

Explanatory Statement

Child Care Subsidy (Transition of approved child care services) Determination 2018

Summary

The *Child Care Subsidy (Transition of approved child care services) Determination 2018* (the Determination) is made by the Secretary of the Department of Education and Training under subitem 9(2) of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act).

The Determination provides for a class of approved child care services (as they were approved under the family assistance law before commencement day) to be taken as a type of child care service as described in the table in subclause 2(3) of Schedule 2 to the *A New Tax System (Family Assistance) Act 1999* relating to Child Care Subsidy (CCS) hourly rate cap.

Before commencement day, Child Care Benefit (CCB) and Child Care Rebate (CCR) were only payable in relation to care provided by an approved child care service. With the commencement of CCS, there is a new approval regime in the family assistance law for child care providers and their services. The purpose of this Determination is to clarify which service types, that existed for CCB and CCR purposes, become new service types for CCS purposes.

Background

The Amendment Act amends the family assistance law to give effect to the legislative elements of the Australian Government's new child care package (the package), including the new CCS and the Additional Child Care Subsidy (ACCS) commencing from 2 July 2018. The centrepiece of the package is the CCS, which replaces CCB and CCR.

This Determination helps to give effect to the package and applies for the purposes of subitem 9(1) of Schedule 4 to the Amendment Act. This provision deems the operator of an approved child care service (which held approval in respect of that service immediately before commencement day) to be an approved provider within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act) in relation to that service on and after the commencement day of 2 July 2018. Paragraph (b) of this subitem provides that the service will transition as a type of service determined by the Secretary.

Subitem 9(2) of Schedule 4 to the Amendment Act enables the Secretary to make a determination either on a case by case basis or on a class basis. Where a determination is made on a class basis, the determination must be made as a legislative instrument. This instrument is a class determination for that purpose.

Consultation

The package reflects extensive consultation and expert analysis over several years commencing with the Productivity Commission's 2014 report into Childcare and Early Childhood Learning. This was followed by a Regulation Impact Statement consultation process, three Senate Inquiry processes and ongoing consultation with the child care sector by the Department of Education and Training (the department).

The making of the Determination is to support the implementation of the package to commence on 2 July 2018.

In developing the Determination, the department consulted with a wide range of stakeholders, including child care providers and relevant Government departments through targeted consultation and an exposure draft of the Determination. The stakeholders were advised that the purpose of this Determination is to clarify which service types that existed for CCB and CCR purposes, are to become new service types for CCS purposes.

Regulation Impact Statement

This Determination supports the streamlined transition of child care services that are approved under the family assistance law before commencement day for CCB purposes, who will be approved under the family assistance law after commencement day for CCS purposes. No additional regulatory burden will be imposed by this Determination, which has the effect of reducing regulatory burden as providers of those services are not required to apply for new service approval after commencement day.

The Office of Best Practice Regulation (OBPR) assessed and determined that a Regulation Impact Statement is not required for this Determination (OBPR ID 22401).

Explanation of the provisions

Part 1 Preliminary

Section 1 provides the name of the instrument is the *Child Care Subsidy (Transition of approved child care services) Determination 2018*.

Section 2 provides that the instrument commences on 2 July 2018.

Section 3 sets out that the authority for the instrument is under subitem 9(2) of Schedule 4 to the Amendment Act

Section 4 is the definitions section.

Part 2 Types of approved child care services

Section 5 transitions service types that have been approved before commencement day. In particular, subsection 5(1) sets out that an approved child care service type before commencement day listed under column 1 of the table is taken to be approved from commencement day as the type of service specified in same row under column 2 of the table.

Subsection 5(2) clarifies the interaction of subitem 9(3) of Schedule 4 to the Amendment Act with the table in subsection 5(1). Where the Secretary, on a case by case (or one-off) basis, makes a determination in respect to a particular service, the service that is the subject of that determination is not included in the specified class of child care services specified in the table in subsection 5(1) of this Determination.

This means that if the Secretary, for example, on a one-off case determines a particular “approved occasional care service” (as it was immediately before commencement day) as a “family day care service” for purposes of subitem 9(1) of Schedule 4 to the Amendment Act, this Determination will not apply to the transition of that particular service. That service is therefore taken to be a family day care service from commencement day, rather than a “centre-based day care service” as specified in the table in subsection 5(1) of this Determination.

Once a service transitions under this Determination or by a case by case determination, the service will be approved in respect of that service type. If the approved provider wishes to change the service type, it may apply for a variation of the provider's approval under section 196A of the Administration Act.

Statement of Compatibility with Human Rights

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

Child Care Subsidy (Transition of approved child care services) Determination 2018

The *Child Care Subsidy (Transition of approved child care services) Determination 2018* (the Determination) 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 Determination is made by the Secretary of the Department of Education and Training under subitem 9(2) of Schedule 4 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act).

The Amendment Act amends the family assistance law to give effect to the legislative elements of the Australian Government's new child care package (the package), including the new Child Care Subsidy (CCS) and the Additional Child Care Subsidy (ACCS) commencing from the "commencement day" on 2 July 2018. The centrepiece of the package is the CCS, which replaces the Child Care Benefit (CCB) and Child Care Rebate (CCR).

The Determination outlines a class of services of operators that held approval immediately before commencement day, for CCB and CCR purposes, and clarifies which service type the services will transition to, for CCS purposes on and after commencement day.

Human rights implications

The Determination engages the following rights:

- the rights of the child under the *Convention on the Rights of the Child* (CRC), particularly Articles 3, 18 and 27; and
- the right to work and the right to social security under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), particularly Articles 6 and 9.

Rights of the child

Article 3 of the CRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 18(2) of the CRC requires State Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and Article 18(3) requires State Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

The Determination helps to enable providers of child care services to continue providing sessions of care to children in respect of which parents may be eligible for CCS or ACCS by maintaining their approval under the family assistance law.

This measure is compatible with the rights of the child.

Right to an adequate standard of living

Article 27 of the CRC requires that State Parties to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 27(3) requires State Parties to take appropriate measures to assist parents and others responsible for the child to support the child's development.

The Determination advances these rights by ensuring that child care fee assistance may continue to be paid to address barriers to accessing child care, hence ensuring all children have access to an adequate amount of child care to aid in socialisation and development.

This measure is compatible with the right to an adequate standard of living.

Right to work and social security

Article 6 of the ICESCR requires that State Parties recognise the right to work, including through developing policies and techniques to achieve steady economic, social and cultural development and full and productive employment. Article 9 recognises the right of everyone to social security.

The Government is maintaining its commitment to support workforce participation and assist working families with the cost of child care. The right to work goes to the core objective of the Amendment Act, of which the Determination seeks to give effect to in order to help parents who want to work or who want to work more. The Determination reinforces this commitment by enabling the transition of child care services into new service types for CCS purposes from commencement day, so that child care fee assistance may continue to be paid hence furthering the capacity of individuals to engage in work, study, training and other activities that promote workplace participation and engagement.

This measure is compatible with the right to work and social security.

Conclusion

The Determination is compatible with human rights.

Dr Michele Bruniges AM

Secretary of the Department of Education and Training