



# **Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination (No. 1) 2018**

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

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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*.

Dated 28 March 2018

Simon Birmingham  
Minister for Education and Training

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## 1 Name

This instrument is the *Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination (No. 1) 2018*.

## 2 Commencement and repeal

- (1) This instrument commences on registration.
- (2) This instrument is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.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 subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

## 4 Application

To avoid doubt, the amendments made by this instrument apply in relation to decisions made after commencement, including decisions made on review.

Note: This means that decisions made on internal review under sections 105 or 109A of the Family Assistance Administration Act or by the Administrative Appeals Tribunal under section 138 of the Family Assistance Administration Act are subject to the amendments made by this instrument.

## 5 Amendments

The *Child Care Benefit (Breach of Conditions for Continued Approval) Determination 2017* is amended as set out in Schedule 1.

# Schedule 1—Amendments

## 1 Section 4 (heading)

After “decisions”, add “for all services”.

## 2 Section 4

Before “In applying”, insert “(1)”.

## 3 At the end of section 4

Add:

- (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.

## 4 After section 4

Insert:

### 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.
- (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.