



# **Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015**

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made under subsection 49(3) of the *A New Tax System (Family Assistance) Act 1999*.

## **Compilation No. 2**

**Compilation date:** 10 October 2016

**Includes amendments up to:** Child Care Benefit (Children in respect of whom no-one is eligible) Amendment Determination 2016

Prepared by the Department of Education and Training

## About this compilation

### **This compilation**

This is a compilation of the Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015 that shows the text of the law as amended and in force on 10 October 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**1 Name of Determination**

This Determination is the *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*.

**2 Commencement**

This Determination commences on 12 October 2015.

**3 Revocation**

The *A New Tax System (Family Assistance) (Child Care Benefit – Children in respect of whom no-one is eligible) Determination 2006* is revoked.

**4 Definitions**

In this Determination:

***eligible disability child*** means:

- (a) a child who has been diagnosed by a qualified medical practitioner as suffering from one or more of the conditions listed in Schedule 1; or
- (b) a child who has been diagnosed by a registered psychologist as suffering from one or more of the conditions listed in Schedule 2,

where:

- (c) documentary evidence of the diagnosis has been provided to the approved family day care service providing care to the child; and
- (d) the diagnosis was obtained within a period of 24 months prior to the provision of the documentary evidence to the service.

*Note:* Documentary evidence could include a letter or certificate from the medical practitioner or registered psychologist containing the child's name and date of birth, the name of the diagnosed condition and the date of diagnosis.

***eligible ISP child*** means a child in respect of whom an approved family day care service is receiving funding, under a funding agreement entered into under the auspices of the Commonwealth Inclusion Support Programme, of IDF Family Day Care Top Up, as referred to in the *Inclusion Support Programme Guidelines 2016-2017 to 2018-2019* but only where the funding is made in respect of a child who is undergoing assessment for disability, including where the assessment is ongoing or continuous, as described in those Guidelines.

***FDC carer*** means an individual who is employed, contracted or otherwise engaged by an approved family day care service to provide care to a child on behalf of the service.

***Foster care child*** means a child who is under the care of an individual who is a registered and active foster carer of the child as defined under section 5B of the *Social Security Act 1991*.

*Note:* **registered and active foster carer** is defined under section 5B of the *Social Security Act 1991* as a person who meets the requirements of the law of the State or Territory in which the person resides in order to be registered or approved to provide foster care in that

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State or Territory, and the person is actively involved in providing foster care in that State or Territory.

**IHC carer** means an individual who is employed, contracted or otherwise engaged by an approved in-home care service to provide care to a child on behalf of the service.

**Inclusion Support Programme Guidelines 2016-2017 to 2018-2019** means the guidelines of that name made for the Inclusion Support Programme administered by the Department of Education and Training, as published on 11 February 2016.

**remote area child** means a child who is an FTB child or regular child of an individual and:

- (a) the child resides in an area designated as ‘remote Australia’ or ‘very remote Australia’ as determined in accordance with the Australian Bureau of Statistics’ *Australian Statistical Geography Standard (ASGC) Volume 5 – Remoteness Structure*, July 2011 (cat. no. 1270.0.55.005); and
- (b) documentary evidence of the child’s residence has been provided to the approved family day care service providing care to the child.

*Note:* Documentary evidence of a child’s residence could include a copy of the individual’s (in relation to whom the child is an FTB child or a regular care child) current driver’s licence, or a recent utility bill sent to the address where the individual and child reside, or a statutory declaration.

**RTO** (or ‘Registered Training Organisation’) has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

## **5 Children in respect of whom no-one is eligible**

- (1) For subsection 49(3) of the Family Assistance Act, it is determined that children included in the classes of children specified in sections 6, 7 or 8 are children in respect of whom no-one is eligible for child care benefit under Division 4 of Part 3 of the Family Assistance Act.
- (2) For the avoidance of doubt, the determination in subsection (1) applies in respect of the session of care specified in sections 6, 7 or 8 (as the case may be).

## **6 Session of care provided by FDC carer to own child or partner’s child or siblings**

A child is included in the class of children specified in this section in respect of a session of care provided to the child if:

- (a) the session of care is provided by an FDC carer; and
- (b) the child is, one or more of the following:
  - (i) an FTB child; or
  - (ii) a regular care child; or
  - (iii) a foster care child; or
  - (iv) a biological or adopted child; or

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- (v) a brother, sister, half-brother, half-sister, step-brother or step-sister; or
  - (vi) a child for whom there is a legal responsibility towards, as referred to in paragraphs 22(5)(a) and (b) of the *A New Tax System (Family Assistance) Act 1999*, on the part of the FDC carer or the partner of the FDC carer.

