



Frequently Asked Questions

Family Day Care Legislation Changes – Child Swapping

What is ‘child swapping’?

Child swapping is a practice where a Family Day Care (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.

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

Child swapping is contrary to the original intent of FDC, as well as family assistance law (FAL) 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 Family Day Care (FDC) educators and their partners are not entitled to receive child care fee assistance 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>	12 October 2015

Description of Changes	Date of Effect
<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 fee assistance 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>Specified circumstances</p> <p>FDC educators and their partners are not entitled to receive child care fee assistance 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 (ISS) 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 ISS.</p> <p>For any of the specified circumstances to apply, documentary evidence must 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>

Description of Changes	Date of Effect
<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 ISS 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>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>	12 October 2015
<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>	As soon as approved FDC service's CCMS registered software allows

Who is affected by the changes?

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

Why does this rule only apply to Family Day Care services and educators?

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

The child swapping integrity measure strikes a balance between the need to address child swapping practices across the sector while safeguarding legitimate FDC 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, FDC educators can continue to use FDC as their care service type of choice for their own children. However, on a day an educator is providing care to other children they, or their partner, are not eligible to receive child care fee assistance for their own children unless specified circumstances apply.

Does the new rule affect my eligibility for the Child Care Rebate?

Yes. A precondition for Child Care Rebate (CCR) eligibility is Child Care Benefit (CCB) eligibility. Consequently, if CCB is not payable, neither is CCR. Therefore, FDC educators and their partners are not entitled to CCB or CCR 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.

What is considered a specified circumstance?

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

- the child has been diagnosed as having a particular disability or medical condition
- the FDC service is receiving payment of Inclusion Support Subsidy (ISS) 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 FDC service, the FDC educator is required to work (other than as a FDC 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 FDC service must apply for the ISS on behalf of the educator and be assessed and approved to receive the ISS in order to be eligible to receive child care fee assistance for that child.

For any of the specified circumstances to apply, documentary evidence must have been provided to the approved FDC 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 ISS.

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. More information on IPSP and ISS is available at www.education.gov.au

As a Family Day Care educator, am I able to claim child care fee assistance for my child if a specified circumstance does not apply?

Yes. On days when a FDC educator is not providing care with a FDC service, they are entitled to receive child care fee assistance for their child.

However, on a day a FDC educator is providing care with a FDC service, child care fee assistance 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 FDC educator they will be able to access child care FDC 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 FDC educator informs the approved FDC 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 FDC service need to make sure they are fully aware of their obligations under FAL. An operational guide will be available on the department's website at [Department of Education and Training](#)

The new rules talk about where a child is the child of a Family Day Care educator or their partner. I am separated from my partner. How am I affected?

Under the changes, FDC educators and their partners are not entitled to receive child care fee assistance 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.

A 'partner' refers to a person with whom an FDC educator is:

- married;
- in a registered relationship (whether of the same sex or a different sex); or
- in a de facto relationship (whether of the same sex or a different sex).

People are not considered partners if they are living *separately and apart on a permanent or indefinite basis*.

Living separately and apart from another person on a permanent or indefinite basis is not the same thing as having different residences, although that is a consideration to be taken into account.

The matters taken into consideration when determining whether people are living *separately and apart on a permanent or indefinite basis* include:

- the financial arrangements (e.g. joint ownership or real estate, pooling of financial resources, sharing of day-to-day household expenses)
- the nature of the household (e.g. joint responsibility for providing care or support to children, the living arrangements)
- social aspects of the relationship (e.g. how others perceive the relationship, how people engage in social activities)
- any sexual relationship
- the nature of commitment (e.g. the length of the relationship, emotional support).

It is important to understand that, while an initial claim of separation may be accepted by the Department of Human Services, child swapping involving claims by an FDC educator that they are separated from their partner will be carefully scrutinised by the Department of Education and Training. There may be serious consequences for services and individuals that defraud the Commonwealth, and providing false or misleading information is an offence.

Of course, people are not eligible for child care fee assistance if the care is provided by an FDC educator to their own, or their partner's, child.

Services that wish to further understand the effect of a particular set of circumstances on whether or not a person is the partner of an FDC educator may wish to seek their own legal advice.

Do the work and study specified circumstances apply only to the person who is a Family Day Care educator or to their partner as well?

The specified circumstance regarding work applies where the **FDC educator**, not their partner, is required to work for at least two hours on the same day they provide FDC.

The specified circumstance regarding education and training applies where the **FDC educator**, not their partner, is engaged in activities for the purposes of the programme of course on the same day they provide FDC.

