



# Family Day Care Legislation Changes

The Australian Government has made changes to family assistance law affecting Child Care Benefit approved Family Day Care (FDC) services. The changes will apply from 12 October 2015 and are intended to end 'child swapping' in FDC.

This fact sheet gives *general* information about the changes. For detailed information about the changes and the consequent changes to the obligations of approved FDC services, please read the legislative instruments referred to under the heading 'Family assistance law – legislative instruments' on the next page. This fact sheet does not constitute legal advice. You may wish to seek your own legal advice about your obligations under the changes.

## What is 'child swapping'?

Child swapping is a practice where an FDC educator, or their partner, receives child care payments for a session of FDC provided to their child on the same day that they themselves provide FDC.

## Who is affected by the changes?

These changes affect approved FDC services. They also affect individuals entitled to child care payments for a child enrolled for care at an approved FDC service (the 'eligible individual') if they, or their partner, are an FDC educator and provides any session of care for an approved FDC service on that day.

## Key changes to the family assistance law

**Eligibility** — FDC educators and their partners are not entitled to receive child care payments for their own child's session of FDC if, on that same day, the FDC educator provides FDC for an approved FDC service, unless specified circumstances apply.

**Check FDC educator status** — FDC services will be required to ask eligible individuals if they, or their partner, are an FDC educator.

**Specified circumstances** — the specified circumstances allow eligible individuals to claim child care payments for their own child's FDC care on the same day they or their partner work as an FDC educator in an approved FDC service. If an eligible individual who is, or is the partner of, an FDC educator informs the approved FDC service that specified circumstances apply, the approved FDC service must request particular information and documents to substantiate the specified circumstances. Specified circumstances do not apply unless documentary evidence has been provided to the approved FDC service.

**Change of circumstances** — approved FDC services must request to be informed if an eligible individual or their partner becomes an FDC educator. If an eligible individual or their partner is an FDC educator and specified circumstances apply, approved FDC services must also request to be informed of any change in those circumstances.

**Record keeping** — approved FDC services will be required to retain evidence of specified circumstances. They must also create and maintain a register of relevant information.

**Online compliance** — if an FDC educator has a Customer Reference Number (CRN) allocated by the Department of Human Services, the approved FDC service will be required to enter it into the Child Care Management System (CCMS).

## What are the specified circumstances?

Specified circumstances allow for child care payments to be paid for an eligible individual's child's FDC care where an eligible individual, or their partner, is an FDC educator and the FDC educator provides FDC for an approved FDC service on the same day. The specified circumstances allow eligible individuals to claim child care payments for their own child's FDC care on the same day they or their partner work as an FDC educator in an approved FDC service.

The specified circumstances are where:

- the child has been diagnosed as having a disability, or is undergoing continuous assessment of a disability
- the child lives in a remote or very remote area within Australia
- the FDC educator is required to work (other than for an approved FDC service)
- the FDC educator is required to attend particular education or training.

The specified circumstances do not apply unless there is documentary evidence of the specified circumstance.

In the case of the disability specified circumstance, if the child does not yet have a diagnosis and is undergoing continuous assessment of a disability the service must be receiving the Inclusion Support Subsidy in relation to the child, and retain evidence of its approval to receive that payment.

In each of the other specified circumstances, the individual must provide relevant documentary evidence to the approved FDC service that provides care to the child.

Where specified circumstances exist, the approved FDC service must retain the documentary evidence and keep a register of relevant information.

## How will records be kept?

A register template will be available shortly for approved FDC services to record details of the specified circumstances. In addition, an approved FDC service must keep the documentary evidence of the specified circumstance.

## What do Family Day Care service providers need to do?

Operators of an approved FDC service need to make sure they are fully aware of their obligations under family assistance law. An operational guide will be available shortly to further assist with this.

## Consequences of non-compliance

Sanctions may be imposed on approved FDC services if they do not comply with one or more conditions for their continued approval. Sanctions include suspension and cancellation of approval.

For certain obligations (including the failure to keep prescribed records), non-compliance may lead to a civil penalty order being made or an infringement notice being given or prosecution for a criminal offence.

## Family assistance law - legislative instrument changes

These changes have been made by three legislative instruments:

1. *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015* ('No One Eligible Determination')
  - The No One Eligible Determination specifies the classes of children in respect of whom no one is eligible for child care payments for the child's care provided by an approved child care service.
2. *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2015 (No. 2)*. This amends the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* ('Eligibility Determination')
  - The Eligibility Determination sets out the eligibility criteria and obligations for approved child care services to become approved and continue to be approved for the purposes of the family assistance law.
3. *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Amendment Rules 2015 (No. 1)*. This amends the *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006* ('Record Keeping Rules')
  - The Record Keeping Rules set out the types of records approved child care services must keep under family assistance law.