**7 Session of care provided by IHC carer to own child or partner's child or siblings**

A child is included in the class of children specified in this section in respect of a session of care provided to the child if:

- (a) the session of care is provided by an IHC carer; and
- (b) the child is, one or more of the following:
  - (i) an FTB child; or
  - (ii) a regular care child; or
  - (iii) a foster care child; or
  - (iv) a biological or adopted child; or
  - (v) a brother, sister, half-brother, half-sister, step-brother or step-sister; or
  - (vi) a child for whom there is a legal responsibility towards, as referred to in paragraphs 22(5)(a) and (b) of the *A New Tax System (Family Assistance) Act 1999*, on the part of the IHC carer or the partner of the IHC carer.

**8 Session of care provided by an approved family day care service to the child of an FDC carer or the FDC carer's partner**

- (1) Subject to subsection (2), a child is included in the class of children specified in this section in respect of a session of care provided by an approved family day care service to the child if:
  - (a) the child is an eligible disability child or an eligible ISP child; or
  - (b) the session of care is provided by the service to the child on a day (the *care day*) on which the FDC carer provides any session of care to a child on behalf an approved family day care service.
- (2) A child is not included in the class of children specified in this section in respect of a session of care provided to the child if:
  - (a) the child is an eligible disability child or an eligible ISP child; or
  - (b) the child is a remote area child; or
  - (c) the FDC carer:
    - (i) is required to work for at least 2 hours on the care day in paid work which is not for an approved family day care service; and

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- (ii) documentary evidence has been provided to the FDC service that the FDC carer is usually required to work at the time the session of care is provided; or
  - (d) the FDC carer:
    - (i) is enrolled in a programme or course of education or training towards a recognised qualification (at Certificate III level or above) provided by an RTO; and
    - (ii) engaged in activities for the purposes of the programme or course on the care day; and
    - (iii) documentary evidence has been provided to the FDC service that the FDC carer usually studies at the time the session of care is provided.

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## Schedule 1

- (a) Moderate to severe multiple disability or moderate to severe physical disability (including neurological disability) where the child is, or is likely to be, dependent for mobility indoors and outdoors from 3 years of age onwards.
- (b) Severe multiple or physical disability (including uncontrolled seizures), requiring constant care and attention where the child is less than 6 months of age.
- (c) Moderate, severe or profound intellectual disability where IQ is less than 55. This includes a child with a known syndrome.
- (d) Autism Spectrum Disorder when diagnosed by a psychiatrist or developmental paediatrician experienced in the assessment of Pervasive Developmental Disorders and using the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).
- (e) Autistic Disorder or Asperger's Disorder (not including Pervasive Developmental Disorder not otherwise specified) when diagnosed by a psychiatrist or developmental paediatrician experienced in the assessment of Pervasive Development Disorders and using the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).
- (f) Childhood Disintegrative Disorder diagnosed by a psychiatrist using DSM-IV.
- (g) Major depression of childhood diagnosed by a psychiatrist using DSM-IV or DSM-5.
- (h) Childhood schizophrenia diagnosed by a psychiatrist using DSM-IV or DSM-5.
- (i) Bilateral blindness where:
  - (i) visual acuity is less than or equal to 6/60 with corrected vision, or
  - (ii) visual fields are reduced to a measured arc of less than 10 degrees.
- (j) A 45 decibels or more hearing loss in the better ear, based on a 4 frequency pure tone average (using 500, 1,000, 2,000 and 4,000Hz).
- (k) Deaf-blindness diagnosed by a specialist multidisciplinary team, including a professional audiological and ophthalmological evaluation.
- (l) Epilepsy (uncontrolled while on medication).
- (m) Cystic Fibrosis.
- (n) Down syndrome.
- (o) Fragile X syndrome.
- (p) Diabetes Mellitus Type 1.
- (q) Phenylketonuria (PKU).
- (r) Other inborn errors of metabolism (not specified elsewhere) that are treated by medically prescribed diet to prevent neurological disability and/or severe organ damage.

**Example:** Organic acidaemias, urea cycle defects, galactosaemia and some fatty acid or oxidation defects.

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- (s) Moderate to severe Osteogenesis Imperfecta with 2 or more fractures per year and/or significant pain that significantly limits activities of daily living.
  - (t) Chromosomal or syndromic conditions (not specified elsewhere) where there is moderate or severe intellectual disability and/or multiple, major and permanent physical abnormalities as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist.