What periods can I claim child care fee assistance for when I undertake education or training?

The education specified circumstance is intended to provide FDC educators with the flexibility to have their child cared for in an FDC setting when the FDC educator is required to undertake education or training at a particular time, and on the same day, they also work as an FDC educator.

An eligible individual who is, or whose partner is, an FDC educator may be entitled to receive child care fee assistance for the FDC of their child if the FDC educator:

- is enrolled in a programme or course of education or training towards a recognised qualification (at Certificate III level or above) provided by a Registered Training Organisation;
and
- is engaged in activities for the purposes of the programme or course on the care day (e.g. attends the training institution for the purposes of the programme or course);
and
- has provided the service with documentary evidence that the FDC educator usually studies at the time the session of care is provided to the child by the service.

Where these conditions are met, CCB may be claimed for a session of FDC provided to the child on that day. Sessions of care details are determined by service providers and based on their opening hours. A session of care must not exceed 12 hours.

Services must make sure that they report attendance correctly. This means only reporting attendance for sessions that the child actually attended. Services can report absences, but only if the child would otherwise have been in care and only if the family was charged a fee for that care.

I am a Family Day Care educator and I study by distance education. How am I affected?

In respect of this specified circumstance, the FDC educator must be enrolled in a programme or course of education or training towards a recognised qualification (at Certificate III level or above)

provided by a Registered Training Organisation (RTO) and be engaged in activities for the purposes of the programme or course on the care day. Documentary evidence must have been provided to the FDC service that the person usually studies at the time the session of care is provided.

This is intended to provide FDC educators with the flexibility to have their child cared for in an FDC setting when the FDC educator is required to undertake education or training at a particular time and, on the same day, they also work as an FDC educator.

In order for this specified circumstance to apply, the person must be engaged with the RTO for the purposes of the programme or course, and the person must usually study at that time. This means that the person must be required to attend or have contact with the RTO for a formal and planned aspect of the course (e.g. for a lecture or workshop). In a distance education setting, this means that the person must be engaged with the RTO for a formal and planned aspect of the course such as a lecture that is presented live, or a live on-line study group. The specified circumstance is not intended to apply to aspects of the course or training where the timing is in the person's control, such as homework or viewing pre-recorded lectures.

What periods can I claim CCB for when I work other than for a Family Day Care service?

The work specified circumstance is intended to provide FDC educators with the flexibility to have their child cared for in an FDC setting when the FDC educator is required to work for two hours or more other than for an FDC service, and on the same day, they also work as an FDC educator.

An eligible individual who is, or whose partner is, an FDC educator may be entitled to receive child care fee assistance for the FDC of their child when they provide care for an FDC service on the same day if they are also required to:

- undertake paid work for at least two hours on the same day their child is in care with the FDC service
- and**
- the work is not for an approved FDC service
- and**
- documentary evidence has been provided to the service, showing the FDC educator is usually required to work on the same day and time the session of care is provided by your service to the child.

Where these conditions are met, child care fee assistance may be claimed for a session of FDC provided to the child on that day. Sessions of care details are determined by services and based on their opening hours. A session of care must not exceed 12 hours.

Services must make sure that they report attendance correctly. This means only reporting attendance for sessions that the child actually attended. Services can report absences, but only if the child would otherwise have been in care and only if the family was charged a fee for that care.

Is there a specified circumstance that allows me to have my children picked up and dropped off at school?

No. You will be able to continue having your children picked up and dropped off to school with another FDC educator. However, if you are providing care for an approved FDC service on the same day, you will not be entitled to claim child care fee assistance for the FDC provided to your child, unless specified circumstances apply.

Approved child care services must not report that a session of care was provided if the child was provided with a transport service only. No CCB is payable where a child is solely being provided with a transport service. It is not unlawful, however, for a child care service to transport a child to and from care.

Educator to child ratios

Educator to child ratios is regulated by State and Territory Regulatory Authorities. We note that in most states educator to child ratios include an educator's own child who is younger than 13 years of age at the residence.

For matters relating to educator to child ratios, your service should contact your State or Territory Regulatory Authority. A list of the Regulatory Authorities, as well as their contact information, can be found on the [ACECQA](http://www.acecqa.gov.au) website at www.acecqa.gov.au/regulatory-authorities1/contact-your-regulatory-authority

Where can I find more information on the changes?

More information, including a fact sheet regarding the new changes are available at www.education.gov.au/FDC

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