



Australian Children's
Education & Care
Quality Authority

2

Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011

FEBRUARY 2017

Amendments to the Education and Care Services National Regulations affecting the National Quality Framework Resource Kit

Amendments to the Education and Care Services National Regulations came into effect in all states and territories except Western Australia on 1 September 2013. The *National Regulations* in Western Australia will be amended later in 2013 to reflect these changes. The minor amendments deliver benefits to providers and educators, resolving several issues raised since the introduction of the National Quality Framework. ACECQA has updated the National Quality Framework Resource Kit to reflect the amendments. Key changes are shown in the table below.

There are also a number of jurisdiction specific amendments. More information about changes in your state or territory is available on the Australian Children's Education and Care Quality Authority (ACECQA) website or from your regulatory authority.

Changes to the National Quality Framework Resource Kit			
Change	Reg.	Page number	
		New	Old
Guide to the Education and Care Services National Law and National Regulations			
Information that must be included in an application for service approval (centre-based)	r25	22	24
Definition of serious incidents that must be notified to the regulatory authority (note: the definition has not changed for providers in WA)	r12	57	59
Requirements for rehearsal of emergency and evacuation procedures	r97	65	67
Space requirements do not apply in relation to a child being educated and cared for in an emergency under regulation 123(5)	r107-8	72-3	74-5
Educator to child ratios do not apply in relation to a child being educated and cared for in an emergency under regulation 123(5)	r123	84	87
Early childhood teacher requirements do not apply in relation to a child being educated and cared for in an emergency under regulation 123(5)	r129	90	92
Guidance has been added about possible safety and security precautions for family day care services with licensed firearms on the premises	n/a	68, 82	n/a
Guide to the National Quality Standard			
Guidance about child safety restraints in vehicles has been removed, to clarify that the NQF does not extend to regulation of transport services	n/a	n/a	70-7
Guidance about child protection responsibilities of educators and providers has been revised for consistency with state and territory based legislation	n/a	76	80
References to the NHMRC Staying Healthy in Child Care guidelines have been updated following publication of the 5th edition	n/a	58, 191	61, 197
Guidance has been added about what assessors may sight and discuss at family day care services which have licensed firearms on the premises	n/a	73	n/a

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About this guide

The purpose of this guide is to assist providers of education and care services, nominated supervisors and educators to understand the *Education and Care Services National Law Act 2010* ('*National Law*') and the *Education and Care Services National Regulations 2011* ('*National Regulations*'). It provides examples of how providers, services and supervisors might meet their obligations under the *National Law* and *National Regulations*.

Some of the explanatory context is drawn from the Guide to the *National Quality Standard* and the Guide to Developing a Quality Improvement Plan so you may also see it replicated in those documents.

This guide does not replace the *National Law* and *National Regulations* and is provided solely for guidance and assistance. Approved providers and those working directly with children should read and understand the *National Law* and *National Regulations*. Approved services should seek their own legal advice for a full interpretation of the *National Law* and *National Regulations*. This guide contains information relevant to centre-based services, including long day care, preschool (also called kindergarten in some jurisdictions) and outside school hours care, and family day care services.

As a general approach, each section highlights key elements of the *National Law* and *National Regulations* but it is **not** exhaustive.

In many areas additional information is provided about how a service may operationalise the requirements on a day to day basis. This information is provided as guidance only.

How this guide is organised

This guide is organised into chapters which align with the structure of the *National Regulations*. Where a topic refers the reader to a particular regulation of the *National Regulations* or section of the *National Law*, the reference will be noted in a green box, for example:

National Law: eg Section 53

National Regulations: eg Regulation 104

Purple text boxes will highlight examples of practice, or information to note

Other boxes will refer the reader to other parts of this guide for more information on a particular topic or requirement.

Orange text boxes include guidance information.

Indicates the fee for this application

This guide also provides cross-references to the *National Quality Standard*, to help the reader understand the relationship between the National Law, the *National Regulations* and the *National Quality Standard*.

Chapter 1: Introduction

Legislative framework of the National Quality Framework

The *National Law* is not a Commonwealth Law. The National Quality Framework is being established under an applied law system comprising the Education and Care Services National Law and Education and Care Services *National Regulations* and will apply to most long day care, family day care and preschools (or kindergartens) and outside school hours care services in Australia.

A national applied law is a way of establishing national laws whereby a host jurisdiction (in this case Victoria) passes a law (the *Education and Care Services National Law Act 2010* (Vic)) and other jurisdictions adopt that law or pass corresponding legislation.

The purpose of the Education and Care Services National Law is to create a jointly-governed, uniform and integrated national approach to the regulation and quality assessment of education and care services.

The *National Law* sets out the objectives and guiding principles for the National Quality Framework.

Objectives

National Law: Section 3 (2)

The objectives of the National Quality Framework are to:

- ensure the safety, health and wellbeing of children attending education and care services
- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services
- establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the National Quality Framework
- improve public knowledge, and access to information, about the quality of education and care services
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

Guiding principles

National Law: Section 3(3)

The following principles apply when making decisions about operating education and care services, and working to achieve the *National Quality Standard* and improve quality at each service:

- the rights and best interests of the child are paramount
- children are successful, competent and capable learners
- the principles of equity, inclusion and diversity underpin the National Law
- that Australia's Aboriginal and Torres Strait Islander cultures are valued
- that the role of parents and families is respected and supported
- that best practice is expected in the provision of education and care services.

The United Nations Convention on the Rights of the Child articulates the rights of all children and provides a set of guiding principles that shape the way we view children. 'Best interests of the child' is one of these guiding principles and sets out that when adults make decisions, they should consider how these decisions will affect children.

The *National Law* sets out:

- approval processes for the operation of education and care services
- the assessment and rating system
- key operational requirements
- compliance, monitoring and enforcement powers
- review of decisions made by regulatory authorities
- the functions and powers of the Standing Council
- the functions and powers of the Australian Children's Education and Care Quality Authority (ACECQA)—the national body that oversees the system
- the functions and powers of regulatory authorities in each jurisdiction
- creation of a nationally consistent freedom of information and privacy framework to apply to ACECQA and regulatory authorities
- publication of information, including registers
- key transitional arrangements.