## Family assistance law – change descriptions

Description of Changes	Date of Effect
<p><b>ELIGIBILITY</b></p> <p>FDC educators and their partners are not entitled to receive child care payments for their own child’s session of FDC if, on that same day, the FDC educator provides FDC for an approved FDC service, unless a specified circumstance applies.</p> <p><i>Legislative reference – sections 4, 5 and 8 of the No One Eligible Determination</i></p>	<p>12 October 2015</p>
<p><b>CHECK FDC EDUCATOR STATUS</b></p> <p>An approved FDC service must ask an ‘eligible individual’ (i.e. the person who is entitled to child care payments for a child enrolled for care by an eligible FDC service) if they, or their partner, are an FDC educator.</p> <p>The approved FDC service must also request to be informed if the eligible individual or their partner later becomes an FDC educator.</p> <p>This must occur within seven days of the ‘care date’ (i.e. the date the child is enrolled for care with an approved FDC service or the date the No One Eligible Determination comes into effect).</p> <p><i>Legislative reference – subsection 10A(1), of the Eligibility Determination</i></p>	<p>FDC services must have checked FDC educator status:</p> <p>(a) for all eligible individuals using the service on 12 October 2015 – by 19 October 2015</p> <p>(b) for each new eligible individual using the service after that – within 7 days of enrolment of the child</p>
<p><b>SPECIFIED CIRCUMSTANCES</b></p> <p>FDC educators and their partners are not entitled to receive child care payments for their own child’s session of FDC if, on that same day, the FDC educator provides FDC for an approved FDC service, unless one or more of the specified circumstances apply. The specified circumstances are where:</p> <ul style="list-style-type: none"> <li>• the child has been diagnosed with a particular disability or medical condition, <b>or</b> the FDC service is receiving payment of Inclusion Support Subsidy because the child is undergoing continuous assessment of disability</li> <li>• the child lives in an area designated as ‘remote Australia’ or ‘very remote Australia’</li> <li>• the child requires FDC because the eligible individual (or their partner) who is an FDC educator is required on the same day to work for a minimum of two hours (but not for an approved FDC service)</li> <li>• the child requires FDC because the eligible individual (or their partner) who is an FDC educator is required on the same day to undertake education or training towards a recognised qualification (at Certificate III or above).</li> </ul> <p>If the FDC service becomes aware that the eligible individual or their partner is an FDC carer and one or more of the specified circumstances exists, the FDC service must request relevant information.</p> <p>Except where the FDC service is receiving Inclusion Support Subsidy because the child is undergoing continuous assessment of disability, the FDC service must request documentary evidence of the specified circumstance. The service will</p>	<p>12 October 2015</p>

Description of Changes	Date of Effect
<p>have the documentary evidence of receipt of Inclusion Support Subsidy.</p> <p>For any of the specified circumstances to apply, documentary evidence <u>must</u> have been provided to the approved FDC service.</p> <p><i>Legislative reference – section 10A of the Eligibility Determination and section 8 of the No One Eligible Determination</i></p>	
<p><b>CHANGE OF CIRCUMSTANCES</b></p> <p>The approved FDC service must request to be informed of any changes to information regarding specified circumstances.</p> <p>This is in addition to the approved FDC service requesting to be informed if the eligible individual or their partner becomes an FDC educator.</p> <p>The approved FDC service will, within seven days of being notified that Inclusion Support Subsidy is no longer being paid in relation to a child, record this fact and any other relevant information in the register in the form approved by the Secretary.</p> <p><i>Legislative reference – section 10A of the Eligibility Determination</i></p>	12 October 2015
<p><b>RECORD KEEPING</b></p> <p>An approved FDC service will be required to record, in a register, relevant information relating to specified circumstances.</p> <p><i>Legislative reference – section 10A of the Eligibility Determination</i></p> <p>The approved FDC service will be required to keep records which are provided to or created by the approved FDC service which substantiate the specified circumstances.</p> <p><i>Legislative reference – section 7 of the Record Keeping Rules and section 219F of the A New Tax System (Family Assistance) (Administration) Act 1999</i></p>	12 October 2015
<p><b>ONLINE COMPLIANCE</b></p> <p>An approved FDC service will ensure that for each of its FDC educators who has a CRN, the approved FDC service will enter the CRN for each FDC educator as soon as the approved FDC service’s CCMS registered software allows.</p> <p><i>Legislative reference – subsection 10(1A) of the Eligibility Determination</i></p>	As soon as approved FDC service’s CCMS registered software allows

Further detail and reasons for the changes are provided under ‘Detailed Explanations of Changes’, below.

