Explanatory Statement

*Child Care Benefit (Limits of Hours of Care) Rules 2017*

## Summary

The *Child* Care *Benefit (Limits of Hours of Care) Rules 2017* (the 2017 Rules) is made by the Minister for Education and Training under sections 57A and 57B of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). The 2017 Rules set out how hours in sessions of care are to be counted towards an individual’s weekly limit of hours, as well as rules for making determinations that affect an individual’s weekly limit of hours.

The 2017 Rules continue the operation of two instruments:

* the *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006* (2006 Determination)
* the *Child Care Benefit (Hours of Eligibility Rules) Determination 2000* (2000 Determination)

which are repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.

## Background

Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to the eligibility requirements for child care benefit. A person must be eligible for child care benefit, before they may be determined, under Division 4 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act)*,* to be entitled to be paid child care benefit.

Child care benefit is a means-tested payment which assists individuals with child care costs. Under family assistance law, eligibility for child care benefit arises in respect of a session of care provided to a child.

Subdivision G of Division 4 of Part 3 of the Family Assistance Act specifies weekly limits of hours for which a person can be eligible for child care benefit for care provided by an approved child care service.

Under section 57A of the Family Assistance Act the Minister must, by legislative instrument, determine rules relating to how hours in sessions of care provided by an approved child care service to a child in a week are to be counted towards the relevant limit of hours for a claimant.

Section 57B of the Family Assistance Act, specifies the Minister may, by legislative instrument, determine rules relating to:

1. the giving of certificates by approved child care services under subsection 54(10), 55(6) or subsection 56(3) or (4)
2. the making of decisions by the Secretary under section 54 or 55 or subsection 56(6) or (8)
3. the making of the Secretary’s determinations under section 57
4. the meaning of terms used in Subdivision G of Division 4 of Part 3 of the Act.

## Purpose

Part 2 of the 2017 Rules sets out the order in which hours spent by a child in sessions of care are to be assigned to the eligible individual’s weekly limit of hours for the purpose of section 57A of the Family Assistance Act. Part 2 of the 2017 Rules replicates the operation of the 2006 Determination.

Part 3 of the 2017 Rules sets out rules relating to the giving of certificates by approved child care services under, the making of decisions and determinations by the Secretary under, and the meaning of terms used in, Subdivision G of Division 4 of Part 3 of the Act for the purposes of section 57B of the Family Assistance Act. Part 3 of the 2017 Rules replicates the operation of the 2000 Determination.

The 2000 and 2006 Determinations are repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new 2017 Rules will operate from 1 October 2017 until 2 July 2018, when they 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. Those Rules will replace many of the existing family assistance law subordinate legislative instruments.

In particular, the Amendment Act repeals the provisions in the Family Assistance Act relating to limitations on eligibility for child care benefit for care provided by an approved child care service relating to hours, including sections 57A and 57B. The Amendment Act enables the making of Minister’s Rules prescribing circumstances in which an individual can nominate how their hours of subsidised care per fortnight will be allocated to services their child attends, for the purposes of determining child care subsidy payments where a child attends more than one session.

Consequently, the sole purpose of the 2017 Rules is to enable the operation of the current arrangements for limitations on eligibility for child care benefit relating to hours to continue between the sunsetting of the 2000 and 2006 Determinations 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 instruments 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 *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006* and the *Child Care Benefit (Hours of Eligibility Rules) Determination 2000* until 2 July 2018. The instrument does not substantially alter existing arrangements.

## Regulatory Impact Statement

The 2017 Rules do not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The 2017 Rules remake the 2000 and 2006 Determinations for a short period, and are 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 (Limits of Hours of Care) Rules 2017* is made under sections 57A and 57B of the *A New Tax System (Family Assistance) Act 1999*.

## Explanation of Provisions

**Part 1—Preliminary**

**Section 1** sets out that the name of the instrument is the *Child* Care *Benefit (Limits of Hours of Care) Rules 2017.* The instrument replaces the *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006* andthe *Child Care Benefit (Hours of Eligibility Rules) Determination 2000.*

**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) Act 1999*.

**Section 4** provides that for the purposes of this instrument the terms:

***claimant*** means a fee reduction claimant or a past period claimant, within the meaning of section 52 of the Family Assistance Act.