Services covered by the National Law

National Law: Section 5

The National Quality Framework covers most long day care, family day care, preschool (kindergarten) and outside school hours care services. In WA, the National Quality Framework also extends to home based care.

The National Quality Framework has commenced with the largest services in terms of numbers of children. Given the range and diversity of education and care services, an all-encompassing national system will take a number of years to achieve. Further work will be undertaken in the future to assess how and when other services may be incorporated, including cost–benefit analysis for inclusion of these services.

Given that additional types of education and care services may be brought into the National Quality Framework later, the National Law adopts a broad definition of ‘education and care service’ as ‘any service providing or intending to provide education and care on a regular basis to children under 13 years of age’, except those services that are specifically excluded either by the National Law or the *National Regulations*.

Services excluded by the National Law

The following services are excluded by the National Law and are not within the scope of the National Quality Framework:

- a school providing full-time education to children, including children in the year before Grade 1, but not including a preschool program delivered in a school or a preschool that is registered as a school (as these are within scope)
- a preschool program delivered in a school if the program is delivered in a class or classes where a full-time education program is also being delivered to school children and the program is delivered to fewer than six children in the school (a composite class)
- a personal arrangement
- a service principally conducted to provide instruction in a particular activity (for example, a language class or ballet class)
- a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service
- care provided under a child protection law of a participating jurisdiction.

Services that are excluded by the National Law are unlikely to be brought into the National Quality Framework in the future.

Services excluded by the National Regulations

National Regulations: Regulation 5

Services that are excluded by the *National Regulations* may be brought into the National Quality Framework in the future.

The *National Regulations* exclude the following services:

- disability services defined under state or territory law, and early childhood intervention services for children with additional needs
- except in WA, education and care in a residence, other than as part of a family day care service
- occasional care services (for example, offered at short notice or on a casual basis)
- education and care provided by a hotel or resort to children of short-term guests at the hotel or resort
- education and care that is provided on an ad hoc basis to children of a guest, visitor or patron where the person who is responsible for the children is readily available at all times
- education and care where it is primarily provided or shared by parents or family members
- education and care provided at a secondary school to a child of a student attending the school, where the parent retains responsibility for the child
- mobile services
- services that provide education and care for no more than four weeks per calendar year during school holidays
- transition to school programs provided by a school to orient children to that school
- budget based funded services, other than where they receive Child Care Benefit
- playschools licensed in the Australian Capital Territory
- stand-alone services in Queensland
- playcentres in South Australia
- services licensed as centre-based Class 4 or 5 services under the *Child Care Act 2001* in Tasmania
- licensed limited hours or short-term services in Queensland or Victoria
- government-funded services under the *Children and Community Services Act 2004* of Western Australia.

Where key definitions can be found

National Law: Section 5

National Regulations: Regulations 4, 10–13

actively working towards a qualification	Regulation 10, National Regulations
child over preschool age	Regulation 4, National Regulations
child preschool age or under	Regulation 4, National Regulations
education and care service premises	Section 5, National Law
educator	Section 5, National Law
emergency	Regulation 4, National Regulations
excursion	Regulation 4, National Regulations
family day care educator assistant	Regulation 4, National Regulations
family member	Section 5, National Law
in attendance at a centre-based service	Regulation 11, National Regulations
office, in relation to a Family day care service	Section 5, National Law
parent	Section 5, National Law
participating jurisdiction	Section 5, National Law
person	Section 5, National Law
person with management or control	Section 5, National Law
preschool program	Section 5, National Law
regular outing	Regulation 4, National Regulations
Regulatory Authority	Section 5, National Law
school children	Section 5, National Law
staff member	Section 5, National Law
serious incident	Regulation 12, National Regulations
working directly with children	Regulation 13, National Regulations

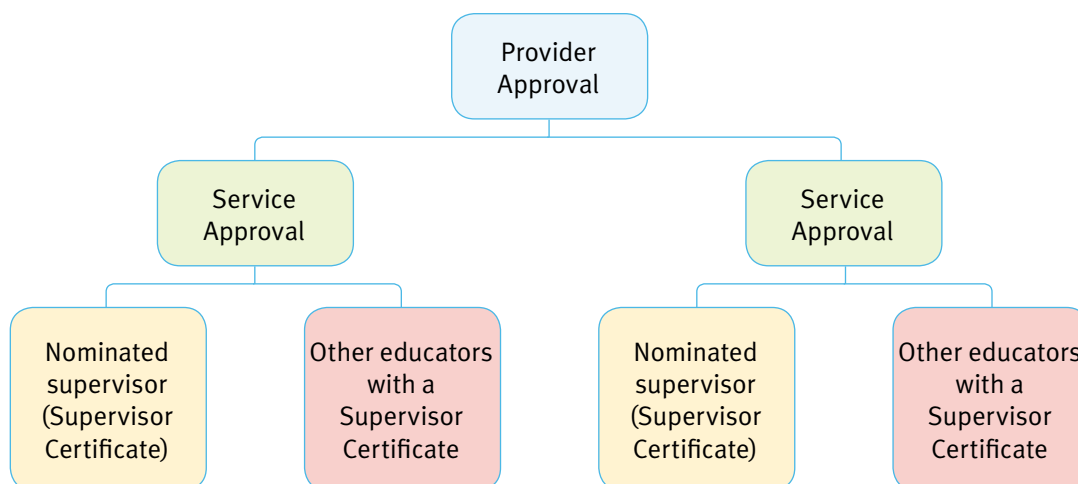
Chapter 2: Approvals and certificates

This chapter explains the process for obtaining approvals and supervisor certificates.

The *National Law* determines three inter-related approval processes for entities and individuals:

- **provider approval**—which is nationally recognised and enables providers to apply for one or more service approvals.
- **service approval**—authorises an approved provider to operate an education and care service. The approved provider must nominate a person to be the nominated supervisor for each of their approved services.
- **supervisor certificate**—allows individuals who hold a supervisor certificate to be eligible to be a nominated supervisor, or to be placed in day-to-day charge when the approved provider or nominated supervisor is not physically present at the education and care service.

Diagram 1:



The *National Law* and *National Regulations* set out specific information required for each type of application. They also prescribe timeframes for regulatory authorities to make decisions and notify applicants of the outcome.

