



Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016

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

I, Simon Birmingham, Minister for Education and Training, make this Determination under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Dated: 12 September 2016

Simon Birmingham

Minister for Education and Training

1 Name

This Determination is the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016*.

2 Commencement

This Determination commences on 10 October 2016.

3 Application and savings provisions

The amendments made by this Determination to rules and conditions apply from commencement in relation to decisions made from commencement, including, in particular:

- (a) decisions to approve applications under section 195 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, including in relation to applications made prior to commencement;
- (b) decisions to apply sanctions under section 200 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

4 Amendments

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* is amended as set out in Schedule 1.

Schedule 1

1 Section 3

Replace the definition of *carer* with:

“*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;”.

After the definition of *FDC carer* insert:

“*IHC carer* has the same meaning as in the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*;”.

2 Section 7

Replace the entire section with:

“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:

Matters relevant to management of child care services

- (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

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- (ii) any arrangements to ensure compliance by the applicant, or any person the applicant is, or will be, responsible for managing, with the laws and standards mentioned in paragraphs (d) through to (f);

Matters relevant to capacity to comply with all laws and standards

- (d) the applicant's understanding of obligations that would apply to it under the family assistance law, and commitment to complying with these obligations;
- (e) the applicant's record of compliance with any laws of the Commonwealth or a State or Territory;
- (f) the applicant's record of compliance with any quality standards relating to child care services;

Matters relevant to management of financial affairs

- (g) the applicant's record of financial management, including:
 - (i) any instances of bankruptcy, insolvency or external administration involving the applicant; and
 - (ii) any debts due to the Commonwealth by the applicant (whether or not the debt has been discharged);
 - (iii) the applicant's record of administering of Commonwealth, State or Territory funds;

Matters relevant to previous conduct, charges and convictions etc.

- (h) any relevant criminal charges against the applicant;
- (i) any proceedings currently before a court or tribunal that involve the applicant;
- (j) any order for the applicant to pay a pecuniary penalty for the contravention of a civil penalty

provision of a law of the Commonwealth or a State or Territory;

- (k) any decision under a law of the Commonwealth or a State or Territory relating to child care which adversely affects the applicant;
- (l) subject to Part VIIC of the *Crimes Act 1914*, any conviction or finding of guilt against the applicant for an offence against a law of the Commonwealth or a State or Territory (including an offence against children, or relating to dishonesty or violence);
- (m) any act of the applicant involving fraud or dishonesty;

Other matters

- (n) 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
 - (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.”.

3 Section 9

Replace the entire section with:

“9 Family day care and in-home care services: suitability of carers

(1) Where the applicant is applying for approval of a family day care service or an in-home care service, carers employed, contracted or otherwise engaged by the service must be suitable people to provide child care.

(2) The applicant must undertake that the service will take reasonable steps to ensure that carers employed, contracted or otherwise engaged by the service are suitable people to provide child care.

(3) For the purposes of subsection (2), the child care service must undertake a check for the following:

(a) any relevant criminal charges against the carer pending before a court;

(b) any relevant convictions or findings of guilt against the carer for an offence.

(4) 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).”.

4 Section 16

Replace subsections 16(4) and (5) with:

- “(4) Carers employed, contracted or otherwise engaged by a family day care service or an in-home care service must at all times be suitable people to provide child care.
- (5) When a service employs a new member of staff, or a family day care service or an in-home care service 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 Part 2 of this determination in relation to staff and carers before the service was approved.”.

5 Section 19

Replace the entire section with:

“19 Notifiable events

- (1) The operator must give the Secretary written notice of at least 30 days before:
- (a) entering into a contract for the sale of premises where the child care service is conducted;
 - (b) terminating the lease of the premises;
 - (c) changing the address of the service.
- (2) The operator must give the Secretary written notice within 14 days of any change to the details contained in the child care service’s application for approval, other than the address of the service.
- (3) If the operator becomes aware of something in relation to the persons listed in subsection (5) below, that affects or is likely to affect the suitability of the person to provide child care, the operator must give the Secretary written notice within 7 days of becoming aware, setting out:
- (a) the matter; and

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- (b) the action that the operator has taken or intends to take to deal with the situation.
- (4) Without limiting subsection (3) above, the matters that must be notified include:
- (a) any criminal charge, conviction or finding of guilt against the person for an offence against a law of the Commonwealth or a State or Territory which relates to an indictable offence punishable by imprisonment of 2 years or more, or an offence for which a penalty equivalent to 40 penalty units or more could be imposed;
 - (b) any instances of bankruptcy involving the person;
 - (c) any refusal (which includes the cancellation) of, or conditions imposed in relation to, a working with children check (where required under the law of the State or Territory in which the service is situated) which relates to the person's ability to work with children.
- (5) For the purposes of subsections (3) and (4) above, the operator must provide a written notice in respect of any of the following persons:
- (a) a member of the service's staff;
 - (b) key personnel;
 - (c) if the service is a family day care service or an in-home care service, a carer employed, contracted or otherwise engaged by the service."