

Explanatory Statement

Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 2017

Summary

The *Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 2017* (the Determination) is made by the Minister for Education and Training under section 11 of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). The Determination sets out:

- the circumstances in which an approved child care service other than an approved occasional care service is taken to have provided a session of care to a child who was absent from the whole of that session, after absences on 42 earlier days in the financial year; and
- the circumstances in which an approved child care service that is an approved occasional care service is taken to have provided a session of care to a child who was absent from the whole of that session.

The Determination continues the operation of the *Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Background

Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to the eligibility requirements for child care benefit. A person must be eligible for child care benefit, before they may be determined, under Division 4 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, to be entitled to be paid child care benefit.

Child care benefit is a means-tested payment which assists individuals with child care costs. Under family assistance law, eligibility for child care benefit arises in respect of a session of care provided to a child.

Section 10 of the Family Assistance Act provides for the circumstances in which a session of care is taken to have been provided by an approved child care service (other than an occasional care service) to a child who was absent from all or part of that session. Generally, section 10 operates to the effect that the first 42 days of absence of a child from a whole session of care is taken to have been provided, for child care benefit purposes, regardless of the reason for the absence.

Section 10 also permits additional absences, after the initial 42 absence days, if an absence has occurred in any of the circumstances set out in subparagraphs 10(3)(c)(i) to (iv) (subject to other conditions of subsection 10(3) being met). Amongst other things, subparagraph 10(3)(c)(iv) provides that an approved child care service is taken to have provided a session of care to a child in circumstances set out in a legislative instrument made under section 11 of the Act.

Section 10A of the Family Assistance Act provides for the circumstances in which a session of care is taken to have been provided by an approved occasional care service to a child who was absent from all or part of that session. In particular, paragraph 10A(2)(b) provides that a service is taken to have provided a session of care to a child in circumstances set out in a legislative instrument made under section 11 of the Act.

Section 11 of the Family Assistance Act authorises the Minister to determine, by legislative instrument, the circumstances that are permitted circumstances for the purpose of subparagraph 10(3)(c)(iv) or paragraph 10A(2)(b) of the Family Assistance Act. This

Determination specifies the circumstances in which a session of care is taken to have been provided to a child absent from care.

Purpose

The purpose of the Determination is specify the circumstances in which an approved child care service is taken to have provided a session of care to a child who has not attended any part of that session, for the purpose of subparagraph 10(3)(c)(iv) and paragraph 10(2)(b) of the Family Assistance Act.

In doing so, the Determination replicates the operation of the *Child Care Benefit (Absences from Care—Permitted Circumstances) 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 Determination will operate from 1 October 2017 until 2 July 2018, when it 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 (the Rules). The 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 Family Assistance Act relating to permitted absences, including sections 10, 10A and 11, and enables the making of Minister's Rules to prescribe reasons for absences in which a child who has not attended any part of a session of care is taken to have attended that session of care for absences beyond the initial 42 day limit.

Consequently, the sole purpose of the Determination is enable the operation of the current arrangements for permitted absences to continue between the sunsetting of the 2000 Determination on 1 October 2017 and the commencement of the new Minister's Rules 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 (Absences from Care—Permitted Circumstances) Determination 2000* until 2 July 2018. The instrument does not substantially alter existing arrangements.

Regulatory Impact Statement

The Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination remakes the 2000 Determination for a short period, and is 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 (Absences from Care—Permitted Circumstances) Determination 2017* is made under section 11 of the *A New Tax System (Family Assistance) Act 1999*.

Explanation of Provisions

Section 1 sets out that the name of the instrument is the *Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 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 3 sets out that the authority for the instrument is the *A New Tax System (Family Assistance) Act 1999*.

Section 4 specifies the circumstances that are permitted circumstances, for the purpose of subparagraph 10(3)(c)(iv) of the Family Assistance Act, in which an approved child care service (other than an approved occasional care service) is taken to have provided a session of care to a child who was absent for all of the session. These circumstances replicate those set out in section 5 of the 2000 Determination.

