circumscribed and will only be made where there is concern about the suitability of individuals to work with children or to be involved in the proper administration of Commonwealth funds or in circumstances where an individual (or a service, where applicable) seeks to rely on an exemption from the general rule that no-one is eligible for child care benefit where the child falls within a certain class and personal information may need to be divulged to justify the granting of such an exemption. To the extent that the right to privacy is limited, the limitation is reasonable and proportionate and is directed to the legitimate policy objective of safeguarding the rights and interests of children in care.

The 2017 Rules also allow for the monitoring of, and assurance that, care is being accurately reported to the Secretary of the department, and those calculations by the Secretary of the department, of amounts of child care benefit that should be paid for care based on this information, can be done accurately. Further, there are a number of safeguards in place in relation to the information that is collected by the service. This includes that the *Privacy Act 1988* applies in relation to the management by the service of information collected by the service for the purposes of section 10AB of the 2017 Rules. In addition, any information collected by the service and provided by the service to the Secretary will, once it is obtained and recorded by the Secretary, be subject to the confidentiality provisions contained in sections 161 to 168 of the Administration Act.

To the extent that the right to privacy is limited, the limitation is reasonable and proportionate and will support and augment the best interests of children in care.

Right to work

Article 6 of the ICESCR requires that a person has a right to work, which includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts, and appropriate steps are taken to safeguard this right.

The Australian Government is maintaining its commitment to support workforce participation and assist working families with the cost of child care. The 2017 Rules reinforce this commitment by ensuring child care fee assistance is only paid to operators of child care services that are subject to a range of conditions that, among other things, ensure that child care is provided by suitable operators with suitable staff. This ensures that parents can be assured of the adequacy and standard of care and allows them to make an informed and confident decision about whether to send children to child care to support their own work, training or study commitments or aspirations.

Conclusion

The 2017 Rules are compatible with human rights because they promote the protection of human rights, particularly the best interests of the child. To the extent that it places a limitation on the right to privacy, that limitation is reasonable and proportionate in light of the legitimate policy objective of having coordinated, multisectoral monitoring and supervisory systems which promote high quality care delivery standards for early childhood programs, institutions and services.

Simon Birmingham
Minister for Education and Training