All decisions made by regulatory authorities in relation to the approvals process are reviewable. An application for internal review must be made in writing to the regulatory authority within 14 days after notification of the decision.

The regulatory authorities will assess applications to ensure that individuals, or in the case of an entity, persons with management or control, meet minimum requirements.

Provider and service approvals and supervisor certificates are national and ongoing approvals.

Applications can be made through the National Quality Agenda IT System. If an entity or individual is unable to access online application forms, they should contact the regulatory authority in their jurisdiction.

Contact details for each regulatory authority are provided on the ACECQA website at www.acecqa.gov.au.

Part 2.1 outlines the process for obtaining provider approval.

Part 2.2 sets out matters related to service approval, including applications, amendments, suspension and cancellation, and waivers.

Part 2.3 sets out matters related to supervisor certificates, including applications, amendments and placing a supervisor in day-to-day charge of an approved service.

Part 2.1: Provider approvals

A provider approval authorises a person to apply for one or more service approvals.

Under the *National Law*, becoming an approved provider is a prerequisite to operating one or more approved services. Once granted, a provider approval is ongoing, unless suspended, cancelled or surrendered. A provider approval is valid in all jurisdictions. This means that an approved provider will not have to apply for separate provider approval in each jurisdiction in which they operate an education and care service.

All fees are indexed annually on 1 July.

Application process

For more information about fees, see Part 6.3: Fees

National Law: Sections 10–16, 21, 43, 55, 291(5)

National Regulations: Regulations 14–16

This also relates to the *National Quality Standard Element 7.1.5: Adults working with children and those engaged in management of the service or residing on the premises are fit and proper*.

The applicant must apply in the jurisdiction in which he or she usually lives (or in the case of an entity, the location of the entity's principal office).

One or more persons may apply for a national provider approval. An approved provider can only apply for a service approval if it will operate the approved service or will be responsible for the management of staff members and the nominated supervisor at that service. State and territory regulatory authorities will assess and determine provider approvals.

An application by an individual for a provider approval must include prescribed information, such as:

- The applicant's full name

- Residential address and contact details
- Date and place of birth
- Proof of identity
- Service statement
- Information about criminal history
- Disciplinary proceedings statement
- Bankruptcy declaration

An application by a person other than an individual must include:

- All of the information detailed above for individual applicants
- The applicant's name and any trading or other name used
- Street address and postal address
- Contact person's name and details for the application
- Evidence of the legal status of the applicant
- A financial declaration

An applicant must demonstrate, and continue to demonstrate, fitness and propriety to be involved in the provision of an education and care service. If the applicant is an entity, each person who will have management or control of an education and care service must demonstrate their fitness and propriety.

In determining whether a person is fit and proper, a regulatory authority must have regard to:

- the applicant's history of compliance with any current or former education and care services law, children's service law or education law
- the applicant's checks under the jurisdiction's working with children law (if applicable)
- the applicant's criminal history
- any decision made under a former education and care services law, children's services law or education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification issued to the person under that law
- any bankruptcy or insolvency issues.

If a person has been served with an infringement notice for an offence under the *National Law*, and the person has paid the penalty, a regulatory authority cannot take that offence into account when determining the person's fitness and propriety.

The applicant must submit a range of information or documentary evidence, including:

- proof of identity
- previous service statement
- evidence of fitness and propriety
- details of any disciplinary proceedings or bankruptcy.

If the applicant is an entity (for example, a company or incorporated association), the prescribed information must be provided for each person with management or control of the service.

A person with management or control is defined as:

- in relation to a *body corporate*, an officer of the body corporate who is responsible for managing the delivery of the education and care service
- in relation to an *eligible association*, each member of the executive committee who has responsibility for managing the delivery of the education and care service
- in relation to a *partnership*, each partner who has responsibility for managing the delivery of the education and care service
- in any other case, each person who has the responsibility for managing the delivery of the education and care service.

An entity must also submit documentary evidence of its legal status, such as a partnership agreement or registration of incorporation.

The regulatory authority may ask for any other relevant information to assist in making a decision to grant provider approval, such as medical history or financial circumstances that may impact on the person's ability to operate a service. It may also seek information from another state or territory regulatory authority.

Determining an application for provider approval

National Law: Sections 15–16, 191

A regulatory authority must decide to grant or refuse an application for provider approval within 60 days after receiving the application or any further information requested. If the applicant agrees, an extension of up to 30 days can be approved.

The regulatory authority may ask an applicant to provide any further information that is necessary to assess the application or undertake inquiries in relation to a person.

The regulatory authority must give the applicant written notice of a decision and the reasons for that decision within seven days after the decision is made.

All decisions by regulatory authorities in relation to the approvals process are reviewable. An application for internal review must be made in writing to the regulatory authority within 14 days after notification of the decision.

See *Chapter 5: Review, enforcement and compliance* for more information on how to apply for a review.

An approved provider must notify certain circumstances to the regulatory authority, such as a change in the name of or contact details for the approved provider, or the appointment or removal of a person with management or control.

See the table on page 113 for information that must be notified to the regulatory authority.

Grant and issue of provider approval

National Law: Sections 20, 172

National Regulations: Regulation 173

If granted, the regulatory authority must provide a copy of the provider approval to the approved provider.

An approved provider is subject to a range of notification requirements which are set out on page 113.

The approved provider must display certain information so it is visible in the main entrance of each service operated by the provider.

See page 112 for information that must be displayed in the education and care service premises.

Conditions on provider approvals

National Law: Section 19

A provider approval may be granted subject to any conditions that are prescribed in the *National Regulations* or that are determined by the regulatory authority. All provider approvals are granted subject to the condition that the approved provider must comply with the *National Law* and *National Regulations*.

A regulatory authority may place additional conditions on a provider approval. For example, a condition might be imposed to limit the number of services that may be operated by the approved provider. Any additional conditions will appear on the copy of the provider approval.

Amendment of provider approval

National Law: Sections 22–24, 173, 190–191

National Regulations: Regulation 17

An approved provider may apply in writing to the regulatory authority for an amendment of their provider approval.

A regulatory authority may also amend a provider approval at any time without application by an approved provider, such as to vary a condition or to place a new condition on a provider approval.

