

# Explanatory Statement

---

## *Child Care (Family Assistance) Revocation Determination (No. 1) 2018*

### Summary

The *Child Care (Family Assistance) Revocation Determination (No. 1) 2018* (the Determination) revokes eight legislative instruments that are administered by the Department of Education and Training (the department) (or were administered by predecessor departments which held portfolio responsibility for child care matters under then current Administrative Arrangements Orders).

The instruments specified in Schedule 1 to this Determination are either spent or redundant. The instruments specified in Schedule 2 to 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 on 2 July 2018.

The revocation of these spent or redundant instruments will remove unnecessary child care instruments from the Federal Register of Legislation when these instruments no longer have any practical application.

### 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, including the Child Care Subsidy and Additional Child Care Subsidy, 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 current child care instruments were made, and provides for matters which are dealt with by current child care instruments which will no longer be applicable due to those amendments.

Consequently, the sole purpose of this Determination is to revoke unnecessary child care instruments and remove them from the Federal Register of Legislation.

### 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 the day after this Determination is registered (in the case of instruments specified in Schedule 1 to this Determination), or from 2 July 2018 (in the case of instruments specified in Schedule 2 to this Determination).

## Regulation Impact Statement

The revocation of spent or redundant instruments removes unnecessary child care legislative instruments from the Federal Register of Legislation as those instruments no longer have any practical application. This provides businesses, community organisations or individuals with a clearer picture of their obligations under 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. 1) 2018* is made by the Minister for Education and Training under subsection 49(3) of the Assistance Act; subsection 162(3), section 169, subsection 205(1) and subsection 219RD(2) of the Administration Act.

## Explanation of Provisions

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

**Section 2** provides that section 4 of this Determination commences on the day after registration of this Determination, and section 5 of this Determination commences immediately after the commencement of Schedule 1 to the Amendment Act (being 2 July 2018).

**Section 3** sets out the authority for this Determination under relevant sections of the Assistance Act, and the 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 on the day after this Determination is registered.

**Section 5** provides that each instrument specified in Schedule 2 to this Determination is revoked immediately after the commencement of Schedule 1 to the Amendment Act (being 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

The instruments specified in Schedule 1 to this Determination are revoked on the day after registration.

### Item 1 of Schedule 1

The *A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2010* (the 2010 PIC Determination) was made by the former Minister for Education, Employment and Workplace Relations and operated to enable certain disclosures of protected information in the public interest under that portfolio. The 2010 PIC Determination was superseded by, and is in substantially identical form as, the

more recent instrument, the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* (the 2015 PIC Determination), however, it was not revoked when the 2015 PIC Determination came into force. The 2015 PIC Determination, as it relates to child care matters, has been replaced by the *Family Assistance (Public Interest Certificate Guidelines (Education)) Determination 2018* from 5 April 2018 for child care matters (although it will continue to have effect for family assistance matters arising in the Social Services portfolio until alternate arrangements are in place). As such, the 2010 PIC Determination is spent and need not remain listed as being in effect on the Federal Register of Legislation.

#### Items 2 and 3 of Schedule 1

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2015 (No. 1)* and the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016* are spent, as the principal instruments that these instruments amended were repealed on 1 October 2017, under Part 4 in Chapter 3 of the *Legislation Act 2003* (sunsetting of legislative instruments).

#### **Schedule 2**

The instruments contained in Schedule 2 to this Determination are revoked immediately after the commencement of Schedule 1 to the Amendment Act (being 2 July 2018).

#### Item 1 of Schedule 2

The *A New Tax System (Family Assistance) (Administration) (Release of Protected Information) (DEEWR) Determination 2009 (No. 1)* is spent as it refers to a program known as the Support for the Child Care System Program that was set out in the DEEWR 2009-10 Portfolio Budget Statements. By 2 July 2018, the administered items under that program are no longer applicable to the programs set out in the Education and Training 2017-18 Portfolio Budget Statement.

#### Items 2 to 5 of Schedule 2

These are instruments that are authorised to be made under provisions that are repealed by the Amendment Act on 2 July 2018. As a result of the authorising provisions being repealed by the Amendment Act, these instruments are 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. 1) 2018***

The *Child Care (Family Assistance) Revocation Determination (No.1) 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**

The Determination, made under subsection 49(3) of the *A New Tax System (Family Assistance) Act 1999* (the Assistance Act); and subsection 162(3), section 169, subsection 205(1) and subsection 219RD(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act), revokes eight spent and redundant legislative instruments.

The revocation of spent and redundant instruments will remove any unnecessary child care legislative instruments from the Federal Register of Legislation as those instruments no longer have any practical application.

The three instruments specified in Schedule 1 to this Determination are either spent or redundant and are revoked the day after the Determination is registered.

The *A New Tax System (Family Assistance) (Administration) (Public Interest Certificate Guidelines) (DEEWR) Determination 2010* (the 2010 PIC Determination) was made by the former Minister for Education, Employment and Workplace Relations and operated to enable certain disclosures of protected information in the public interest under that portfolio. The 2010 PIC Determination was superseded by, and is in substantially identical form as, the more recent instrument, the *Family Assistance (Public Interest Certificate Guidelines) Determination 2015* (the 2015 PIC Determination), however, it was not revoked when the 2015 PIC Determination came into force. The 2015 PIC Determination, where it relates to child care matters, has been replaced by the *Family Assistance (Public Interest Certificate Guidelines) (Education) Determination 2018* from 5 April 2018 for child care matters (although it will continue to have effect for family assistance matters arising in the Social Services portfolio until alternate arrangements are in place). As such, the 2010 PIC Determination is spent and need not remain listed as being in effect on the Federal Register of Legislation.

The *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2015 (No. 1)* and the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016* are spent, as the principal instruments that these instruments amended were repealed on 1 October 2017, under Part 4 in Chapter 3 of the *Legislation Act 2003* (sunsetting of legislative instruments).

The instruments specified in Schedule 2 to 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 on 2 July 2018, and are revoked on 2 July 2018. This is because the Amendment Act repeals and replaces provisions in the Assistance Act and the Administration Act under which current child care instruments were made, and provides for matters which are dealt with by current child care instruments to no longer be applicable due to those amendments.

## Human Rights Implications

The 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 spent and redundant child care instruments that no longer have any practical application.

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 removing redundant and spent instruments from 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 services. This is because many instruments were made under provisions which are being repealed by the Amendment Act, and some instruments contain obligations that either have already been or will be replaced in more current instruments, including the *Child Care Subsidy Minister's Rules 2017*, from 2 July 2018.

## Conclusion

This Determination is compatible with human rights.

**Simon Birmingham**  
**Minister for Education and Training**