

Explanatory Statement

Child Care (Family Assistance) Revocation Determination (No. 2) 2018

Summary

The *Child Care (Family Assistance) Revocation Determination (No. 2) 2018* (the Determination) revokes two legislative instruments that are administered by the Department of Education and Training (the department). The instruments are redundant when Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) commences on 2 July 2018.

Background

The Amendment Act was enacted on 4 April 2017 and gives effect to the legislative elements of the Australian Government's new child care package (the package), including the Child Care Subsidy (CCS) and Additional Child Care Subsidy (ACCS) from 2 July 2018.

The Amendment Act repeals provisions in the *A New Tax System (Family Assistance) Act 1999* (the Assistance Act) and the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act) under which child care instruments relevant to child care benefit and child care rebate were made. These instruments will therefore be redundant from 2 July 2018. Further, new subordinate legislation, the *Child Care Subsidy Secretary's Rules 2017* cover the matters that are dealt with by the child care instruments revoked by this Determination for the purposes of CCS and ACCS (being the requirement to give statements and matters relating to conditions for approval of child care providers and services).

Consultation

The package reflects extensive consultation and expert analysis over several years commencing with the Productivity Commission's 2014 report into Childcare and Early Childhood Learning. This was followed by a Regulation Impact Statement (RIS) consultation process, three Senate Inquiry processes and ongoing consultation with the child care sector by the department.

The making of the Determination is to support the implementation of the package to commence on 2 July 2018 and is machinery in nature to revoke spent or redundant child care instruments.

In developing the Determination, the department consulted with a wide range of stakeholders, including child care providers and relevant Government departments through targeted consultation and an exposure draft of the Determination.

Stakeholders were advised that a review of all instruments relating to child care had identified spent or redundant instruments that are not required from 2 July 2018.

Regulation Impact Statement

The revocation of spent and redundant instruments will ensure that those instruments are marked as having ceased on the Federal Register of Legislation when they no longer have any practical application. This provides businesses, community organisations or individuals with a clearer picture of their obligations under the family assistance law and removes complexity by reducing the number of instruments in effect, thereby reducing red tape.

The Office of Best Practice Regulation (OBPR) assessed and determined a RIS was not required (OBPR reference: 22401).

Authority

The *Child Care (Family Assistance) Revocation Determination (No. 2) 2018* is made by the Secretary for the Department of Education and Training under paragraph 205(3)(b) and subsection 219E(6) of the *A New Tax System (Family Assistance) (Administration) Act 1999* and relies on subsection 33(3) of the *Acts Interpretation Act 1901* to revoke the relevant instruments.

Explanation of Provisions

Section 1 provides the name of this Determination is the *Child Care (Family Assistance) Revocation Determination (No. 2) 2018*.

Section 2 provides that this Determination commences immediately after the commencement of Schedule 1 to the Amendment Act (2 July 2018).

Section 3 sets out the authority for this Determination under relevant sections of the Assistance Act and Administration Act. Further, under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Section 4 provides that each instrument specified in Schedule 1 to this Determination is revoked immediately after the commencement of Schedule 1 to the Amendment Act on 2 July 2018. The revocation of these instruments is subject to paragraphs 8(1)(c) and 10(1)(c) in Schedule 4 to the Amendment Act. These are savings provisions that apply to an instrument (whether legislative or administrative) in force immediately prior to 2 July 2018 to ensure that the former law in relation to child care benefit, child care rebate and operators of approved child care services still applies in relation to sessions of care that occurred before 2 July 2018 but in respect to which decisions may still need to be made (such as in relation to past period claims or appeals).

Schedule 1

Schedule 1 specifies the child care instruments that are revoked immediately after the commencement of Schedule 1 to the Amendment Act on 2 July 2018, due to becoming spent and redundant.

Statement of Compatibility with Human Rights

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

Child Care (Family Assistance) Revocation Determination (No. 2) 2018

The *Child Care (Family Assistance) Revocation Determination (No.2) 2018* (the Determination) 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

This Determination, made under paragraph 205(3)(b) and subsection 219E(6) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act), revokes two legislative instruments administered by the Department of Education and Training (or predecessor departments which held responsibility in relation to child care matters under the then current Administrative Arrangements Orders).

The revocation of spent and redundant instruments will ensure that those instruments are marked as having ceased on the Federal Register of Legislation when they no longer have any practical application. The instruments specified in Schedule 1 of this Determination are no longer required when Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* (the Amendment Act) commences. This is because the Amendment Act repeals and replaces provisions in the *A New Tax System (Family Assistance) Act 1999* and the Administration Act under which current child care instruments were made. Further, new subordinate legislation, the *Child Care Subsidy Secretary's Rules 2017* covers the matters that are dealt with by the child care instruments revoked by this Determination for the purposes of Child Care Subsidy (CCS) and Additional Child Care Subsidy (ACCS) (being the requirement to give statements and matters relating to conditions of approval of child care providers and services).

Human Rights Implications

This Determination engages the following rights:

- *Rights of parents and children*

The rights of parents and children are contained in Articles 3 and 18 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 scope of the rights of parents and children is broad. The rights include the requirement to apply the principle of best interests of the child as a measure to support and assist parents and others who have day-to-day responsibility for ensuring recognition of children's rights. This requires all legislative, administrative and judicial bodies and institutions to systematically consider how children's rights and interests are or will be affected directly or indirectly by their decision and action. The rights of parents and children also includes respect for the responsibilities, rights and duties of parents or other persons who have responsibility for the child. This includes providing appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, in particular to ensure the development of services for the care of children and that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

The making of this Determination is machinery in nature to revoke two instruments that are spent or redundant as a consequence of the Australian Government's new child care package implemented by the Amendment Act involving the CCS and ACCS which commence on 2 July 2018.

The measures in this Determination have a neutral effect on the rights of parents and children as they revoke redundant and spent instruments. This minimises the complexity of the family assistance law by marking redundant and spent instruments as having ceased on the Federal Register of Legislation, and ensures the current relevant instruments in relation to child care are identifiable and accessible to child care stakeholders, including parents. The measures in this Determination do not limit the rights of parents and children as they do not represent a substantive change in the requirements that currently apply to families and child care. This is because the provisions under which these instruments were made are being repealed by the Amendment Act and certain matters in the instruments will be replaced by the *Child Care Subsidy Secretary's Rules 2017* from 2 July 2018.

Conclusion

This Determination is compatible with human rights.

Dr Michele Bruniges AM

Secretary of the Department of Education and Training