



Child Care Subsidy Approval

Identifying Persons with Management or Control of the Provider in Community Organisations, Schools and Local Councils

What is in this fact sheet?

This fact sheet clarifies which individuals are taken to '*Persons with Management or Control of the Provider*' for child care providers that are community organisations, schools or local councils intending to apply for Child Care Subsidy (CCS) approval.

What will the information help you to do?

Understand how the CCS approval requirements for identifying *Persons with Management or Control of the Provider* apply to these types of organisations.

What is an approved child care provider?

An approved CCS provider is a legal entity that has been granted approval under the family assistance law to operate one or more child care services for the purposes of administering the CCS payment to families using care. The legal entity types able to be granted CCS approval may include sole traders, partnerships, companies, government bodies and incorporated or unincorporated bodies.

In the child care sector, entities such as local government, incorporated and unincorporated bodies are typically represented by councils, primary schools and community organisations that provide child care services to families in their community. Some examples might be a Primary School or its Parent & Citizens (P&C) Association that operate an outside school hours care service or a local council that operates a community day care service or vacation care program.

What are the responsibilities of an approved provider?

Once approved as a CCS Provider, a school, local council or committee becomes 'the person' held responsible under the family assistance law for the ongoing CCS eligibility of the provider and its services. One of the eligibility requirements is that the provider **must identify every Person with Management or Control of the Provider (i.e. the legal entity)** and ensure that each of these individuals have undergone the necessary fit and proper checks.

What is a ‘Person with Management or Control of the Provider’?

Section 194F of the *A New Tax System (Family Assistance) Act 1999* (the Act) describes a *Person with Management or Control of the Provider* to be someone who is:

- a member of the group of persons responsible for the executive decisions of the body;
- a person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the body;
- a person who is responsible for the day-to-day operation of the body; or
- a person who is responsible for the day-to-day operation of a child care service in respect of which the body is approved.

The definition at Section 194F is specifying individuals who make up a governing body of an organisation. This governing body will be different accordingly to the legal entity type. For example, the governing body of a partnership includes all of the partners while the governing body of a company comprises all of those individuals holding the office of Director.

With regard to schools, councils and community organisations that seek to become approved child care providers, the following individuals will be taken by the department to be *Persons with Management or Control of the Provider*:

- In a school – the School Principal and all members of the school board executive committee.
- In a committee, such as P&C or sports committee – all members of the committee or board.
- In a local shire council – individuals in the role of General Manager, CEO or equivalent responsible for child care services as well as any other staff to whom the CEO’s authority is delegated.

All of the mentioned individuals must be listed as *Persons with Management or Control of the Provider* and be subject to the required fit and proper checks. This is because they all have a role (a decision making ‘say’ in how the legal entity conducts its business.

Why is it necessary to identify and check individuals who are not involved with the daily operation of the child care service?

By becoming approved under the family assistance law, a CCS provider has the responsibility of administering government payments to families. The actions of, and decisions made by, the provider have the ability to impact payments and the provision of care to families. Consequently, those individuals who contribute to the actions and decisions of the provider also have the ability to impact on child care payments.

The verification of the fitness and propriety of a provider’s key personnel is a necessary measure to support the integrity of public funds and the continuity of quality child care to families.

Can individuals from the governing body be excluded as Persons with Management or Control?

In almost all cases, every member of a governing body – as determined by the entity type and business structure – must be included as a *Person with Management or Control*. This is because the law requires that every person with the authority to influence the actions of the provider be identified to the department.

However, in some unique, ad hoc, circumstances an individual might be part of the governing body but be excluded from the provider's decision making. An example might be a committee member whose sole purpose is to provide secretariat services and who does not vote on committee business decisions. In these circumstances, the provider could request that the individual be excluded from identification as a *Person with Management or Control*. The department may request the provider supply evidence of the individual's unique role.

Additionally, a legal entity may decide to revoke the authority of certain individuals in its organisation (such as some committee members) resulting in those individuals not being able to make decisions on behalf of the provider or vote on decisions being made by the provider. An example might be where a committee revokes decision making authority of a sub-committee of members assigned to fundraising activities. In having this authority removed, the individuals could no longer reasonably be considered to be *Persons with Management or Control of the Provider* and therefore there would be no obligation for the provider to identify them in a CCS application.

