



Frequently Asked Questions

Family Day Care Legislation Changes – Child Swapping

What is ‘child swapping’?

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

Why is it necessary for the Government to stop child swapping?

Child swapping is contrary to the original intent of family day care, as well as family assistance law and, in most cases, is designed to maximise profits for the service operator.

The Department estimates child swapping cost taxpayers about \$350 million in 2014-15.

What are the changes and when do they take effect?

| Description of Changes | Date of Effect |
|---|---|
| <p>ELIGIBILITY</p> <p>Family day care (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>CHECK FDC EDUCATOR STATUS</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> |

| Description of Changes | Date of Effect |
|---|--|
| <p>SPECIFIED CIRCUMSTANCES</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"> • the child has been diagnosed with a particular disability or medical condition, or the FDC service is receiving payment of Inclusion Support Subsidy because the child is undergoing continuous assessment of disability • the child lives in an area designated as 'remote Australia' or 'very remote Australia' • 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) • 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). <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 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>12 October 2015</p> |
| <p>CHANGE OF CIRCUMSTANCES</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> | <p>12 October 2015</p> |
| <p>RECORD KEEPING</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> | <p>12 October 2015</p> |
| <p>ONLINE COMPLIANCE</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> | <p>As soon as approved FDC service's CCMS registered software allows</p> |

Who is affected by the changes?

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

Why does this rule only apply to family day care services and educators?

Child swapping is unique to the family day care sector and about 90 per cent occurs in family day care services identified as being at high risk of non-compliance. The practice is contrary to the intent of family assistance law which had envisaged family day care educators would not be eligible to receive child care fee assistance for their own children while caring for other people's children as a family day care educator.

The child swapping integrity measure strikes a balance between the need to address child swapping practices across the sector while safeguarding legitimate family day care operators and the families who depend on them.

As a family day care educator, am I still able to use family day care as my care service type of choice for my child?

Yes. Under the integrity measure, family day care educators can continue to use family day care as their care service type of choice for their own children. However, on a day an educator is providing family day care to other children they, or their partner, are not eligible to receive child care payments for their own children unless specified circumstances apply.

What is considered a specified circumstance?

Some specified circumstances allow for child care payments to be paid where an eligible individual, or their partner, is a family day care educator. These allow the eligible individual to claim child care payments for their own child while they, or their partner, work as a family day care educator in an approved family day care service. These specified circumstances are:

- the child has been diagnosed as having a particular disability or medical condition
- the family day care service is receiving payment of Inclusion Support Subsidy because the child is undergoing continuous assessment of a disability
- the child lives in a remote or very remote area within Australia
- on the same day as the child receives care through a family day care service, the family day care educator is required to work (other than as a family day care educator) or attend particular education or training.

Do I need to provide evidence if a specified circumstance applies?

Yes. The service that provides care to the child must have documentary evidence of the specified circumstance. The service will need to retain the documentary evidence and keep a register. Where an educator's child is undergoing continuous assessment for disability, the family day care service must apply for the Inclusion Support Subsidy (ISS) on behalf of the educator and be assessed and approved to receive the ISS in order to be eligible to receive child care payments for that child.

For any of the specified circumstances to apply, documentary evidence must have been provided to the approved family day care service.

Which medical conditions and disabilities qualify?

The child must have been diagnosed by a medical practitioner or registered psychologist as having a disability or medical condition listed in the legislative instruments.

To ensure consistency, these are the same conditions used to assess eligibility for the Inclusion Support Subsidy.

Why do services have to claim Inclusion Support Subsidy if my child is undergoing continuous assessment of a disability?

Inclusion Support Subsidy (ISS) assists eligible child care services to improve their capacity to include children with ongoing high support needs.

The assessment of an application for ISS is based on an eligible child care service supplying documentary evidence that the child is undergoing continuous assessment of disability. It is an objective measure that there is a genuine need.

ISS eligibility ensures that people with a genuine need are able to child swap, and provides an independent verification of their eligibility through an existing Government-approved programme. The Inclusion and Professional Support Program (IPSP) provides extra support to care for children with disability. For more information on IPSP and ISS go to www.dss.gov.au

As a family day care educator, am I able to claim child care payments for my child if a specified circumstance does not apply?

Yes. On days when a family day care educator is not providing care with a family day care service, they are entitled to receive child care payments for their child.

However, on a day a family day care educator is providing care with a family day care service, child care payments are not payable unless specified circumstances apply.

Should an educator wish to place their child in another care service type, such as long day care, whilst working as a family day care educator they will be able to access child care payments for their child.

As a family day care educator, what are my obligations under the new changes?

If an eligible individual who is, or is the partner of, a family day care educator informs the approved family day care service that specified circumstances apply; particular information and documents to substantiate the specified circumstances must be supplied to the approved service. Specified circumstances do not apply unless documentary evidence has been provided.

As a family day care service provider, what are my obligations under the new changes?

Operators of an approved family day care service need to make sure they are fully aware of their obligations under family assistance law. An operational guide will be available on the Department's website soon to assist with this.

Where can I find more information on the changes?

For more information, including a fact sheet regarding the new changes go to www.dss.gov.au

If you have any queries about these new legislative requirements, please email:
childswappingrule@dss.gov.au