

Explanatory Statement

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

Summary

The *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017* (the Determination) is made by the Minister for Education and Training under subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act). It provides guidance to the Secretary in making decisions on sanctions on approved child care services under subsections 200(1) and (3) of the Administration Act. It continues the operation of the *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Background

Division 1 of Part 8 of the Administration Act provides for the approval, for the purposes of the family assistance law, of child care services by the Secretary, and imposes conditions for continued approval on approved child care services.

A failure of an approved child care service to comply with any conditions of approval may lead to the Secretary imposing one or more sanctions on the service under subsection 200(1) of the Administration Act. These sanctions include, among others, suspension or cancellation of the service's approval. Subsection 200(3) of the Act provides that the Secretary can lift a suspension of a service's approval.

Under subsection 200(5) of the Administration Act, the Minister may, by legislative instrument, determine factors to be taken into account by the Secretary in applying sanctions under subsection 200(1) of the Act. Subsection 200(5) also allows for the Minister, by legislative instrument, to determine factors to be taken into account by the Secretary in specifying the date of effect of a revocation of a suspension under subsection 200(3) of the Act.

The Determination replicates the operation of the *Child Care Benefit (Breach of Conditions for Continued Approval) 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 The 2000 Determination is repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new Determination will operate from 1 October 2017 until 2 July 2018, when it will be superseded.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 consequences of breach of conditions for continued approval, including section 200. The Amendment Act enables the making of Minister's Rules setting out the matters to be taken into account by the Secretary in applying sanctions for breaches of conditions for continued approval and in specifying the day of effect of a revocation of a suspension.

Consequently, the sole purpose of the Determination is to continue the operation of the current arrangements for breach of conditions for continued approval between the sunseting 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 (Breach of Conditions for Continued Approval) 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 (Breach of Conditions for Continued Approval) Determination 2017* is made under subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

Explanation of Provisions

Section 1 sets out that the name of the instrument is the *Child Care Benefit (Breach of Conditions for Continued Approval) 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) (Administration) Act 1999*.

Section 4 specifies the factors the Secretary must take into account when applying one or more sanctions on the service under subsection 200(1) of the Administration Act. Section 4 replicates the operation of section 4 of the 2000 Determination.

Section 5 specifies the factors the Secretary must take into account when specifying the date of effect of a revocation of a suspension of an approved child care service under subsection 200(3) of the Administration Act. Section 5 replicates the operation of 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

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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 (Breach of Conditions for Continued Approval) Determination 2017* (the Determination) is made by the Minister for Education and Training under subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act). It provides guidance to the Secretary in making decisions on sanctions on approved child care services under subsections 200(1) and (3) of the Administration Act. It continues the operation of the *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2000*, which is repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

Division 1 of Part 8 of the Administration Act provides for the approval, for the purposes of the family assistance law, of child care services by the Secretary, and imposes conditions for continued approval of approved child care services.

A failure of an approved child care service to comply with any conditions of approval may lead to the Secretary imposing one or more sanctions on the service under subsection 200(1) of the Administration Act. These sanctions include, among others, suspension or cancellation of the service's approval. Subsection 200(3) of the Act provides that the Secretary can lift a suspension of a service's approval.

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Consequently, the sole purpose of the Determination is to continue the operation of the current arrangements for breach of conditions for continued approval between the sunset 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 parents and children – Article 18 and 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 rights of parents and children

Article 3 of the CRC recognises that in all actions concerning children, the best interests of the child shall be a primary consideration and Article 18(2) of the CRC requires States Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children. Article 24 of the ICCPR is specifically devoted to children, stipulating that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his or her status as a minor, on the part of his family, society and the State.

The family assistance law imposes eligibility rules and conditions for continued approval for family day care services to ensure that services continue to provide quality care for children and families. The Determination engages the rights of the parents and children by ensuring that before a decision is made on the sanctions to be imposed on an approved child care service for breaches of conditions of continued approval, which may affect access to child care, the severity and frequency of the failures are taken into account. The instrument also requires an assessment as to whether a failure to comply may threaten the health or welfare of any child in the care of a service.

Conclusion

The Determination is compatible with human rights because it promotes the protection of human rights especially the rights of parents and children.

Simon Birmingham
Minister for Education and Training