To satisfy the personnel requirements of family assistance law, the mechanism by which the authority was removed must be a constitutional one such as an amendment of the organisation's Constitution or Replaceable Rules. The amendment must specify that named individuals do not have authority to act on behalf of or contribute to decisions made by the provider. A copy of the amended Constitution, or formal Minutes, endorsed by the relevant committee, should be included with the provider's CCS application.

Can the role of Person with Management or Control or the Provider be delegated to others?

Yes, many organisations have governance rules, constitutions and even acts of parliament, providing for delegation mechanisms where management and financial authority can be delegated to particular individuals. For example, a committee might delegate management authority in respect of a child care service.

However, the delegation of authority to subordinate personnel **does not** exclude members of the governing body as *Persons with Management or Control*. Instead, where the delegated officer routinely makes high level decisions without requiring approval 'higher up', they fall within the definition of Management or Control and must also be identified to the department.

An example of this might be an individual in the role of Regional Manager for a large provider with a company entity. The directors of the company are taken to be *Persons with Management or Control of the Provider* as they make decisions about the legal entity. However, the Regional Manager, who might make executive decisions of behalf of the provider would also be considered to be a *Person with Management or Control of the Provider*.

Similarly, a General Manager of a 'family or community services' branch of a local shire council operating a child care service would be taken to be a *Person with Management or Control of the Provider* on the basis that they can make decisions about the child care service without approval from a higher authority. However, it is likely that some of the authorities held by the General Manager are delegated to other officers within the council. For example, while the General Manager has overall responsibility for the child care service, the authority to decide on major expenditure or enter into legal agreements might be delegated down to other roles within the council. Where this is the case, the delegated officers are also taken to be *Persons with Management or Control of the Provider*.

How do providers identify Persons with Management or Control of the Provider to the department?

Individuals in the role of *Persons with Management or Control of the Provider* are identified to the department by being linked to the provider's CCS approval record either through the provider's child care software product or in the Provider Entry Point (the PEP). Regardless of which method is used to identify them, an individual must first register for a PRODA¹ (Provider Digital Access) account and verify their identity before they can be linked to the CCS approval record. PRODA is the online authentication system used to verify the identity of individuals in specified child care personnel roles.

A provider must initially identify individuals when it submits a CCS application but can later add and remove individuals as personnel change— such as when committees and councils are re-elected or when employees commence or leave their organisation.

It is a requirement of ongoing CCS approval that providers notify the department of changes to its key personnel.

¹ PRODA (Provider Digital Access) is an online authentication system that the department uses to check the identity of child care provider entities and their personnel.

All Persons with Management or Control of the Provider must undertake Fit and Proper checks

Section 43 of the *Child Care Subsidy Minister's Rules 2017* requires a provider to undertake particular suitability checks for each *Person with Management or Control of the Provider*. These are:

- An Australian National Police Criminal History Check dated no earlier than 6 months from the date the individual was linked to the organisation.
- A Working With Children Check if the *Person with Management or Control* is required to hold such a check under their state or territory's regulatory law (because they are in contact with children).
- A National Personal Insolvency Index check performed using the Bankruptcy Register Search service provided by the Australian Financial Security Authority (AFSA) dated no earlier than 3 months from the date the individual was linked to the organisation.
- A Current and Historical personal name extract search of the records of the Australian Securities and Investments Commission (ASIC) dated no earlier than 6 months from the date the individual was linked to the organisation.
- Evidence that the person does not appear on the banned and disqualified register held by ASIC (in the form of a computer printout of the results of the search) dated no more than 3 months from the date the individual was linked to the organisation.

Evidence of these checks are required in a CCS provider application and, where personnel are added after CCS approval, the evidence must be made available to the department on request.

There are no legislative provisions exempting a Person with Management or Control of the Provider from any of the above checks.

More information

- The [CCS Specified Personnel Roles Fact Sheet](#) sets out information about the specified personnel roles for CCS approved providers and services.
- The [How to Register for an Individual Account Task Card](#) gives step-by-step instructions on how to create an account and verify your identity using PRODA.

Information about how to apply to become a CCS approved service is available on the department's [Applying for CCS Approval](#) webpage.

If you need additional information or assistance, you can email your query to the department's CCS Assessment team at CCSAssessments@dese.gov.au