The regulatory authority must advise the approved provider in writing of the amendment, and supply a copy of the amended provider approval to the approved provider.

All decisions by the regulatory authorities in relation to the approvals process are reviewable.

Suspension of provider approval

National Law: Sections 25–30, 35–37

National Regulations: Regulations 18–19

A regulatory authority may suspend a provider approval on a number of grounds, such as the approved provider:

- is no longer considered fit and proper to operate an education and care service
- has not complied with a condition of their provider approval, or has been found guilty of an offence
- has not operated any education and care service for 12 months
- has not paid any outstanding fees.

Before a regulatory authority takes action to suspend a provider approval, it must:

- notify the approved provider and provide reasons for the action (a ‘show cause notice’)
- allow the approved provider to respond in writing to the notification before making its final decision
- advise the approved provider in writing of the final decision.

The regulatory authority may suspend the provider approval for up to 12 months.

The regulatory authority may direct the approved provider to notify parents of children enrolled in the education and care service/s in writing of the suspension.

A regulatory authority may also suspend a provider approval without prior notification if it is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children. In this case, the maximum period of suspension is six months.

The decision to suspend a provider approval is reviewable. See *Chapter 5: Review, enforcement and compliance* for further information on applying for a review.

An approved provider may also apply to voluntarily suspend their provider approval for up to 12 months. The approved provider must notify parents of children enrolled in the care and education service/s in writing of their intention to apply for a voluntary suspension of provider approval.

If a provider approval is suspended, all service approvals held by the provider are also suspended. A suspension applies to education and care services and any associated children's services operated by the approved provider. However, the *National Law* provides for a suspended service to be transferred to another approved provider.

See *Part 2.2: Service approvals* for a definition of an associated children's service.

Cancellation of provider approval

National Law: Sections 31–36, 38

A regulatory authority may cancel a provider approval on a number of grounds, such as:

- the approved provider is no longer considered fit and proper to operate an education and care service
- there is an unacceptable risk to the health, safety or wellbeing of a child being educated and cared for by the approved provider
- the approved provider has not complied with a condition of their provider approval, or has been found guilty of an offence
- the approved provider has not operated any education and care service for more than 12 months (including any period of suspension).

Before a regulatory authority takes action to cancel a provider approval, it must:

- notify the approved provider and provide reasons for the action (a 'show cause notice')
- allow the approved provider to respond in writing to the notification before making its final decision
- advise the approved provider in writing of the final decision.

An approved provider may also surrender a provider approval by notifying the regulatory authority in writing. The approved provider must notify parents of children enrolled in each approved service in writing of the intention to surrender the provider approval. If a provider approval is surrendered, the approval is cancelled on the date nominated by the approved provider.

If a provider approval is cancelled or surrendered, all service approvals held by the provider are also cancelled or taken to be surrendered. A cancellation applies to education and care services and any associated children's services operated by the approved provider. However, the *National Law* allows the provider to apply for consent to transfer a service approval held by the provider.

See *Part 2.2: Service approvals* for a definition of an associated children's service.

The regulatory authority may direct the approved provider to notify parents of children enrolled in the education and care service/s in writing of the cancellation.

Approval of executor, representative or guardian as approved provider

National Law: Sections 39–41

National Regulations: Regulations 20–23

Where an approved provider can no longer fulfil their role due to death or incapacity, a nominated executor or legal personal representative or guardian can be appointed, subject to meeting the requirements to be an approved provider.

Part 2.2: Service approvals

A service approval authorises an approved provider to operate an education and care service.

An approved provider may apply to the regulatory authority for a service approval for an education and care service if the approved provider will be the operator of the education and care service and will be responsible for the management of the staff members and nominated supervisor of that service.

Once granted, a service approval is ongoing, unless suspended, or cancelled or surrendered.

There are two types of service approvals:

- centre-based service, which includes long day care, preschool (or kindergarten), and outside school hours care
- family day care service.

There is an application fee for each service approval, and an annual fee payable on or before 1 July each year. The fee is based on the size of the service and is indexed annually. The fee schedule is set out in the *National Regulations*, Schedule 2.

For more information about fees, see *Part 6.3: Fees*.

Application for service approval (one-off)		
Family day care service		\$600
Centre-based service	24 or less approved places	\$400
	25 to 80 approved places	\$600
	81 or more approved places	\$800
Approved service annual fee		
Family day care service	5 or less educators	\$185
	6 to 20 educators	\$275
	21 or more educators	\$365
Centre-based service	24 or less approved places	\$185
	25 to 80 approved places	\$275
	81 or more approved places	\$365

All fees are indexed annually on 1 July. The first indexation will occur on 1 July 2013.

Application process

National Law: Sections 43–44, 103–104, 161–162

National Regulations: Regulations 24–25 (centre-based service), 26 (family day care service), 146

An approved provider must submit an application for service approval in the jurisdiction in which the service is to be located.

The application must designate a nominated supervisor and include that person's written consent to the nomination.

See Part 4.4 Staffing arrangements for information about responsible person being present or available to family day care educators– page 84

The application for a centre-based service must include the prescribed information:

- proposed maximum number of children
- proposed hours and days of operation
- a statement that the approved provider has prepared the required policies and procedures
- plans prepared by a building practitioner*
- copy of a planning permit, if required
- right to occupy the premises*
- building certification.*

*The regulatory authority may accept an application that does not include this information if the approved provider is seeking to:

- relocate the education and care service for not more than 12 months, or
- locate the service on a school site.

A 'building practitioner' is defined in regulation 4 as a person who is registered as a building surveyor, building inspector, draftsman or architect, or licensed as a surveyor, under the laws of a participating jurisdiction.

The requirement for building certification means that an application can only be submitted once a building is complete.

The *National Law* provides that it is an offence to operate an education and care service without a service approval. Additionally, it is an offence to advertise an education and care service until an application for service approval has been submitted to the regulatory authority.

Where an approved provider proposes to operate a service covered by the *National Law*, and on the same premises proposes to operate a service not covered by the *National Law* but regulated under a state or territory law, the approved provider may seek a service approval under the *National Law* for both services.

The approved provider will not be required to have separate approvals or licences under different laws. However, the associated service component will need to continue to comply with the relevant state or territory law.

