Child Care Benefit (Child at Risk and Hardship Determinations) Rules 2017

I, Simon Birmingham, Minister for Education and Training, make this instrument under subsection 82(3) of the A New Tax System (Family Assistance) Act 1999.

Dated 18 September 2017

Simon Birmingham
Minister for Education and Training
# Contents

**Part 1—Preliminary**

1. Name ......................................................................................................................... 1  
2. Commencement and repeal ............................................................................................ 1  
3. Authority .......................................................................................................................... 1  
4. Definitions ....................................................................................................................... 1  

**Part 2—Kinds of hardship**

5. Kinds of hardship ............................................................................................................. 2  

**Part 3—Rules for giving certificates and making determinations**

6. Contents of certificates given in relation to children at risk and hardship .................. 2  
7. Hardship determinations not to exceed 52 weeks .......................................................... 3  
8. Periods of hardship determinations in income support cases ....................................... 3  
9. Periods of hardship determinations made by the Secretary ............................................. 3
Part 1—Preliminary

1 Name

This instrument is the Child Care Benefit (Child at Risk and Hardship Determinations) 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.

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The whole of this instrument</td>
<td>1 October 2017.</td>
<td>1 October 2017</td>
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</tbody>
</table>

Note: This table relates only to the provisions of this instrument as originally made.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:

hardship determination, in relation to an individual, means:

(a) a certificate given by an approved child care service under subsection 76(1) of the Family Assistance Act for the reason set out in subparagraph 76(1)(b)(ii) in relation to the individual; and

(b) a determination by the Secretary under subsection 81(2) of the Family Assistance Act in relation to the individual.
Part 2—Kinds of hardship

5 Kinds of hardship

(1) For subparagraph 76(1)(b)(ii) and paragraph 81(2)(c) of the Family Assistance Act, the following kinds of hardship are specified in relation to an individual:
   (a) hardship arising from an event that has substantially reduced the individual’s capacity to pay child care fees;
   (b) where the individual has ceased to receive an income support payment (other than because of the application of an assets test in relation to that payment)—hardship arising from:
       (i) the individual incurring significant additional expenditure associated with commencing new employment; or
       (ii) the individual’s income being significantly reduced.

(2) Without limiting paragraph (1)(a), the event mentioned in that paragraph may include the following:
   (a) loss of employment or failure of a business;
   (b) damage to a residence that has required the child of the individual to be relocated or to require additional child care;
   (c) death or serious illness in the individual’s family that has required significant additional expenditure or has resulted in a significant reduction in income.

(3) However, hardship of a kind mentioned in subsection (1) does not include hardship arising from:
   (a) foreseeable expenditure (such as routine home repairs or maintenance); or
   (b) non-essential expenditure (such as home improvements); or
   (c) ongoing low income; or
   (d) increases in child care fees.

Part 3—Rules for giving certificates and making determinations

6 Contents of certificates given in relation to children at risk and hardship

A certificate given by an approved child care service under section 76 of the Family Assistance Act must include a description of the circumstances that led to the service giving the certificate, including:

(a) if the certificate is given under subsection 76(1) of the Act for the reason set out in subparagraph 76(1)(b)(i), or is given under subsection 76(2) of the Act—the reasons that the service considers the child is at risk of serious abuse or neglect; and
Section 7

(b) if the certificate is given under subsection 76(1) of the Act for the reason set out in subparagraph 76(1)(b)(ii)—the details of the hardship that the individual is experiencing.

Note: The certificate also needs to include the matters set out at subsection 76(3) of the Family Assistance Act.

7 Hardship determinations not to exceed 52 weeks

The total period of hardship determinations made in relation to a particular individual and a particular hardship event must not exceed 52 weeks.

8 Periods of hardship determinations in income support cases

(1) The period of a hardship determination made in relation to a particular individual and a particular hardship event of a kind mentioned in paragraph 5(1)(b) must be for a period of:

(a) for the first such determination in a financial year—3 weeks, commencing on:

(i) if the individual ceased to receive an income support payment on a Monday—that day; or

(ii) otherwise—the first Monday after the individual ceased to receive an income support payment; and

(b) for a subsequent determination in a financial year—1 week, commencing no earlier than the end of an earlier hardship determination in relation to the individual and hardship event.

(2) However, the total period of hardship determinations made in any financial year in relation to a particular individual and a particular hardship event of a kind mentioned in paragraph 5(1)(b) must not exceed 6 weeks.

Note: Sections 77 and 78 of the Family Assistance Act also impose limits on the periods for which certain hardship determinations can be in effect.

9 Periods of hardship determinations made by the Secretary

(1) The period of a determination made by the Secretary under subsection 81(2) of the Family Assistance Act in relation to a particular individual and a particular hardship event must be for the minimum period that the Secretary considers necessary for the individual to recover from or adjust to the hardship event.

(2) For subsection (1):

(a) recovery from or adjustment to a hardship event means adaptation to the individual’s new circumstances, and does not mean a return to the circumstances that existed before the hardship event occurred; and

(b) the Secretary must consider all of the individual’s circumstances, including the individual’s ability to reduce other items of household expenditure in order to pay child care fees, and whether the general expenditure of the person is reasonable having regard to the level of housing and other costs in the area in which the person lives.