



Civil penalty and infringement notice scheme

For services operating under the Child Care Management System (CCMS)

The civil penalty and infringement notice scheme has been expanded to give the Australian Government a broader range of options for dealing with non-compliance by approved child care services. The scheme applies to a range of obligations that approved child care service providers are required to meet.

What is a civil penalty?

Civil penalties are financial penalties, determined in the courts, that do not involve criminal liability.

Who may seek a civil penalty order?

The Minister for Education, Employment and Workplace Relations may seek a civil penalty order from the Federal Court of Australia or the Federal Magistrates Court.

What is the maximum amount of a civil penalty?

For most contraventions, the maximum penalty is \$22,000 for an individual and \$44,000 for a body corporate. The courts determine the penalty based on all relevant matters (please see the attached table for a complete list of obligations and penalties).

What is the infringement notice scheme?

The infringement notice scheme operates in conjunction with civil penalties. An infringement notice is a financial penalty that can be issued to a service for failure to comply with an obligation under the Family Assistance Law. If a service receives an infringement notice and pays the amount set out in the notice, a civil penalty can be avoided.

An infringement notice will specify the nature of the contravention, the amount of the penalty and payment methods. Services will have 30 days from the date the notice is given to pay the penalty specified on the infringement notice.

Who may issue an infringement notice?

An infringement notice may be issued by the Department of Education, Employment and Workplace Relations (DEEWR) to a non-compliant service.

What is the penalty for an infringement notice?

Penalties range from \$220 to \$4,400 for an individual and \$440 to \$8,800 for a body corporate for a single contravention.

When will civil penalties and infringement notices be applied?

When an approved child care service contravenes its obligations under the Family Assistance Law, an infringement notice or civil penalty may be applied either in addition to, or instead of, sanctions imposed on the service.

Can a service contest an infringement notice?

If a service does not pay the penalty within 30 days of the infringement notice being given, and the Department does not withdraw the infringement notice within 28 days of giving the notice, the matter will proceed to either the Federal Court of Australia or the Federal Magistrates Court.

Are there any other consequences of receiving infringement notices?

Where a service fails to meet its obligations under the Family Assistance Law, action may also be taken to suspend or cancel approval for the purposes of Child Care Benefit (CCB). These are serious consequences, as the service would not be able to make CCB fee reductions.

If an approved child care service is issued 10 infringement notices within a 12 month period (which includes the 30 day period for paying the most recent penalty), the service's CCB approval may be suspended.

Obligations of approved child care services to which a civil penalty or infringement may be applied

Civil penalties or infringements may be applied where an individual or body corporate fails to meet any of the obligations, listed below, under the A New Tax System (Family Assistance) (Administration) Act 1999.

For information on the legislation supporting these obligations, refer to 'Legislative extracts for Approval and Continued Approval for Child Care Benefit purposes'. This is located under 'Information to assist child care payment compliance' on the 'Instruction Sheets to Assist Child Care Services' webpage at:

<http://www.deewr.gov.au/EarlyChildhood/Programs/ChildCareforServices/Operation/Pages/InstructionSheets.aspx>.

Legislative Reference	Description	Maximum Civil Penalty (Body Corp/Individual)	Infringement Penalty for a single contravention (Body Corp/Individual)
s204	Notification of matters affecting eligibility for approval (Child Care Benefit)	\$44,000 / \$22,000	\$3,300 / \$1,650
s219AC	Obligation to notify Secretary of enrolment of a child by an individual	\$44,000 / \$22,000	\$3,300 / \$1,650
	Obligation to notify Secretary of enrolment where approved child care service eligible	\$44,000 / \$22,000)	\$3,300 / \$1,650
s219AG	Failure to update enrolment information	\$44,000 / \$22,000	\$3,300 / \$1,650
s219B	Obligation to pass on fee reductions where individual conditionally eligible	\$44,000 / \$22,000	\$3,300 / \$1,650

s219BB	Obligation to charge no more than usual fee —rate determined by child care service or Secretary ('Special CCB')	\$44,000 / \$22,000	\$3,300 / \$1,650
s219BC	Obligation to charge no more than usual fee —special grandparent rate	\$44,000 / \$22,000	\$3,300 / \$1,650
s219BD	Obligation to charge no more than usual fee —Jobs Education and training (JET) Child Care fee assistance	\$44,000 / \$22,000	\$3,300 / \$1,650
s219E	Obligation to provide statements	\$44,000 / \$22,000	\$3,300 / \$1,650
s219EA	Obligation to provide information relating to child care places	\$6,600 / \$3,300	\$440 / \$220
s219F	Obligation to keep records	\$44,000 / \$22,000	\$3,300 / \$1,650
	Obligation to keep records for 36 months	\$44,000 / \$22,000	\$3,300 / \$1,650
s219G	Former approved child care service —obligation to keep records	\$44,000 / \$22,000	\$3,300 / \$1,650
	Former approved child care service —notification of premises at which records are kept	\$44,000 / \$22,000	\$3,300 / \$1,650
	Former approved child care service —notification if premises changes	\$44,000 / \$22,000	\$3,300 / \$1,650
s219L	Occupier to provide authorised officer with access to records and assistance—Obligation to produce records referred to in subsection 219F(1)	\$44,000 / \$22,000	\$3,300 / \$1,650
	Occupier to provide authorised officer with access to records and assistance—Obligation to produce records referred to in subsection 219G(2)	\$44,000 / \$22,000	\$3,300 / \$1,650
	Occupier to provide authorised officer with access to records and assistance—Obligation to provide reasonable facilities and assistance referred to in subsection 219L(3)	\$6,600 / \$3,300	\$440 / \$220
s219M	Obligation to notify the Secretary if an operator decides to stop operating an approved child care service	\$44,000 / \$22,000	\$8,800 / \$4,400
	Obligation to give further information requested in writing about the decision to cease operating the service	\$44,000 / \$22,000	\$8,800 / \$4,400
s219N	Obligation to give reports to Secretary (CCB)	\$44,000 / \$22,000	\$3,300 / \$1,650
s219NA	Obligation to provide information to the Secretary about number of child care places	\$44,000 / \$22,000	\$3,300 / \$1,650
s219NB	Obligation to provide further information to Secretary about enrolled children	\$44,000 / \$22,000)	\$3,300 / \$1,650

s219P	Obligations of operators of former approved child care services (former operator to fulfil all obligations relating to sessions of care provided prior to suspension or cancellation of approval)	\$44,000 / \$22,000	\$3,300 / \$1,650
s219QB	Remitting amounts that cannot be passed on (fee reductions)	\$44,000 / \$22,000	\$3,300 / \$1,650
S219TSB	Ancillary contravention of civil penalty provision	\$44,000 / \$22,000	\$3,300 / \$1,650