An 'associated children's service' is a children's service that is operated (or intended to be operated) from the same premises as an approved service by the same approved provider. For example, an occasional care service co-located with a long day care service would be considered an associated service.

The application for a family day care service must include information about the education and care service, including:

- proposed hours and days of operation of the service
- proposed location of the principal office
- proposed number of family day care educators
- locations where education and care is to be provided
- proposed number of family day care co-ordinators
- a statement that the approved provider has prepared the required policies and procedures
- copies of additional policies and procedures required under regulation 169.

Determining an application for service approval

National Law: Sections 45–50

National Regulations: Regulations 27–28

A regulatory authority must decide to grant or refuse an application for service approval within 90 days after receiving the application. If the applicant agrees, the period of time may be extended.

In determining an application for service approval, the regulatory authority must take into account a range of information, including, but not limited to:

- the suitability of the premises and site (excluding a family day care residence)
- the adequacy of the policies and procedures for the service
- any suspensions of the provider approval
- any conditions of the provider approval.

The regulatory authority may:

- ask an applicant to provide any further information that is reasonably required to assess the application
- take into account information relating to the previous licensing, accreditation or registration of the education and care service under a former education and care services law, a children’s services law or an education law of any participating jurisdiction
- inspect the proposed education and care service premises at any reasonable time
- inspect the policies and procedures of the service.

In addition, the regulatory authority may take into account:

- whether the applicant is capable of operating an education and care service, having regard to the applicant's financial capacity and management capability
- the applicant's history of compliance with the *National Law* and *National Regulations*, including in relation to any other service it operates.

A service approval will not be granted if:

- the regulatory authority considers that the proposed service would present an unacceptable risk to the safety, health or wellbeing of children, or
- the applicant does not have a provider approval.

A service approval may not be granted if the regulatory authority is not satisfied that the applicant is:

- capable of operating the proposed service in compliance with the *National Law*, the *National Regulations* or the *National Quality Standard*, or
- entitled to occupy the education and care service premises (centre-based service only).

The regulatory authority must give the applicant written notice of a decision and the reasons for that decision within seven days after the decision is made.

All decisions by regulatory authorities in relation to the approvals process are reviewable. An application for internal review must be made in writing to the regulatory authority within 14 days after notification of the decision.

See [Chapter 5: Review, enforcement and compliance](#) for more information on how to apply for a review.

Grant and issue of service approval

National Law: Sections 48, 50, 52, 172

National Regulations: Regulation 173

If granted, the regulatory authority must provide a copy of the service approval to the approved provider. The service approval must include details about any conditions on the service approval, the maximum number of places (centre-based service only) and details of any waivers applying to the service (refer to 30 for information about waivers).

The service approval must be displayed so that it is visible from the main entrance of the approved service (refer to 112 about display of information at a service).

Conditions on service approval

National Law: Section 51, 161, 163

National Regulations: Regulations 29–32

A regulatory authority may grant a service approval subject to conditions. It is the approved provider's responsibility to ensure that all conditions are met.

There are a number of standard conditions that apply, including that:

- the approved service must commence operation within six months of being granted approval
- the approved service is operated in a way that ensures the safety, health and wellbeing of the children being educated and cared for at the service
- the approved service is operated in a way that meets the education and development needs of children attending the service
- the approved provider must ensure that a current Quality Improvement Plan is:
 - kept at the service premises, or family day care service principal office
 - available for inspection by the regulatory authority and families or prospective families of the service
- the approved provider must hold public liability insurance with a minimum cover of \$10 000 000
- the service continues to be entitled to occupy the education and care service premises (centre-based services).

A new service will have three months from the date of their service approval to develop their Quality Improvement Plan. For more information, see *Part 3.1: Quality Improvement Plans*. Also see transitional provisions.

Evidence that a centre-based service is entitled to occupy the premises might include a current lease, or proof of ownership such as a property title search. Also see transitional provisions.

Family day care services must provide sufficient numbers of family day care co-ordinators to monitor and support the family day care educators.

Family day care educators must also hold public liability insurance with a minimum cover of \$10 000 000. This might be covered by the family day care service or the individual educator.

The National Regulations do not prescribe how many co-ordinators are required in a family day care service. The approved provider should determine how many co ordinators are needed to provide support and assistance to all family day care educators engaged by the service, and to monitor each educator's compliance with the National Law and National Regulations.

Amendment of service approval

National Law: Sections 54–55, 57

National Regulations: Regulation 34

An approved provider may apply in writing to the regulatory authority for an amendment of a service approval. An amendment cannot change the location of a service.

The regulatory authority must make a decision on the application within 60 days after the application (or any further information requested by the regulatory authority) is received.

A regulatory authority may also amend a service approval at any time without an application by an approved provider, for example to vary a condition or to place a new condition on the service approval.

The regulatory authority must advise the approved provider in writing of the amendment, and issue a copy of the amended service approval.

Change to nominated supervisor

National Law: Section 56

National Regulations: Regulations 35

The approved provider must notify the regulatory authority in writing if the provider wishes to change the person designated as the nominated supervisor. This notice should be given at least seven days before the person commences as the nominated supervisor, or if this is not possible, no later than 14 days after the change of nominated supervisor.

The notice to the regulatory authority must include that person's written consent to be the nominated supervisor.

A person must have a supervisor certificate to be a nominated supervisor.

Transfer of service approval

National Law: Sections 58–69

National Regulations: Regulations 36 (centre-based service), 37 (family day care service), 38

A service approval may be transferred from one approved provider to another approved provider—for example, where an approved provider sells their business, or has their provider approval or service approval suspended.

The transferring and receiving approved providers must jointly notify the regulatory authority in writing of the transfer at least 42 days before the transfer is intended to take effect.

The *National Law* does not require the transferring service approval to be reassessed or reappraised. The regulatory authority is taken to have consented to the transfer unless it intervenes.

A regulatory authority may intervene in a transfer of a service approval if it has concerns about whether the receiving approved provider is capable of operating the education and care service, having regard to its financial capacity, management capability and any other relevant matter. To intervene, the regulatory authority must notify both parties in writing, at least 28 days before the proposed date of transfer. The notice must outline the matters about which the regulatory authority is concerned.

