



Child Care Benefit (Session of Care) Determination 2016

made under section 9 of the *A New Tax System (Family Assistance) Act 1999*.

Compilation No. 1

Compilation date: 13 March 2017

Includes amendments up to: *Child Care Benefit (Session of Care) Amendment
Determination 2017*

Prepared by the Department of Education and Training, Canberra

About this compilation

This compilation

This is a compilation of the *Child Care Benefit (Session of Care) Determination 2016* that shows the text of the law as amended and in force on 13 March 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1 Preliminary

1 Name

This Determination is the *Child Care Benefit (Session of Care) Determination 2016*.

2 Commencement

This Determination commences on 10 October 2016.

3 Authority

This Determination is made under section 9 of the *A New Tax System (Family Assistance) Act 1999 (the Act)*.

4 Revocation

The *Child Care Benefit (Session of Care) Determination 2000* is revoked.

5 Savings and transitional

To avoid doubt, the *Child Care Benefit (Session of Care) Determination 2000* applied to sessions of care that occurred up to and on 9 October 2016.

This Determination applies to sessions of care that occur on and from 10 October 2016 onwards.

Part 2 Sessions of Care

6 What constitutes a session of care

- (1) Subject to section 11, for the purposes of the Act, a session of care is the minimum period of time in respect of which an approved child care service imposes a liability on an individual by charging a fee for providing child care.
- (2) To avoid doubt, a genuine legal liability must arise in respect of the fee referred to in subsection (1) under an arrangement which requires an individual to pay the fee irrespective of any payment made by the Secretary under the family assistance law to discharge some or all of that liability.
- (3) A session of care may start on one day and end on the next day, however, a session of care must not exceed 12 hours.

7 Session of care starting on one day and ending on the next day

A session of care that starts on one day (the first day) and ends on the next day is to be treated as having occurred on the first day.

Part 3 Sessions of care before and after school

8 Definition for this Part

In this Part *approved child care service* does not include an approved occasional care service.

9 Sessions of before school care

- (1) In this section *standard period* means the period of 2 hours ending immediately before school starts.
- (2) A *standard session* is the minimum period for which an approved child care service charges a fee for providing before school care to a child in the standard period.
- (3) A standard session must not exceed 2 hours.
- (4) If a child attends a standard session exceeding one hour, and on the same day the approved child care service provides an additional period of care for the child immediately before or after the standard period, a session of care during the additional period must not exceed half an hour.

10 Sessions of after school care

- (1) In this section *standard period* means the period of 3 and a half hours starting immediately after school finishes.
- (2) A *standard session* is the minimum period for which an approved child care service charges a fee for providing after school care to a child in the standard period.
- (3) A standard session must not exceed 3 and a half hours.
- (4) If a child attends a standard session exceeding one hour, and on the same day the approved child care service provides an additional period of care for the child immediately before or after the standard period, a session of care during the additional period must not exceed half an hour.

Part 4 Care provided that is not a session of care for which child care benefit is payable

11 Care that is not a session of care

- (1) Care provided to a child in the following situations does not constitute a session of care:
 - (a) the provision of a transport service, unless the transport is merely incidental to a session of care being provided;
 - (b) care provided in a domestic living arrangement on residential premises where no liability as described in section 6 of this determination would ordinarily arise, including where:
 - (i) the care is provided in the child's own home; or
 - (ii) an individual for whom the child is an FTB child or a regular care child (including a parent of the child) remains present at the location where the care is being provided, whilst the care is taking place.
- (2) Notwithstanding paragraph (1)(b), the care is a session of care where the care is provided by a service approved as an in-home care service under section 195 of the *A New Tax System (Family Assistance) Administration Act 1999* and in accordance with the *Child Care Benefit (Allocation of Child Care Places) Determination 2000* and the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*.