Section 5 specifies the circumstances that are permitted circumstances, for the purpose of paragraph 10A(2)(b) of the Family Assistance Act, in which an approved occasional care child care service is taken to have provided a session of care to a child who was absent for all of the session. These circumstances replicate those set out in section 6 of the 2000 Determination.

Statement of Compatibility with Human Rights

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

Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 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 (Absences from Care—Permitted Circumstances) Determination 2017* (the Determination) sets out the permitted circumstances in which an approved child care service is taken to have provided a session of care to a child who was absent from the whole of that session. It continues the operation of the *Child Care Benefit (Absences from Care—Permitted Circumstances) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Division 4 of Part 3 of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act) includes provisions relevant to the eligibility requirements for child care benefit. A person must be eligible for child care benefit, before they may be determined, under Division 4 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, to be entitled to be paid child care benefit.

Child care benefit is a means-tested payment which assists individuals with child care costs. Under family assistance law, eligibility for child care benefit arises in respect of a session of care provided to a child.

Section 10 of the Family Assistance Act provides for the circumstances in which a session of care is taken to have been provided by an approved child care service (other than an occasional care service) to a child who was absent from all or part of that session. Generally, section 10 operates to the effect that the first 42 days of absence of a child from a whole session of care is taken to have been provided, for child care benefit purposes, regardless of the reason for the absence.

Section 10 also permits additional absences, after the initial 42 absence days, if an absence has occurred in any of the circumstances set out in subparagraphs 10(3)(c)(i) to (iv) (subject to other conditions of subsection 10(3) being met). Amongst other things, subparagraph 10(3)(c)(iv) provides that an approved child care service is taken to have provided a session of care to a child in circumstances set out in a legislative instrument made under section 11 of the Act.

Section 10A of the Family Assistance Act provides for the circumstances in which a session of care is taken to have been provided by an approved occasional care service to a child who was absent from all or part of that session. In particular, paragraph 10A(2)(b) provides that a service is taken to have provided a session of care to a child in circumstances set out in a legislative instrument made under section 11 of the Act.

Section 11 of the Family Assistance Act authorises the Minister to determine, by legislative instrument, the circumstances that are permitted circumstances for the purpose of subparagraph 10(3)(c)(iv) or paragraph 10A(2)(b) of the Family Assistance Act. This Determination specifies the circumstances in which a session of care is taken to have been provided to a child absent from care.

In doing so, the Determination replicates the operation of the *Child Care Benefit (Absences from Care—Permitted Circumstances) 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 Determination will operate from 1 October 2017 until 2 July 2018, when it 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 (the Rules). The 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 Family Assistance Act relating to permitted absences, including sections 10, 10A and 11, and enables the making of Minister's Rules to prescribe reasons for absences in which a child who has not attended any part of a session of care is taken to have attended that session of care for absences beyond the initial 42 day limit.

Consequently, the sole purpose of the Determination is allow the operation of the current arrangements for permitted absences to continue between the sunsetting of the 2000 Determination on 1 October 2017 and the commencement of the new Minister's Rules on 2 July 2018.

Human Rights Implications

The making of the Determination 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 Determination engages 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)

The right to an adequate standard of living – Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to social security – Article 9 of the ICESCR.

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.

The Determination promotes this right by enabling access to child care benefit to continue even when a child has been absent from care under certain circumstances.

The right to an adequate standard of living

Article 27 of the CRC requires that State Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The continuation of access to child care benefit under certain circumstances when children have been absent from care assists parents to cover child care costs they would still be liable for even when their child is absent.

The right to social security

Article 9 of the ICESCR recognises the right of everyone to social security.

The Determination, by providing for continued child care benefits to be extended to include a periods of absence from care under certain circumstances promotes this right.

Conclusion

The Determination is compatible with human rights because it promotes the protection of human rights, particularly the rights of parents and children, the right to an adequate standard of living and the right to social security.

Simon Birmingham
Minister for Education and Training