The regulatory authority must notify both parties of its decision to consent to or refuse the transfer at least seven days before the proposed date of transfer. The regulatory authority may impose conditions on the provider or service approval of the receiving approved provider because of the transfer.

The receiving approved provider must give written notice to the parents of children enrolled at an education and care service of the transfer of the service approval, at least two days before the transfer.

Both parties must also notify the regulatory authority in writing within two days after the actual transfer takes effect. The regulatory authority must then amend the service approval and provide a copy of the amended service approval to the receiving approved provider.

Suspension of service approval

National Law: Sections 30, 70–75, 84–85

National Regulations: Regulations 39–40

A regulatory authority may suspend a service approval on a number of grounds, such as:

- there is a reasonable belief that it would not be in the best interests of the children for the service to continue to operate
- the service has operated at a rating level not meeting the *National Quality Standard* and
 - a service waiver or temporary waiver does not apply to the service in respect of that non compliance and
 - there has been no improvement in the rating level
- the approved provider has not complied with a condition of the service approval or the *National Law* and *National Regulations*
- the approved provider has not complied with a direction, compliance notice or emergency order under the *National Law*
- the approved provider has not paid the annual fee for the service approval.

Before a regulatory authority takes action to suspend a service approval, it must:

- notify the approved provider and provide reasons for the action (a ‘show cause notice’)
- allow the approved provider to respond in writing to the notification before making its final decision
- advise the approved provider in writing of the final decision.

The regulatory authority may suspend the service approval for up to 12 months.

The regulatory authority may require the approved provider to notify parents of children enrolled in the care and education service in writing of the suspension.

A regulatory authority may also suspend a service approval without prior notification if it is satisfied that there is immediate risk to the safety, health or wellbeing of a child or children. If a regulatory authority suspends a service approval without notification, the suspension can be for no longer than six months.

An approved provider may also apply to voluntarily suspend a service approval for up to 12 months. The approved provider must notify parents of children enrolled in the approved service in writing of their intention to apply for a voluntary suspension of service approval, at least 14 days before making the application. A service approval will be automatically suspended if the relevant provider approval is suspended. However, the regulatory authority may consent to the transfer of a suspended service to another approved provider.

Cancellation of service approval

National Law: Sections 77–84, 86

A regulatory authority may cancel a service approval if:

- there is a reasonable belief that there the continued operation of the service would constitute an unacceptable risk to the health, safety or wellbeing of a child or children being educated and cared for by the service
- the service has been suspended (other than a voluntary suspension) and the reason for the suspension has not been rectified
- the service approval was obtained improperly, or
- a condition placed on the service approval has not been complied with.

Before a regulatory authority takes action to cancel a service approval, it must:

- notify the approved provider and provide reasons for the action (a ‘show cause notice’)
- allow the approved provider to respond to the notification before making its final decision
- advise the approved provider in writing of the final decision.

An approved provider may also surrender a service approval by notifying the regulatory authority in writing. The approved provider must notify parents of children enrolled in the approved service in writing of the intention to surrender the service approval. If a service approval is surrendered, the approval is cancelled on the date nominated by the approved provider.

Waivers

The *National Law* provides for two types of exemptions or waivers from meeting a prescribed Element or Elements of the *National Quality Standard* or the *National Regulations*:

- service waiver—on an ongoing basis
- temporary waiver—for a period of up to 12 months.

For example, where a service is unable to meet a physical environment requirement of the *National Regulations* (for example, fencing or appropriate shaded area), the approved provider could apply for a waiver.

There is an application fee for a service or temporary waiver.

Service waivers

National Law: Sections 87–93

National Regulations: Regulations 41–43

An approved provider of a centre-based service may apply for a service waiver for any of the following:

- the Standards and Elements set out in Quality Areas 3 (Physical environment) and 4 (Staffing arrangements) of the *National Quality Standard*,
- regulations 104 (fencing and security), 107 (indoor space), 108 (outdoor space), 110 (ventilation and natural light), 111 (administrative space), 112 (nappy change facilities), 113 (outdoor space – natural environment), 114 (outdoor space – shade), 115 (premises designed to facilitate supervision), 120 (supervision of under 18 year old educator), 123 (educator-to-child ratios), 126 (educator qualifications) and 130 to 134 (requirement for early childhood teacher), and
- any provision in chapter 7 of the *National Regulations* which applies in place of one of the regulations listed above.

An approved provider of a family day care service may apply for a service waiver for any of the following:

- the Standards and Elements set out in Quality Areas 3 (Physical environment) and 4 (Staffing arrangements) of the *National Quality Standard*,
- regulations 104 (fencing and security), 107, 108, 110 (ventilation and natural light), 117 (glass), 124 (number of children who can be educated or cared for), 127 (educator qualifications) and 128 (co-ordinator qualifications), and

- any provision in chapter 7 of the *National Regulations* which applies in place of one of the regulations listed above.

When deciding whether to grant a service waiver, the regulatory authority will take into account:

- whether the education and care service is able to meet each Element of the *National Quality Standard* and the *National Regulations* by alternative means that satisfy the objectives of those Elements
- any other relevant matters detailed in the application.

For example, if a waiver was sought for regulation 110, maintaining the service premises at a safe temperature, a regulatory authority might refuse the waiver on the grounds that the approved provider could repair or install an air conditioning unit.

The regulatory authority must notify the applicant within 60 days of receiving the application, and if granted, re-issue the service approval stating each Element or regulation to which the service waiver applies.

If a service waiver is granted, the service is taken to comply with each Element of the *National Quality Standard* and each regulation of the *National Regulations* specified in the waiver. A service waiver will not affect an approved service's rating assessment against the *National Quality Standard*.

A service waiver may be revoked by the regulatory authority at any time or through application by the approved provider.

Temporary waivers

National Law: Sections 94–100

National Regulations: Regulations 44–45

An approved provider of a centre-based service may apply for a temporary waiver for any of the following:

- the Standards and Elements set out in Quality Areas 3 (Physical environment) and 4 (Staffing arrangements) of the *National Quality Standard*, and
- regulations 104 (fencing and security), 107 (indoor space), 108 (outdoor space), 110 (ventilation and natural light), 120 (supervision of under 18 year old educator), 123 (educator-to-child ratios), 126 (educator qualifications), 130 to 134 (requirement for early childhood teacher) and 136 (first aid qualifications).

