EXPLANATORY STATEMENT

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2007 (No.1)

Summary

This Determination is made under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Act).

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

The purpose of this Determination is to amend the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (the Approval Determination) that sets out the eligibility rules for child care services to become, and remain, approved child care services under the family assistance law for the purposes of child care benefit (CCB).

Amendments made by this Determination will clarify the undertaking applicable to in-home care services as a condition of approval and continued approval, and will remove one of the circumstances in which in-home care can be provided.

From commencement of this Determination, the amendments will apply to in-home care that starts being provided to a child on or after the commencement date. Where in-home care is currently being provided in accordance with the Approval Determination on the commencement date and continues to provide that care after that date, the amendments will only apply to that care arrangement from 1 July 2008, thereby enabling any in-home care arrangements that exist immediately before commencement to continue up to 30 June 2008 at the latest.

The changes are to commence on the day after this Determination is registered.

Background

Under subsection 194(1) of the Act, a person who proposes to operate a centre-based long day care service, a family day care service, an in-home care service, an occasional care service or an outside school hours care service may apply to the Secretary to have the service approved for the purposes of the family assistance law.

An approved child care service is a child care service approved under section 195 of the Act. The Secretary must approve a child care service if, amongst other things, the service satisfies any eligibility rules applicable to the service
under paragraph 205(1)(a) (the Approval Determination). A child care service must continue to comply with the eligibility rules in order to remain approved. The eligibility rules also require child care services to give undertakings in relation to the provision of child care. Failure to comply with any of the eligibility rules may result in a sanction being imposed on the service under section 200, at the Secretary’s discretion.

In-home care service

An in-home care service provides approved child care to the child in the child’s home.

Under section 10(1B) of Part 2 of the Approval Determination as it currently provides, applicants applying for approval of an in-home care service must (amongst other things) undertake to provide care only to a child to whom no other existing child care service (other than an in-home care service) can provide care, or where only the in-home care service can provide care that is suitable for the child in any of the circumstances specified in subsection 10(1C).

The policy intent reflected in this amendment is to more tightly target the circumstances in which in home care can be provided, in particular, to require that in home care services do not provide in-home care where only the circumstance set out in the current 10(1C)(f) applies (where the child, or any other child with whom the child lives, is breastfed by the mother working from home).

An extensive review of the In Home Care program was undertaken in 2005 by an independent consultant. As a result of consultations with carers, providers and families, one of the recommendations of the Final Evaluation Report: In-Home Care was that the program could be targeted to the families most in need by amending the undertaking applicable to in-home care services.

A Preliminary Assessment of the impact of this proposal has been undertaken in accordance with the procedure established by the Office of Best Practice Regulation, and the impact on approved in-home care services was assessed to be low.
Explanation of the sections

Name of Determination

Section 1 states the name of this Determination.

Commencement

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

Amendment of the Approval Determination

Section 3 states that Schedule 1 amends the Approval Determination.

Explanation of the items in Schedule 1

Item 1 – amendment to subsection 3(1)

Item 1 makes a minor technical amendment to subsection 3(1) of the Approval Determination (Interpretation) by omitting the words ‘In this Determination, unless the contrary intention appears:’ and inserting the words ‘In this Determination:’. This amendment is consequential to the amendment made by item 2.

Item 2 – amendment to subsection 3(2)

Item 2 omits subsection 3(2) of the Approval Determination. Subsection 3(2) is now unnecessary as a result of section 13 (Construction of legislative instruments) of the Legislative Instruments Act 2003 which is similar in effect to subsection 3(2).

Item 3 - amendment to paragraph 10(1B)(a)

Section 10 of the Approval Determination (Provision of care) specifies that where an applicant is applying for approval of a particular kind of child care service, the applicant must undertake to provide care in accordance with the relevant undertaking. Subsection 10(1B) sets out the undertakings applicable to an applicant applying for approval of an in-home care service.

Item 3 substitutes new paragraph 10(1B)(a) which provides that, where an applicant is applying for approval of an in-home care service, the applicant must undertake that the service will provide in-home care only to a child to whom a circumstance mentioned in subsection 10(1C) applies (subparagraph 10(1B)(a)(i)) and to whom only an in-home care service can provide suitable care (subparagraph 10(1B)(a)(ii)).
Item 4 - amendment to subsection 10(1C)

Subsection 10(1C) of the Approval Determination sets out the circumstances in which in-home care can be provided to a child for the purposes of an undertaking under subsection 10(1B).

Item 4 makes an amendment consequential to the amendment made by item 3 by removing the current reference to ‘For the purpose of paragraph (1B)(a)’ and inserting the words ‘For subparagraph (1B)(a)(i),’.

Item 5 – amendment to paragraph 10(1C)(e)

Item 5 makes a minor technical amendment to paragraph 10(1C)(e), as a consequence of the amendment made by item 6, by removing the reference to ‘school;’ and inserting a reference to ‘school, or’.

Item 6 – amendment to paragraph 10(1C)(f)

Item 6 omits paragraph 10(1C)(f) of the Approval Determination relating to the circumstance where a child, or any other child with whom the child lives, is breastfed by the mother working from home.

Item 7 – amendment to subsection 16(6)

Item 7 omits subsection 16(6) of the Approval Determination which deals with continuing compliance with any undertakings given under subsection 8(2), 9(2), 10(1), (1A), (1B), (2) or (3) or 13(1). Subsection 16(6) is instead replicated in new subsection 16A relating to compliance with undertakings - general.

Item 8 – new sections 16A and 16B

Section 16 deals with continuing compliance with any conditions of approval of a child care service applicable under Part 2 of the Approval Determination.

Item 8 inserts two new sections 16A and 16B into Part 3 after section 16, containing provisions relating to continuing compliance with undertakings.

New section 16A (compliance with undertakings - general) replicates subsection 16(6), as removed by item 7.

New subsections 16B(1) - (3) (Approved in-home care services - compliance with certain undertakings) deals with undertakings given before commencement of this Determination.

New subsection 16B(1) provides that an approved in-home care service, subject to the application of subsections 16B(2) and (3), must comply with its undertaking given under subsection 10(1B) before commencement of this Determination.
New subsection 16B(2) enables an approved in-home care service to continue to provide in-home care to a child (where the service, immediately before commencement of this Determination, was providing in-home care to the child) even in circumstances where the child, or any other child with whom the child lives, is breastfed by the mother working from home until such time as the breastfeeding ceases or until 30 June 2008, whichever occurs first.

The effect of new subsection 16B(3) is that in-home care provided in circumstances to which subsection 16B(2) applies cannot be provided on or after 1 July 2008.

New subsection 16B(4) relates to undertakings given on or after commencement of this Determination. The effect of new subsection 16B(4) is that an approved in-home care service must comply with an undertaking given by the operator for the service under subsection 10(1B) on or after commencement of this Determination. As a result, an approved in-home care service cannot undertake to provide care to a child in circumstances where a child or another child with whom the child lives is breastfed by the mother working from home, if no other circumstance listed under 10(1C) applies.

New subsection 16B(5) inserts a definition of ‘specified date’ in new section 16B to allow for clarity and ease of interpretation. ‘Specified date’, for the purposes of this section, means the date that this Determination commences.

Item 9 – amendments to paragraphs 23(a), 23A(a), and 24A(2)(a)

Item 9 makes a minor technical amendment to paragraphs 23(a), 23A(a) and 24A(2)(a) by substituting references to ‘on 14 October 2006’ in lieu of the references to the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2006 (No.2).