## Detailed explanation of changes

### Changes to the No One Eligible Determination

**FDC educators and their partners are not entitled to receive child care payments for their own child's session of FDC if, on that same day, they provide FDC for an approved FDC service, unless specified circumstances apply.**

- The specified circumstances are where:
  - the child has been diagnosed by a medical practitioner or registered psychologist as having a disability or medical condition of the kind listed at Schedule 1 and 2 of the No One Eligible Determination **or** if the FDC service is receiving Inclusion Support Subsidy because the child is undergoing continuous assessment of disability under the Inclusion & Professional Support Program Guidelines for 2013-2016. This does not apply if the service is receiving an amount of Inclusion Support Subsidy because the child comes from a refugee or humanitarian intervention background.
  - the child lives in an area which is designated as 'remote Australia' or 'very remote Australia' as determined in accordance with the Australian Statistical Geography Standard (ASGS): Volume 5 – Remoteness Structure, July 2011 (cat. no. 1270.0.55.005).
  - the child requires FDC because the FDC educator is required on the same day to work for a minimum of two hours and the work does not include working for an approved FDC service.
  - the child requires FDC because the FDC educator is required on the same day to undertake education or training towards a recognised qualification at the Certificate III level or above.
- Child care payments are not to be made where specified circumstances apply unless documented evidence of the specified circumstance is provided to the approved FDC service that provides care to the child. If the FDC service is receiving Inclusion Support Subsidy because the child is undergoing continuous assessment of disability, the service will have the documentary evidence of receipt of the Inclusion Support Subsidy.
- FDC services can access information and guidance to the existing Inclusion and Professional Support Program **here** or at the following website address:  
<https://www.dss.gov.au/our-responsibilities/families-and-children/programmes-services/early-childhood-child-care/inclusion-and-professional-support-program>

### Changes to the Eligibility Determination

**An approved FDC service will be required to ask an eligible individual if they (or their partner) are an FDC educator. This must occur within seven days of the 'care date'.**

These changes mean that:

- When a child is enrolled for care at an approved FDC service, the approved FDC service must ask the eligible individual if they, or their partner, are an FDC educator. The approved FDC service must ask this within seven days of the care date.
- Where a child is already enrolled in an approved FDC service on 12 October 2015, the approved FDC service must ask the eligible individual if they, or their partner, are an FDC educator. The service must ask this within seven days of the No One Eligible Determination commencing (i.e. this must be asked of all eligible individuals by 19 October 2015).
- The approved FDC service must also ask to be informed if the eligible individual or their partner later becomes an FDC educator.
- If the eligible individual, or their partner, is an FDC educator and states that specified circumstances apply, the approved FDC service must, within seven days, request information and documents relating to the specified circumstances. The information and documents include:
  - the name of the eligible individual and their partner (if any)
  - the name and CRN of the FDC educator (if any)
  - if the eligible individual is not the FDC educator, the CRN of the eligible individual
  - the CRN of the child

- the name of the approved FDC service where the FDC educator works
- the dates and times of sessions of care that the FDC educator ordinarily provides FDC, and
- documentary evidence of the specified circumstance, **except** where the specified circumstance is that the FDC service is receiving Inclusion Support Subsidy because the child is undergoing continuous assessment of disability – in this case, the service must have (and retain) documentary evidence it is receiving Inclusion Support Subsidy in relation to the child.
- The approved FDC service must ask the eligible individual to tell the approved FDC service within seven days if their situation changes in any way that would result in the individual needing to provide different information or documents. The approved FDC service must request that this be provided within seven days of the change. The service must record such changed information in the register in the form approved by the Secretary.
- The approved FDC service will, within seven days of being notified that Inclusion Support Subsidy is no longer being paid in relation to a child, record this fact and any other relevant information in the register in the form approved by the Secretary.

**An approved FDC service will be required to maintain a register where one or more of the specified circumstances apply.**

These changes mean that:

- Approved FDC services will be required to record any information provided to them about specified circumstances in a register.
- The register must be in the form approved by the Secretary.
- Approved FDC services must keep documents provided to them that substantiate specified circumstances.
- Approved FDC services could use a copy of the written notification to the service of the approval of the payment of an amount of Inclusion Support Subsidy in the case of an eligible disability child.

**The approved FDC service must submit the CRN for each FDC educator as soon as the approved FDC service's CCMS registered software allows.**

These changes mean that:

- An approved FDC service will ensure that for each of its FDC educators who have a CRN, the approved FDC service will enter the CRN for each FDC educator as soon as the approved FDC service's CCMS registered software allows.

## **Changes to the Record Keeping Rules**

**An approved FDC service must keep records which are provided to or created by the approved FDC service which relate to section 10A of the Eligibility Determination.**

These changes mean that:

- Approved FDC service must keep any records provided to or created by it (including the register about specified circumstances).
- The records to be kept include evidence which substantiates the specified circumstance.