An approved provider of a family day care service may also apply for a temporary waiver for any of the following:

- the Standards and Elements set out in Quality Areas 3 (Physical environment) and 4 (Staffing arrangements) of the *National Quality Standard*, and
- regulations 104 (fencing and security), 110 (ventilation and natural light), 117 (glass), 124 (number of children who can be educated or cared for), 127 (educator qualifications), 128 (co-ordinator qualifications) and 136 (first aid qualifications).

In considering whether the granting of a temporary waiver is appropriate, a regulatory authority must consider whether any special circumstances disclosed in the application reasonably justify the temporary waiver.

The regulatory authority must notify the applicant within 60 days of receiving the application, and if granted, re-issue the service approval stating each Element or regulation to which the temporary waiver applies.

For example, an approved provider of a centre-based service that has been flooded might request a temporary waiver to regulation 113 (outdoor space-natural environment) while their outdoor space is repaired and replanted.

If a temporary waiver is granted, the service is not required to comply with each Element of the *National Quality Standard* and each regulation of the *National Regulations* specified in the waiver.

A temporary waiver can be revoked by the regulatory authority at any time or through application by the approved provider.

Part 2.3: supervisor certificates

A supervisor certificate makes a person eligible to be appointed as the nominated supervisor of an education and care service, or to be placed in day-to-day charge of a service in the absence of the approved provider or the nominated supervisor.

See part 4.4 Supervision of education and care services for information on appointing a nominated supervisor or placing a person in day to day charge.

Prescribed class supervisor certificate

Certain classes of persons may be granted a supervisor certificate without having to apply. Classes of persons set out at regulation 49 include:

- a principal of a school
- a person in charge of a campus of a school
- specified teachers or directors of preschool or preparatory programs under state or territory law.

These provisions recognises that people in these positions are considered fit and proper, and have suitable skills and experience for supervising a service.

Service supervisor certificates

On 1 November 2016 the National Regulations were amended to expand the classes of people who may be covered by a prescribed class supervisor certificate. This change applies in all states and territories apart from Western Australia (Western Australia will make changes regarding supervisor certificates at a later date).

The new prescribed classes are set out at regulation 238A, and include a person who is:

- responsible for the day to day management of the service, or
- exercising supervisory and leadership responsibilities for part of the service, or
- a family day care co-ordinator.

Certificates issued for people working in one of these roles are referred to as **'service supervisor certificates'**.

Service supervisor certificates will not be issued to a particular person. Instead they may apply to any person working at the service who has been identified by the approved provider within the service as working in one of the above roles.

For example, if the service director is responsible for day to day management of the service, they can be covered under the service supervisor certificate. Similarly, a room leader who is responsible for supervising part of the service can also be covered by the service supervisor certificate.

With this new flexibility, most individuals **do not need to apply to the regulatory authority for a supervisor certificate.**

Under these new arrangements, a person is covered under the service supervisor certificate and may be the nominated supervisor if:

- the approved provider identifies that they meet the new definition for a service supervisor certificate and
- they give their written consent to be the nominated supervisor (required under sections 35, 44 and regulation 56).

Nominated supervisors have specific obligations under the National Law. *See the section on Nominated Supervisors for more information.*

A person is covered, and may be placed in day to day charge of the service, if:

- the approved provider or the nominated supervisor identifies that they meet the new definition for a service supervisor certificate and
- they give their written consent to be placed in day to day charge of the service (required under regulation 54).

These new arrangements apply for centre-based and family day care services, and make it easier for providers to meet the requirement to ensure that:

- for centre-based services, either the approved provider, nominated supervisor, or a certified supervisor in day to day charge is present at the service at all times the service is educating and caring for children (section 162) and
- for family day care services, either the approved provider, nominated supervisor or a certified supervisor in day to day charge is available at all times to support family day care educators

educating and caring for children (section 164).

Approved providers **do not need to apply for a service supervisor certificate**. Regulatory authorities will issue a service supervisor certificate for each approved education and care service (apart from those in WA) from 1 November 2016, or after granting a new service approval. There is no fee for a service supervisor certificate.

Existing supervisor certificates issued to an individual or for a person in a prescribed class under regulation 49 are still valid.

Information about responsibilities for approved providers and nominated supervisors for ensuring people covered by the service supervisor certificate are fit and proper with suitable skills and experience is below.

Prescribed minimum requirements for qualifications or experience

The requirements for qualification and experience set out at regulation 47 do not apply for people covered by a service supervisor certificate. The approved provider may designate any person who is working in a role that meets the new definition for a service supervisor certificate (regulation 238A) as the nominated supervisor (section 5) or as a person in day to day charge (regulation 54). However, the approved provider has overall responsibility for ensuring children's safety and wellbeing is protected (section 51) and that the service complies with the National Law and Regulations. They must therefore make sure the nominated supervisor and any person placed in day to day charge of the service has suitable skills and experience for supervising the service, having regard to their qualifications, experience and age.

Under regulation 54, the service's nominated supervisor may also place a certified supervisor in day to day charge of the service. When deciding whether it is suitable for a person who meets the new definition to be placed in day to day charge of the service, the nominated supervisor should consider the same factors as outlined above.

Ensuring the fitness and propriety of a person to be covered by the service supervisor certificate

The approved provider has overall responsibility for the service and must take reasonable steps to ensure children's safety and wellbeing is protected. This includes taking reasonable steps to make an informed decision about whether a person is suitable to be the nominated supervisor for the service or to be placed in day to day charge.

For example, providers are encouraged to seek a statement from the person about their compliance history, such as whether they have ever had an individual supervisor certificate suspended, cancelled or limited by a condition, or have been subject to any other compliance actions under the National Law and Regulations. It is also important to be aware of any compliance action taken under another law relevant to children's education and care, such as a children's services law or an education law, or a former education and care services law, in any state or territory. A compliance history template is available on the ACECQA website.

As nominated supervisors have specific obligations under the National Law, approved providers should also consider a person's age when deciding whether they are suitable for the role. In addition, educators at a centre-based service who are less than 18 years old must be supervised at all times and cannot work alone at the service (regulation 120).