***relevant limit of hours,*** in relation to a claimant, means the limit of hours that applies to that claimant under Subdivision G of Division 4 of Part 3 of the Family Assistance Act.

***weekly report,*** in relation to sessions of care provided to a child by an approved child care service, means the report given by the service under section 219N of the Family Assistance Administration Act for the child for the week.

**Part 2—Hours in sessions of care that count towards limits of hours**

**Section 5** specifies this Part sets out, for section 57A of the Family Assistance Act, rules for working out how hours in sessions of care provided by an approved child care service to a child in a week are to be counted towards the relevant limit of hours for a claimant.

**Section 6** specifies the hours of care provided by approved child care services to a child in a particular week are counted towards a claimant’s relevant limit of hours in order in which weekly reports are received. Section 6 replicates the operation of section 6 of the 2006 Determination.

**Section 7** provides for nominated hours in sessions of care to count towards limits of hours.

Subsection 7(1) specifies, subject to subsection (2), if an approved child care service reports in the weekly report for a child for a week that the individual who enrolled the child for care by the service has nominated in writing the number of hours in sessions of care provided by the service to the child that are to count towards the claimant’s relevant limit of hours for the child for the week, only the number of hours in sessions of care provided to the child in the week up to the nominated number of hours count towards the claimant’s relevant limit of hours.

Subsection 7(2) specifies if, for a week, the hours worked out in accordance with this section are less than the claimant’s relevant limit of hours, any hours (other than hours worked out in accordance with subsection (1)) in sessions of care provided to the child by a service to which that subsection applies count towards the relevant limit of hours in the order in which the Secretary receives the weekly report for the child for the week given by each such service.

Section 7 replicates the operation of section 7 of the 2006 Determination.

**Section 8** sets out the order in which hours in sessions of care provided by an approved child care service to a child in a week are to be counted towards the claimant’s relevant limit of hours for each type of child care service.

Care provided by approved family day care and in‑home care services are to be ordered:

* first—non-standard hours
* second—part-time hours
* third—any other hours.

Care provided by approved centre based long day care services are to be ordered:

* first—hours of part-time long day care
* second—other hours of long day care.

Care provided by approved occasional care services or approved outside school hours care services—the hours of care in sessions of care provided to a child in the week up to the relevant limit of hours.

Subsection 8(2) provides that for the purpose of section 8 the term ‘***part-time long day care’*** means care for which the part-time % is more than 100% under subclause 2(2) of Schedule 2 to the Family Assistance Act.

Section 8 replicates the operation of section 8 of the 2006 Determination.

**Part 3—Rules relating to relevant limit of hours**

**Section 9** specifies this Part sets out, for section 57B of the Family Assistance Act, rules relating to the giving of certificates by approved child care services under, the making of determinations by the Secretary under, and the meaning of terms used in, Subdivision G of Division 4 of Part 3 of the Act.

**Section 10** specifies a certificate given by an approved child care service under subsection 54(10) or subsection 55(6) of the Family Assistance Act must include the following information:

1. the reasons that the service considers that the child is or has been at risk of serious abuse or neglect
2. whether the certificate is given under paragraph 54(10)(a) or (b) or paragraph 55(6)(a) or (b) of the Act, as the case may be.

Section 10 replicates the operation of section 6 of the 2000 Determination.

**Section 11** sets out the rules relating to the making of the Secretary’s determinations of sole providers under section 57 of the Family Assistance Act.

Subsection 11(2) provides that for the purpose of paragraph 57(1)(a) of the Act, in considering if an approved child care service is the sole provider in an area of the kind of care the service provides, the Secretary must have regard to whether the service is located in a town in a rural or remote area and whether the service is on the outskirts of an urban area.

Subsection 11(3) sets out the matters the Secretary must have regard to in considering, for the purpose of paragraph 57(1)(b) of the Act, whether the service would be likely to close if the Secretary were not to make a determination that would be in force for a period of one or more weeks in relation to the service.

Subsection 11(4) provides that a determination must not be made for a period that exceeds 104 weeks.

Section 11 replicates the operation of section 7 of the 2000 Determination.

**Section 12** sets out the circumstances, in relation to an individual, that the term *‘****exceptional circumstances***’ includes for the purpose of Subdivision G of Division 4 of Part 3 of the Family Assistance Act. Subsection 12(2) provides that circumstances are not to be considered exceptional circumstances merely because those circumstances or their impacts exist or are likely to exist indefinitely.

