

Explanatory Statement

Child Care Benefit (Approved Child Care Service Record Keeping) Rules 2017

Summary

The *Child Care Benefit (Approved Child Care Service Record Keeping) Rules 2017* (the 2017 Rules) are made by the Secretary of the Department of Education and Training under subsection 219F(3) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Administration Act). The 2017 Rules set out rules relating to the records that approved child care services must keep. It continues the operation of the *Child Care Benefit (Record Keeping) Rules 2006*, which are repealed under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments), on 1 October 2017.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 *A New Tax System (Family Assistance) Act 1999* (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 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 by an approved child care service.

Subdivision D of Division 1 of Part 8A of the Administration Act imposes obligations on approved child care services in relation to records that they must keep, for the purposes of the family assistance law. Section 219F of the Administration Act provides that an approved child care service must keep records, as provided for in rules made under subsection 219F(3), of information and events relating to an individual's eligibility for payment of child care benefit and a service's eligibility for payment of child care benefit in respect of a child at risk, under that Act. It further provides that records must be kept relating to the service's compliance with the conditions for the continued approval of approved child care services and any other matter specified in rules made under subsection (3).

Subsection 219F(3) of the Administration Act provides for the Secretary to, by legislative instrument, make rules relating to what records an approved child care service must keep.

The 2017 Rules replicate the operation of the *Child Care Benefit (Record Keeping) Rules 2006* (2006 Rules). The 2006 Rules are repealed on 1 October 2017, under Part 4 of the *Legislation Act 2003* (Sunsetting of legislative instruments).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. This 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 and replaces the provisions in the Administration Act relating to requirements in relation to records, including section 219F, and enables the making of Secretary's Rules setting out factors relevant to record keeping requirements.

Consequently, the sole purpose of the 2017 Rules is to continue the operation of the current obligations in relation to record keeping requirements between the sunset of the 2006 Rules on 1 October 2017 and the commencement of the new Secretary'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 instrument 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 *Child Care Benefit (Record Keeping) Rules 2006* 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 2006 Rules 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) agree with this regulatory impact assessment (OBPR ID 22536).

Authority

The Child Care Benefit (Approved Child Care Service Record Keeping) Rules 2017 are made under subsection 219F(3) of the Administration Act.

Explanation of Provisions

Section 1 sets out that the name of the instrument is the *Child Care Benefit (Approved Child Care Service Record Keeping) Rules 2017*.

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 Administration Act.

Section 4 specifies the records an approved child care service must keep for the purposes of the family assistance law. Section 4 replicates the operation of section 6 of the 2006 Rules.

Section 5 specifies additional records that must be kept by approved family day care services. Section 5 replicates the operation of section 7 of the 2006 Rules.

Statement of Compatibility with Human Rights

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

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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

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Division 4 of Part 3 of the *A New Tax System (Family Assistance) Act 1999* (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 Administration Act, to be entitled to be paid child care benefit.

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Human Rights Implications

The making of the 2017 Rules is machinery in nature to enable current legislative requirements set out in the 2006 Rules 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 engage the following rights:

Prohibition on interference with privacy and attacks on reputation – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)

Right to privacy

Article 17 in the ICCPR provides the right to protection against arbitrary and unlawful interferences with privacy, family, home and correspondence.

The 2017 Rules require approved child care services to keep records that relate to children to whom they are providing care and individuals who are eligible for child care benefit in relation to those children. They further require child care services to keep records relating to carers providing care to children. Consequently, the records to be kept by child care services include personal information.

These requirements are directly relevant to ensuring that child care benefit is properly paid and that child care services are properly administering child care payments and are otherwise compliant with their obligations under the family assistance law. In any case, the kinds of records that the 2017 Rules require approved child care services to keep are the kinds of records properly run child care services would keep as a matter of sensible business administration.

To the extent that the right to privacy is limited, the limitation is reasonable and proportionate and will strengthen the best interests of children in care.

Conclusion

The 2017 Rules are compatible with human rights because they promote the protection of human rights. To the extent that the Rules place a limitation on the right to privacy, that limitation is reasonable and proportionate.

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