



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

I, Simon Birmingham, Minister for Education and Training, make this instrument under sections 57A and 57B of the *A New Tax System (Family Assistance) Act 1999*.

Dated 18 September 2017

Simon Birmingham
Minister for Education and Training

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Part 1—Preliminary

1 Name

This instrument is the *Child Care Benefit (Limits of Hours of Care) Rules 2017*.

2 Commencement and repeal

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2017.	1 October 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.
- (3) This instrument is repealed immediately after the commencement of Schedule 1 to the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.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 the *A New Tax System (Family Assistance) Act 1999*.

4 Definitions

In this instrument:

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

5 Purpose of this Part

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.

6 Hours of care by approved child care services are counted towards limit of hours in order in which weekly reports are received

The hours in sessions of care provided by approved child care services to a child in a particular week are to count towards the claimant's relevant limit of hours in the following order:

- (a) first—the number of hours in sessions of care, worked out in accordance with sections 7 and 8, provided to the child in the week by the service whose weekly report is the first weekly report for the child for the week that the Secretary receives;
- (b) second—the number of hours in sessions of care, worked out in accordance with sections 7 and 8, provided to the child in the week by any other service, in the order in which the Secretary receives the weekly report for the child for the week given by each service.

7 Nominated hours in sessions of care to count towards limit of hours

- (1) 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.
- (2) 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 weekly report for the child for the week given by each such service.

8 Order in which hours of care by an approved child care service are counted towards limit of hours

- (1) The 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 in the following order:
 - (a) if the care is provided by an approved family day care service:
 - (i) first—non-standard hours family day care;

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- (ii) second—part-time family day care;
- (iii) third—any other hours of family day care;
- (b) if the care is provided by an approved in-home care service:
 - (i) first—non-standard hours in-home care;
 - (ii) second—part-time in-home care;
 - (iii) third—other hours of in-home care;
- (c) if the care is provided by an approved centre based long day care service:
 - (i) first—hours of part-time long day care;
 - (ii) second—other hours of long day care;
- (d) if the care is provided by an approved occasional care service or an approved outside school hours care service—the hours of care in sessions of care provided to the child in the week up to the relevant limit of hours.

(2) In this section:

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.

Part 3—Rules relating to relevant limits of hours

9 Purpose of this Part

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.

10 Rules relating to certificates given by approved child care services

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:

- (a) the reasons that the service considers that the child is or has been at risk of serious abuse or neglect;
- (b) 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.

11 Rules relating to sole provider determinations

- (1) This section sets out rules relating to the making of the Secretary's determinations under section 57 of the Family Assistance Act.
- (2) In considering the matter in paragraph 57(1)(a) of the Act, the Secretary must have regard to:
 - (a) whether the service is located in a town in a rural or remote area; and
 - (b) whether the service is on the outskirts of an urban area.

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- (3) In considering the matter in paragraph 57(1)(b) of the Act, the Secretary must have regard to:
- (a) the number of FTB children and regular care children of individuals who are eligible for child care benefit and who satisfy the work/training/study test; and
 - (b) the number of FTB children and regular care children of individuals who are eligible for child care benefit and who do not satisfy the work/training/study test; and
 - (c) the hours per week of child care provided to the children referred to in paragraphs (a) and (b); and
 - (d) the measures that would be taken by the service to attract additional children to fill the hours and child care places that would be available if the determination were not made; and
 - (e) other measures taken to maintain or improve the viability of the service; and
 - (f) the existing charging practices of the service and the likely impact (if any) on those practices of the determination not being made; and
 - (g) financial statements for the current and previous financial years, including:
 - (i) profit statements; and
 - (ii) estimates of future income, expenditure and profits, if the determination were not made; and
 - (h) any information that is available to the Secretary about the demand for child care places in the area, including:
 - (i) the service's existing and recent utilisation rates;
 - (ii) patterns and trends of utilisation;
 - (iii) waiting lists; and
 - (iv) projections of expected utilisation if the determination were not made.
- (4) A determination must not be made for a period that exceeds 104 weeks.

Note The Secretary is able to make determinations at any time, including successively: see subsection 33(1) of the *Acts Interpretation Act 1901*.

12 Meaning of exceptional circumstances

- (1) In Subdivision G of Division 4 of Part 3 of the Family Assistance Act, the term ***exceptional circumstances***, in relation to an individual, includes the following circumstances:
- (a) serious illness, hospitalisation, or short-term incapacity of the individual or a member of the individual's family;
 - (b) the individual's attendance at a funeral or bereavement service, or resolution of the estate of a deceased family member of the individual, requiring long-distance travel;
 - (c) the individual needs to provide short-term care for a member of the individual's family;
 - (d) the individual is providing assistance in response to an emergency or natural disaster;
 - (e) the individual needs to attend proceedings in a court or tribunal.

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- (2) Circumstances are not to be considered exceptional circumstances merely because those circumstances or their impacts exist or are likely to exist indefinitely.

13 Meaning of work related commitments

- (1) For Subdivision G of Division 4 of Part 3 of the Family Assistance Act, a person has *work related commitments* during a period that the person:
- (a) is engaged in paid work (whether as an employee or as a self-employed person); or
 - (b) is actively setting up a business that has not yet started to operate; or
 - (c) is actively looking for work; or
 - (d) is undertaking unpaid voluntary work:
 - (i) that provides work experience that gives or increases skills which could normally be expected to enhance a person's prospects of obtaining paid employment; or
 - (ii) for more than 15 hours per week; or
 - (e) is undertaking formal instruction in a training course or course of education for the purpose of improving the person's work skills or employment prospects.
- (2) A person also has *work related commitments*:
- (a) during the period that the person is travelling between a place at which the person undertakes an activity mentioned in subsection (1) and the approved child care service at which the person's child is receiving care; and
 - (b) if the activity mentioned in subsection (1) is undertaken by the person at night—during a period of day-time that the person is sleeping, up to a combined maximum of 10 hours a day for the person and his or her partner, if any.