Section 12 replicates the operation of section 4 of the 2000 Determination.

**Section 13** specifies the activities for which a person is taken to have ‘***work related commitments’*** for the purpose of Subdivision G of Division 4 of Part 3 of the Family Assistance Act.

Section 13 replicates the operation of section 5 of the 2000 Determination.

Statement of Compatibility with Human Rights

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

***Child* Care *Benefit (Limits of Hours of Care) Rules 2017***

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 (Limits of Hours of Care) Rules 2017* (the 2017 Rules) is made by the Minister for Education and Training under sections 57A and 57B of the *A New Tax System (Family Assistance) Act 1999* (the Family Assistance Act). The 2017 Rules set out how hours in sessions of care are to be counted towards an individual’s weekly limit of hours, as well as rules for making determinations that affect what weekly limit of hours an individual has.

The Rules continue the operation of two instruments:

* the *A New Tax System (Family Assistance) (Child Care Benefit — Eligible Hours of Care) Determination 2006* (the 2006 Determination)
* the *Child Care Benefit (Hours of Eligibility Rules) Determination 2000* (the 2000 Determination)

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Division 4 of Part 3 of the Family Assistance Act includes provisions relevant to the eligibility requirements for child care benefit. A person must be eligible for child care benefit, before they may be determined, under Division 4 of Part 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999,* to be entitled to be paid child care benefit.

Child care benefit is a means-tested payment which assists individuals with child care costs. Under family assistance law, eligibility for child care benefit arises in respect of a session of care provided to a child.

Subdivision G of Division 4 of Part 3 of the Family Assistance Act specifies weekly limits of hours for which a person can be eligible for child care benefit for care provided by an approved child care service.

Under section 57A of the Family Assistance Act the Minister must, by legislative instrument, determine rules relating to how hours in sessions of care provided by an approved child care service to a child in a week are to be counted towards the relevant limit of hours for a claimant.

Section 57B of the Family Assistance Act, specifies the Minister may, by legislative instrument, determine rules relating to:

1. the giving of certificates by approved child care services under subsection 54(10), 55(6) or subsection 56(3) or (4)
2. the making of decisions by the Secretary under section 54 or 55 or subsection 56(6) or (8)
3. the making of the Secretary’s determinations under section 57
4. the meaning of terms used in Subdivision G of Division 4 of Part 3 of the Act.

The 2017 Rules replicate the operation of the 2000 and 2006 Determinations. The 2000 and 2006 Determinations are repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments). The new 2017 Rules will operate from 1 October 2017 until 2 July 2018, when they will be superseded.

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In particular, the Amendment Act repeals the provisions in the Family Assistance Act relating to limitations on eligibility for child care benefit for care provided by an approved child care service relating to hours, including sections 57A and 57B. The Amendment Act enables the making of Minister’s Rules prescribing circumstances in which an individual can nominate how their hours of subsidised care per fortnight will be allocated to services their child attends, for the purposes of determining subsidy payments where a child attends more than one session.

Consequently, the sole purpose of the 2017 Rules is to allow the operation of the current arrangements for limitations on eligibility for child care benefit relating to hours to continue between the sunsetting of the 2000 and 2006 Determinations on 1 October 2017 and the commencement of the new Minister’s Rules on 2 July 2018.

## Human Rights Implications

The making of the 2017 Rules is machinery in nature to enable current legislative requirements set out in the 2000 and 2006 Determinations 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 2017 Rules in isolation do not engage any of the applicable rights or freedoms. The instrument merely specifies:

* Part 2—how hours in sessions of care provided by an approved child care service to a child in a week are to be counted towards the relevant limit of hours for a claimant
* Part 3—the matters the Secretary must have regard to in considering whether to make a determination of sole provider and the meaning of terms for the purpose of Subdivision G of Division 4 of Part 3 of the Family Assistance Act.

The principal requirements in relation to limitations on eligibility for child care benefit relating to hours are set out in the Family Assistance Act.

## Conclusion

The 2017 Rules are compatible with human rights as they do not raise any human rights issues.

**Simon Birmingham**

**Minister for Education and Training**