



Fact Sheet: Change Three

Changes to Family Assistance Law from 10 October 2016 – Suitability

The Australian Government is bringing forward measures to strengthen the integrity of the child care payments Compliance Framework to ensure the delivery of high quality, flexible and affordable child care to families.

What are the changes?

The changes commence from 10 October 2016 and will ensure that:

- Change One** Child care fee assistance is not payable for:
- care where there is not a genuine liability to pay fees
 - care that is predominantly transport
 - Family Day Care (FDC) provided in the child's own home, or where the parent is present
 - FDC or In-Home Care (IHC) provided by a parent or sibling.
- Change Two** A minimum benchmark for existing notifiable events obligations is established, and these are extended to key personnel. Services must notify the department where they become aware that a key personnel, staff member, FDC educator or IHC educator:
- is charged with or found guilty of a serious indictable offence
 - becomes bankrupt
 - has their working with children check (WWCC) refused, amended or cancelled.
- Change Three** New suitability criteria applies to relevant people, including applicants for service approval, approved services and particular individuals associated with them.

This information sheet focusses on Change Three.

Why are the changes necessary?

The Government is concerned about serious non-compliance and potential fraud by some child care services. It has taken a range of actions to address non-compliance and practices that do not align with the policy intent of child care fee assistance. An important feature of its strategy is to strengthen Family Assistance Law (FAL) where appropriate.

The changes demonstrate the Government's determination that child care fee assistance will only be available to support eligible families to access genuine, high quality education and care from suitable child care services. They signal that fraudulent use of the significant taxpayer investment in child care will not be tolerated.

Description of changes

The Government has made amendments to the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (the Eligibility Determination) to provide strengthened suitability criteria.

The Eligibility Determination sets out the eligibility criteria and obligations for child care services to become approved, and continue to be approved, for the purposes of FAL to pass on Child Care Benefit (CCB) fee reduction payments to parents of children enrolled at, and cared for by, the service.

The changes are contained in the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016* at www.legislation.gov.au/details/F2016L01426.

The changes commence from 10 October 2016 and will ensure that new suitability criteria will apply to services and their key personnel and other relevant people involved in the service's operation. The changes incorporate key criteria from the proposed *Jobs for Families Child Care Package* and an additional consideration about 'the applicant's understanding of obligations that would apply to it under FAL, and commitment to complying with these obligations'. The department has released the '*General guidance for suitability under the Family Assistance Law*' to provide general guidance to relevant people on some of the approaches the department may use to assess their suitability.

Reason for changes

These changes will help to ensure that approved child care services provide a high quality child care service to families and remain compliant with the requirements of FAL. These changes will also strengthen the department's capacity to take appropriate compliance action where child care services do not satisfy these suitability criteria.

The approval of a service means that individuals can be eligible for CCB or Child Care Rebate (CCR) when their children are provided with a session of care by the service. The Eligibility Determination steps out a range of matters that the delegate may consider when deciding whether or not a service and its key personnel are suitable to pass on child care fee assistance payments on behalf of the Commonwealth.

However, prior to these changes, the matters in the Eligibility Determination did not adequately address the risks faced by the Commonwealth from unscrupulous operators motivated to enter or remain in the sector in order to exploit child care fee assistance. These changes will help stop the small number of unscrupulous operators in the child care sector that operate solely to exploit government payments. It will also assist the Government to refuse unsuitable applicants for service approval and ensure the continued suitability of other relevant persons. The suitability criteria continues to apply to all applicants, operators of existing approved services and other relevant persons connected with the operation of the service.

What do you need to do?

All child care services and their relevant personnel should make sure they are fully aware of their obligations under the FAL, and ensure that key personnel and educators who provide care on their behalf do so in accordance with the requirements of the FAL.

It is important to understand these obligations, so that approved services can put in place the governance, processes and controls to ensure ongoing compliance with the obligations. Failure to comply with the FAL may result in a service's approval being cancelled or suspended.

Who is affected by the changes?

The amended suitability criteria will apply to new applications and operators of existing services and other relevant people involved in the service's operation. The criteria will also apply to applications where the decision has not yet been made, however, in these cases, where the delegate is considering making a decision that may not be favourable to the applicant or existing approved service due to the new criteria, there will be appropriate opportunities available to make a submission to address any identified issues prior to a final decision being made.

Who was consulted?

Early childhood education stakeholders including the FDC sector and the broader major child care peak bodies, were consulted on these changes. There is a broad level of support for the changes.

Have forms and documents changed?

Relevant documents will be updated progressively as necessary.

Consequences of non-compliance

Services that do not comply with the new rules may be in breach of the conditions for continued approval.

The Department of Education and Training may, by written notice, require services to provide information and documents to demonstrate their compliance with their conditions for continued approval. Authorised officers of the department may also enter the premises of an approved FDC service to monitor its compliance with a condition of continued approval.

Failure of services to comply with a condition of continued approval may result in an immediate suspension of their service approval or sanctions including:

- variation to the conditions of continued approval
- additional conditions of continued approval
- suspension or cancellation of approval.

Depending on the nature of the non-compliance, civil or criminal penalties may also apply.

Where can I find more information on the changes?

More information, including fact sheets regarding the new changes are available at:

www.education.gov.au/ccpc.

If you have any queries about these new legislative requirements, please email:

childcareintegrity@education.gov.au.

Disclaimer

This fact sheet is intended to provide general guidance only and is not a substitute for reading the FAL. Links to the relevant legislative instruments are provided in this fact sheet.