

Child care insights

Child Care Subsidy Law– An introduction to the new Minister’s Rules and Secretary’s Rules 2017



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2 July 2018 saw a huge change in the practical and legal governance of child care benefits across Australia with the introduction of the new Child Care Subsidy (CCS) and removal of Child Care Benefit and Child Care Rebate.

CCS continues to be regulated by the A New Tax System (Family Assistance) Act 1999 and the A New Tax System (Family Assistance) (Administration) Act 1999 (the **Family Assistance Law**) as amended on 2 July 2018.

Providers should familiarise themselves with the amendments to the Family Assistance Law and also with the new Child Care Subsidy Minister’s Rules 2017 (**Minister’s Rules**) and the Child Care Subsidy Secretary’s Rules 2017 (**Secretary’s Rules**) which support and clarify the Family Assistance Law in certain respects and which also came into force on 2 July 2018.

Having a detailed understanding of these new rules will be essential to ensuring compliance with the Family Assistance Law, and avoiding the potentially devastating consequences of non-compliance, including suspension or cancellation of CCS provider approvals.

Meridian Lawyers will provide further articles which look at different aspects of the changes in more detail, but in this article we aim only to provide an introduction to matters covered by the new rules.

Minister’s Rules - an overview

Issues governed by the Minister’s Rules include:

- circumstances where no one is eligible for CCS for a session of care;
- circumstances in which a child is taken to be at risk of serious abuse or neglect (for the purposes of Additional CCS (child wellbeing));
- circumstances in which an individual is taken to be experiencing temporary financial hardship;
- eligibility requirements for Additional CCS (transition to work);
- additional rules for a provider’s or a service’s eligibility to be approved for CCS purposes;
- additional matters to which the Secretary must have regard in determining whether a person with management and control of a service is a fit and proper person to hold a CCS approval;

- additional conditions for continued approval under the Family Assistance Law;
- matters the Secretary must take into account in exercising the power to impose a sanction on an approved provider; and
- matters that must be notified to the Secretary by a provider.

Secretary's Rules - an overview

Issues governed by the Secretary's Rules include:

- information which must be contained in an application for approval under the Family Assistance Law;
- requirements for 'complying written arrangements' (that is, the agreement between a service and parents);
- additional information to be provided in a statement of entitlement;
- requirements for providers to make a written record of information or an event not otherwise recorded in writing; and
- record keeping requirements.

Consequences of non-compliance

It is a condition of continued approval under the Family Assistance Law that providers comply with the Minister's Rules and the Secretary's Rules as well as the Family Assistance Law in general. Should there be a failure to comply then the Secretary may decide to impose a sanction upon a provider which could include:

- suspending the CCS approval;
- cancelling the CCS approval;
- varying a CCS approval so as to move a particular service from the approval;
- suspending payments of fee reduction amounts; or
- reducing the number of child care places allocated under an approval.

Recommendation

Achieving compliance with the Family Assistance Law remains a key risk for all child care operators, but in particular, for family day care services.

Approved providers are responsible for ensuring compliance and the Secretary will expect providers to be proactive in this duty including ensuring that staff, educators and parents are adequately trained and informed about the legal requirements, and that compliance is actively monitored.

Providers are urged to ensure that attendance reports are accurate in all respects, CCS is not claimed for children in respect of whom no-one is eligible, and data entry is double checked to avoid allegations that the service has been reckless about the accuracy of its reporting. Compliance systems should be documented in a policy in order to provide evidence of how compliance is governed, should there be any investigation by the Department of Education and Training.

Providers may find it of benefit to develop and adopt a specific “Child Care Subsidy Compliance Policy” which informs educators and parents alike of what is required and expected.

Meridian Lawyers are able to assist you in the development of an effective Child Care Subsidy Compliance Policy and also offer training in CCS compliance as well as training in compliance with the Education and Care Services National Law and National Regulations.

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