12 Care provided by an approved family day care service that is not a session of care for special grandparent rate purposes

- (1) This section applies to care provided by an approved family day care service only.
- (2) If an individual would otherwise be eligible for the special grandparent rate under section 50S of the Family Assistance Administration Act for care in relation to a child, that care is not a session of care if:
 - (a) the hourly fees reported for that care exceed what the Secretary considers the individual has incurred a genuine legal liability for, as set out in section 6 of this Determination; or
 - (b) subject to subsection (4), the hourly fees reported for that care exceed the ***maximum amount***.
- (3) In this section, the ***maximum amount*** is \$12.67 per hour.

- (4) Where the fees reported exceed the **maximum amount**, the care is only a session of care if the Secretary considers that the fees reported:
- (a) have been set in accordance with section 219BC of the *A New Tax System (Family Assistance) (Administration) Act 1999* because the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if the special grandparent rate did not apply; and
 - (b) reflect a genuine legal liability that has been incurred by the individual, despite the fee exceeding the **maximum amount**.

13 Care provided by an approved family day care service that is not a session of care where a child is at risk or individual is in hardship

- (1) This section applies to care provided by an approved family day care service only.
- (2) If an individual or a service would otherwise be eligible for a rate of fee reduction as determined under Subdivision C of Division 4 of Part 4 of the Family Assistance Act for care in relation to a child, that care is not a session of care if:
- (a) the hourly fees reported for that care exceed what the Secretary considers the individual has incurred a genuine legal liability for, as set out in section 6 of this Determination; or
 - (b) subject to subsection (4), the hourly fees reported for that care exceed the **maximum amount**.

Note: Subdivision C of Division 4 of Part 4 of the Family Assistance Act refers to the rate of fee reduction applicable where a child is at risk of serious abuse or neglect or an individual is in hardship.

- (3) In this section, the **maximum amount** is \$12.67 per hour.
- (4) Where the fees reported exceed the **maximum amount**, the care is only a session of care if the Secretary considers that the fees reported:
- (a) have been set in accordance with section 219BB of the *A New Tax System (Family Assistance) (Administration) Act 1999* because the fees set for the session do not exceed the amount of the fees that the service would charge for the same session for the same child if the rate, referred to in sections 76 or 81 of the Family Assistance Act, did not apply; and
 - (b) reflect a genuine legal liability that has been incurred by the individual, despite the fee exceeding the **maximum amount**.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

| | |
|---|---|
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| C[x] = Compilation No. x | pres = present |
| Ch = Chapter(s) | prev = previous |
| def = definition(s) | (prev...) = previously |
| Dict = Dictionary | Pt = Part(s) |
| disallowed = disallowed by Parliament | r = regulation(s)/rule(s) |
| Div = Division(s) | |
| exp = expires/expired or ceases/ceased to have effect | reloc = relocated |
| F = Federal Register of Legislation | renum = renumbered |
| gaz = gazette | rep = repealed |
| LA = <i>Legislation Act 2003</i> | rs = repealed and substituted |
| LIA = <i>Legislative Instruments Act 2003</i> | s = section(s)/subsection(s) |
| (md) = misdescribed amendment can be given effect | Sch = Schedule(s) |
| (md not incorp) = misdescribed amendment cannot be given effect | Sdiv = Subdivision(s) |
| mod = modified/modification | SLI = Select Legislative Instrument |
| No. = Number(s) | SR = Statutory Rules |
| | Sub-Ch = Sub-Chapter(s) |
| | SubPt = Subpart(s) |
| | <u>underlining</u> = whole or part not commenced or to be commenced |

Endnote 3 —Legislation history

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
|--|---------------------------------------|---|--|
| <i>Child Care Benefit (Session of Care) Amendment Determination 2017</i> | 27 February 2017 (see F2017L00162) | Sch 1: 13 March 2017 (s 2) Sch 2: 1 July 2017 (s 2) | s. 4 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|-----------------------------|
| Part 4, s 11(2) | am. 2017 F2017L00162 |
| Part 4, s 12 | ad. 2017 F2017L00162 |
| Part 4, s 12(3) | <u>rs. 2017 F2017L00162</u> |
| Part 4, s 13 | ad. 2017 F2017L00162 |
| Part 4, s 13(3) | <u>rs. 2017 F2017L00162</u> |