



Fact Sheet: Change One

Changes to Family Assistance Law from 10 October 2016 – ‘ineligible care’ and ‘ineligible children’

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 approval, approved services and particular individuals associated with them.

This information sheet focusses on Change One.

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

Change One is made through two key mechanisms:

- ensuring that care provided in some circumstances are not considered 'sessions of care' for the purposes of child care fee assistance ('ineligible care')
- ensuring that no one is eligible for sessions of care provided to particular classes of children ('ineligible children').

Ineligible care

Child care fee assistance is not payable for:

- care where there is not a genuine liability to pay fees
- care that is predominantly transport
- FDC provided in the child's own home, or where the parent is present.

The changes are contained in *Child Care Benefit (Session of Care) Determination 2016* available at www.legislation.gov.au/details/F2016L01427.

These changes mean:

- services must not report sessions of care where a genuine liability has not been incurred for the care. The concept of liability has been clarified by stating that a session of care only occurs where an approved child care service imposes a liability on an individual by charging a real commercial fee.
- services must not report care that is provided predominantly for the purposes of transportation, such as a bus service or driving a child to and from school
- services must not report care that is provided in the child's own home or where a parent remains at the location where care is being provided while the care is taking place. An exception to this amendment is where the service is an IHC service.

Reason for changes

The Government is concerned that some approved services do not require the payment of commercial fees which are offset by child care fee assistance. It is also concerned that the taxpayer is funding services that are not genuine child care, such as only transporting children to and from school, or FDC provided in the child's own home or when their parent is present. The clarification of ineligible care will more closely align child care fee assistance with genuine, formal child care arrangements as is the policy intention under FAL.

An eligible session of care can only occur where a service imposes a liability on the individual by charging a fee, irrespective of any payment made by the Government. The change makes it clear that fee assistance is tied to a genuine legal liability to pay child care fees.

Care that is predominantly transport, or FDC provided to a child in their own home or where their parent is present is excluded from being a session of care.

Children for whom no-one is eligible (ineligible children)

Child care fee assistance is not payable for:

- FDC or IHC provided by an educator to their own (or their partner’s):
 - Family Tax Benefit child
 - Regular care child
 - biological child/ren
 - adopted child/ren
 - foster care child/ren
 - a child whom the educator, or the educator’s partner, has a legal responsibility towards
 - brother, sister, half-brother, half-sister, step-brother or step-sister.

The changes are contained in *Child Care Benefit (Children in respect of whom no-one is eligible) Amendment Determination 2016* available at www.legislation.gov.au/details/F2016L01425.

These changes mean:

- that there is no individual eligible for child care fee assistance when the individual provides FDC or IHC care to their own child, irrespective of whether that child is their ‘FTB child’ or their ‘regular care child’. Note – the definition of a child in respect of whom no-one is eligible for Child Care Benefit has been broadened to include biological, adopted, or foster care children, or a child whom the educator, or the educator’s partner has a legal responsibility towards
- existing provisions have also been broadened to make it clear that there is no individual eligible for fee assistance when the child is being cared for by a sibling including step and half siblings.

Reason for changes

The clarification of children in respect of whom no one is eligible will more closely align child care fee assistance with genuine, formal child care arrangements as is the policy intention under FAL. Child care fee assistance is not intended to be available for circumstances where informal child care arrangements are occurring. Care provided by a parent or sibling is not child care that fee assistance was established to subsidise; nor is it the type of care that taxpayers would expect to be paid from the public purse. The nature of informal care is that it would occur with or without child care fee assistance.

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.

Approved services must not claim child care fee assistance on behalf of families for services that are not sessions of care. Services may charge the family a fee for the service, but must not record the session of care in the Child Care Management System.

Where a session of care is provided to a child in respect of whom no one is eligible, services may provide care to the child and charge the family a fee, but must record the session of care in the Child Care Management System (CCMS) using a 'zero-fee' session type.

Who is affected by the changes?

These changes will affect those child care services that have based their business model on providing informal, domestic type care, or other services that are inconsistent with the established policy intent of child care fee assistance.

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.

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?

The department has released a range of information material further explaining each of the changes. These are available at www.education.gov.au/ccpc.

If you have any queries about these 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.