



# Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017

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I, Simon Birmingham, Minister for Education and Training, make this instrument under subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## Compilation No. 1

**Compilation date:** 4 April 2018

**Includes amendments up to:** *Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination (No. 1) 2018*

Prepared by the Department of Education and Training, Canberra



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## About this compilation

### This compilation

This is a compilation of the *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017* that shows the text of the law as amended and in force on 4 April 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes

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## 1 Name

This instrument is the *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017*.

## 2 Commencement and repeal

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2017.	1 October 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.
- (3) This instrument is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

Note: Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* commences on 2 July 2018, see section 2 of that Act.

## 3 Authority

This instrument is made under the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## 4 Factors relevant to sanction decisions for all services

- (1) In applying subsection 200(1) of the Family Assistance Administration Act to an approved child care service, the Secretary must take into account:
- the severity of the failure by the service to comply with the conditions for continued approval of the service; and
  - the frequency of any previous failures by the service to comply with the conditions for continued approval of the service; and
  - whether the failure by the service to comply with the conditions for continued approval of the service may threaten the health or welfare of any child in the care of the service.

- (2) Once, having regard to the factors in subsection (1), the failure is considered to have been serious or frequent in the past, the appropriate sanction is cancellation, notwithstanding commitments or measures taken by the service to remedy the contravention or prevent future contraventions.

#### 4A Presumption in favour of cancellation with respect to certain breaches

- (1) Where the contravention involves repeated breaches of the obligation in section 219N of the Family Assistance Administration Act to give reports that allow the Secretary to accurately determine matters relating to eligibility and entitlement, as set out in subsection (4) of that section, including, but not limited to, where:
- (a) the service has reported fees that were an inaccurate representation of a genuine legal liability; or
  - (b) the service has reported a session of care that was not a session of care as defined under the *Child Care Benefit (Session of Care) Determination 2016* (such as where the reported fees exceed the “maximum amount” referred to in that Determination); or
  - (c) the service has reported care in relation to a child for whom no-one is eligible under the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*,

the appropriate sanction is cancellation

- (2) For the purposes of subsection (1), **repeated breaches** involve either:
- (a) 100 sessions or more that are reported inaccurately or otherwise do not contain the information required by the Secretary;
  - (b) the payment of child care service payments to the service in excess of \$5,000 due to the misreporting described in subsection (1).
- (3) Where the contravention involves providing false, misleading or otherwise inaccurate information about whether reported child care was actually provided to the child, in cases:
- (a) where a service has reported attendance when the relevant educators did not provide the care (including where they are overseas or otherwise incapacitated); or
  - (b) where children did not attend (including because they were overseas or there is evidence that the children were elsewhere at the time care is reported to have been provided),

the appropriate sanction is cancellation

- (4) Where the contravention involves a failure to update the Secretary about changes to key personnel as required by section 19 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017*, the appropriate sanction is cancellation, especially where a member of the key personnel that has not been notified to the Secretary is a managing director.

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- (5) Where the contravention involves not being suitable to operate a child care service, or staff or educators not being suitable to provide child care, under sections 7, 8, 9 or 16 of the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Rules 2017*, the appropriate sanction is cancellation.
- (6) Where the contravention involves the failure to comply with obligations relevant to:
- (a) children's health and safety as set out in Parts 4.2 or 4.3 of the *Education and Care Services National Regulations*; or
  - (b) the physical environment in which child care is provided as set out in Part 4.3 of the *Education and Care Services National Regulations*; or
  - (c) (where the service is a family day care service) the qualifications of educators (including requirements relevant to working with children checks) and requirements to keep a register of family day care educators, staff, family day care co-ordinators and family day care educator assistants as set out in Part 4.4 of the *Education and Care Services National Regulations*; or
  - (d) (where the service is a family day care service) the fit and proper person requirements for residents and family day care assistants as set out in regulation 163 of the *Education and Care Services National Regulations*,

the appropriate sanction is cancellation

Note: Requirements imposed on service operators under the *Education and Care Services National Regulations* apply as conditions of approval under Commonwealth family assistance law because of subsection 196(3) of the Family Assistance Administration Act.

## 5 Factors relevant to date of effect of revocations of suspensions

In specifying the date of effect of a revocation of a suspension of an approved child care service under subsection 200(3) of the Family Assistance Administration Act, the Secretary must take into account:

- (a) whether the service is complying with the conditions for continued approval of the service, and if so, when the Secretary considers that occurred; and
- (b) whether the service notified the Secretary that it is complying with the conditions for continued approval of the service, and if so, when the Secretary received that notice; and
- (c) the steps taken by the service to ensure it complies with the conditions for continued approval of the service into the future.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

#### **Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

#### **Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

#### **Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.



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**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

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**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
<i>Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017</i>	21 September 2017 (see F2017L01232)	1 October 2017	-
<i>Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination (No. 1) 2018</i>	4 April 2018 (see F2018L00465)	4 April 2018	s 4

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
s 4	am.2018 F2018L00465
s 4A	ad.2018 F2018L00465