



Jag Gorrepati
Director Re-commissioning
Child & Family Department of Communities and Justice
2 Cavill Avenue,
Ashfield NSW 2132

Reply to: PO Box 9977
ALBURY NSW 2640
Our reference: 1051654724612
Contact officer: Glenn Wilson
Phone: (02) 605 87465

1 April 2020

Dear Mr Gorrepati

Covid-19 NSW Foster Care Emergency Authorisation of Staff

We refer to your email dated 26 March 2020 relating to the NSW Office of the Children's Guardian's under the 'Covid-19 Response' that will enable staff employed by your department and designated agencies to act as foster carers in the event of a severe staff or carer shortage resulting from the Covid-19 pandemic.

In subsequent conversations with Michael Majoor of this office it was noted:

- The NSW Office of the Children's Guardian may permit staff employed by a designated agency to act as foster carers in an emergency situation (regulation 31B of the *Children and Young Persons (Care and Protection) Regulation 2012*) provided that they meet the criteria to act as a foster carer
- **The staff who act as foster carers will do so in a private capacity**
- The foster care will be provided for on the same terms and conditions that apply to foster carers generally
- **The staff who perform foster care will receive an allowance to cover anticipated expenses arising from the foster care**
- **While the ATO does not request a calculation of the allowance, it does expect that a genuine estimate has been made having regard to the costs that a foster carer may encounter, noting that some children may incur additional costs. Such expenses may include food, travel, insurance premiums and property damage.**
- **The allowance is not a reward for services and is not an employee expense allowance. It will not be paid through the payroll system.**

Paragraph 2(c) of Taxation Determination TD 2006/62: **Income tax: are certain payments to a volunteer foster carer to provide foster care assessable income?** says that it does not apply to 'employees of foster care agencies'. That condition is there to ensure that an employee cannot have what would be assessable income converted in to a non-assessable allowance.

The 'Covid-19 Response' makes it clear that as an emergency measure, employees should be able to become temporary foster carers. The rules outlined above show that their employment income and the carer allowance are kept at arm's length during the period of the emergency. As such, the requirement in paragraph 2(c) will not apply for emergency care provided under the 'Covid-19 Response'.

Further, as the circumstances for these emergency carers are different to other foster carers, the use of the rates mentioned in paragraph 2(e) does not apply. An allowance based on the likely costs that emergency carers may incur will need to be determined. This allowance may, as in the case of foster carers generally, be for a standard level of care and have additional loadings based on particular needs of the person being cared for.

As noted above, this advice only relates to the 'Covid-19 Response' and is not to be taken to be precedential or indicative of an ATO view on the application of Taxation Determination TD 2006/62 to any other NSW Office of the Children's Guardian care programs (whether in existence or proposed).

You may share this letter with designated agencies.

Yours faithfully

Alison Lendon
Deputy Commissioner of Taxation

Per
(Glenn Wilson)