**Example:** Children with a moderate or severe intellectual disability and/or multiple, major and permanent physical abnormalities who have been diagnosed with Cri du chat syndrome, Rett syndrome, Angelman syndrome, Prader-Willi syndrome, Edwards syndrome (Trisomy 18), Williams syndrome, Patau syndrome (Trisomy 13), Coffin-Lowry syndrome, Congenital rubella syndrome, Cornelia de Lange syndrome, Kabuki Make-up syndrome, Larsen syndrome, Opitz G syndrome, Pallister-Killian syndrome, Seckel syndrome, Smith-Magenis syndrome, CHARGE association.

**Note:** This category may apply to children diagnosed with other non-listed chromosomal or syndromic conditions who have a moderate or severe level of intellectual disability and/or multiple, major and permanent physical abnormalities.

- (u) Neurometabolic degenerative conditions where there is moderate or severe intellectual and/or moderate or severe physical disability as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist:

- (i) Lysosomal storage disorders.

**Example:** Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with metachromatic Leukodystrophy, Tay Sachs disease, Krabbe disease, Pompe's disease, Mucopolysaccharidoses (Hurler syndrome (MPS 1), Hunter syndrome (MPS 2), San Filippo syndrome (MPS 3), Morquio syndrome (MPS IVA), Maroteaux-Lamy syndrome (MPS VI)).

- (v) Neurometabolic conditions.

**Example:** Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with Lesch Nyhan syndrome, Menkes disease, Zellweger syndrome and related peroxisomal disorders, some mitochondrial respiratory chain disorders.

**Note:** This category may apply to children diagnosed with other non-listed neurometabolic degenerative conditions who have a moderate or severe level of intellectual and/or physical disability.

- (w) Neurodegenerative disorders where there is moderate or severe intellectual and/or moderate or severe physical disability as diagnosed by a paediatrician, paediatric sub-specialist or clinical geneticist.

**Example:** Children with a moderate or severe intellectual and/or physical disability who have been diagnosed with Ataxia Telangiectasia, unclassified Leukodystrophies.

**Note:** This category may apply to children diagnosed with other non-listed neurodegenerative conditions who have a moderate or severe level of intellectual and/or physical disability.

- (x) The following dermatological conditions:

- (i) Epidermolysis Bullosa Dystrophica;
- (ii) Hypohidrotic ectodermal dysplasia (synonym: anhidrotic ectodermal dysplasia);
- (iii) Hay Wells syndrome (synonym: ankylobepharon, ectodermal dysplasia and clefting (AEC) syndrome);
- (iv) Lamellar ichthyosis;
- (v) Harlequin ichthyosis;



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- (vi) Sjorgren Larsson syndrome;
  - (vii) Netherton syndrome;
  - (viii) Severe congenital ichthyosiform erythroderma;
  - (ix) Generalised bullous ichthyosis (synonym: bullous ichthyosiform erythroderma; epidermolytic hyperkeratosis).
  - (y) Any of the following neuromuscular conditions:
    - (i) Duchenne (or Becker) muscular dystrophy;
    - (ii) Autosomal recessive muscular dystrophy;
    - (iii) Spinal muscular atrophy conditions, for example Werdnig-Hoffman;
    - (iv) Friedrich's Ataxia.

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## **Schedule 2**

- (a) Autism Spectrum Disorder when diagnosed by a registered psychologist experienced in the assessment of Pervasive Developmental Disorders and using the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).
- (b) Autistic Disorder or Asperger's Disorder (not including Pervasive Developmental Disorder not otherwise specified) when diagnosed by a registered psychologist experienced in the assessment of Pervasive Development Disorders and using the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).
- (c) Moderate, severe or profound intellectual disability where IQ is less than 55. This includes a child with a known syndrome.

## **Endnotes**

### **Endnote 1—About the endnotes**

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### **Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

### **Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### **Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015	F2015L01404	12 October 2015	-
Child Care (Child Swapping Integrity) Measure – Inclusion Support Programme) Amendment Determination 2016	F2016L00621	1 July 2016	-
Child Care Benefit (Children in respect of whom no-one is eligible) Amendment Determination 2016	F2016L01425	10 October 2016	-

**Endnote 4—Amendment history**

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<b>Provision affected</b>	<b>How affected</b>
Section 4	am. F2016L00621, am F2016L01425
Section 6	am F2016L01425
Section 7	am F2016L01425
Section 8	am F2016L01425
Paragraph 8(2)(a)	rs F2016L00621

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