Under regulation 54, the service's nominated supervisor may also place a certified supervisor in day to day charge of the service. When deciding whether it is suitable for a person who meets the new definition to be placed in day to day charge of the service, the nominated supervisor should consider the same factors as outlined above.

Normal requirements for including the details of a staff member's working with children card or check/vulnerable people check, or safety screening clearance or teacher registration, in the staff record continue to apply (regulations 145-7).

Information the approved provider must notify to the regulatory authority

The approved provider must notify the regulatory authority if the nominated supervisor for the service changes (section 56). They must also notify the regulatory authority if a nominated supervisor is no longer employed at the service or if they withdraw their consent to be the nominated supervisor (section 173).

In addition, the approved provider must notify the regulatory authority if the approved provider is notified that (section 173):

- a certified supervisor's working with children check or teacher registration is suspended or cancelled or
- a certified supervisor is subject to disciplinary proceedings under an education law of any state or territory.

Requirements for new service approval applications

Service approval applications must include the details of a person with an individual supervisor certificate, or who has applied for an individual supervisor certificate, who will be the service's nominated supervisor (section 44, regulation 24). If the approved provider wishes to be the nominated supervisor, they must have an individual supervisor certificate, or have applied to their regulatory authority for an individual supervisor certificate. Applications for an individual supervisor certificate can be made online through the NQA ITS, or by using the application form on the ACECQA website.

Individual supervisor certificate

Individual supervisor application process

National Law: Sections 106–109, 114, 118, 291(5)

National Regulations: Regulations 46–49

This also relates to the *National Quality Standard Element 7.1.5: Adults working with children and those engaged in management of the service or residing on the premises are fit and proper.*

A person who is 18 years or older may apply to the regulatory authority for an individual supervisor certificate. The application should be made in the jurisdiction where the person usually lives (or intends to live).

An application for an individual supervisor certificate must include information such as:

- proof of identity
- proof of age
- details of the applicant's relevant skills, experience, training and qualifications
- information regarding the applicant's fitness and propriety.

An applicant must demonstrate that they are a fit and proper person to be a certified supervisor.

Persons considered to be fit and proper

A person who is a registered teacher or a person who holds a current working with children card is considered to be a fit and proper person to supervise an education and care service, unless there is evidence to indicate otherwise. This recognises that these people have already undergone an equivalent fit and proper assessment under a state or territory law.

Determining an application for an individual supervisor certificate

National Law: Sections 110–113, 116

A regulatory authority must decide to grant or refuse an application for an individual supervisor certificate within 60 days after receiving the application. If the applicant agrees, an extension of up to 30 days can be approved. The regulatory authority must give the applicant written notice of a decision and the reasons for that decision within seven days after the decision is made.

The regulatory authority may ask an applicant to provide any further information that is necessary to assess the application, or undertake inquiries in relation to a person.

If the regulatory authority grants an individual supervisor certificate

In determining whether a person is fit and proper to be granted an individual supervisor certificate, a regulatory authority must take into account:

- the applicant's history of compliance with the *National Law* and *National Regulations*, any current or former education and care services law, children's service law or education law in any participating jurisdiction
- any decision made under a former education and care services law, children's services law or education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification of the applicant
- the applicant's working with children/vulnerable people check (in jurisdictions where this is required) or their teacher registration, or a criminal history check to the extent that it may affect the person's suitability for the role

- A regulatory authority may take in to account any medical condition that may affect the person's capacity to be the supervisor or any other matter.

If a person has been served with an infringement notice for an offence under the *National Law*, and the person has paid the penalty, a regulatory authority cannot take that offence into account when determining an applicant's fitness and propriety.

The minimum requirements for an individual supervisor certificate are having adequate knowledge and understanding of the provision of education and care to children, and the ability to effectively supervise and manage an education and care service.

The applicant must also have at least one of the following:

- at least three years' experience working as an educator in an education and care service or a school
- an approved diploma level education and care qualification
- an approved early childhood teacher qualification.

An individual supervisor certificate may be granted by a regulatory authority to a person who primarily educates and cares for children over preschool age (that is, school age children) without having to meet these additional requirements for qualifications or length of experience. However, that certified supervisor cannot be placed in day-to-day charge of a service that educates and cares for children who are preschool age and under.

If a regulatory authority grants an individual supervisor certificate, it must issue a certificate to the applicant stating:

- the supervisor's name or the prescribed class of people to which the person belongs, and name of the approved service
- any conditions of the approval
- the certified supervisor number
- date of approval.

All decisions by regulatory authorities in relation to the approvals process are reviewable. An application for internal review must be made in writing to the regulatory authority within 14 days after notification of the decision.

See Chapter 5: Review, enforcement and compliance for more information on how to apply for a review.

Conditions on supervisor certificates

National Law: Section 115

All supervisor certificates, including prescribed class/service supervisor certificates, are granted subject to the conditions that the person must:

- comply with the National Law and National Regulations, as much as it is in their control to do so, and
- notify the regulatory authority of a change in their name or mailing address.

A regulatory authority may also place additional conditions on a supervisor certificate. For example, the regulatory authority may place a condition on an individual supervisor certificate to limit the size of service that the supervisor can manage. For service supervisor certificates, the regulatory authority may impose a condition to prevent the certificate from applying to a particular person at the service, if this would pose a risk to children at the service.

An individual supervisor certificate may also be subject to a condition that the certified supervisor may only be in charge of a service that primarily educates and cares for children over preschool age, if the supervisor does not meet the qualification or experience requirements for a supervisor to work with children preschool age and under.

Amendment of a supervisor certificate

National Law: Section 119–122

National Regulations: Regulation 51

A certified supervisor may apply to the regulatory authority in writing for an amendment of their supervisor certificate.

The regulatory authority may amend a supervisor certificate at any time, such as to vary a condition or place a new condition on the certificate. The regulatory authority must notify the certified supervisor in writing of the amendment and supply a copy of the amended supervisor certificate to the certified supervisor.

A certified supervisor must also notify the regulatory authority of changes to particular circumstances within seven days after the change occurs.

See the table on page 113 for information that must be notified to the regulatory authority.

Suspension or cancellation of a supervisor certificate

National Law: Sections 123–130

National Regulations: Regulations 52–53

A regulatory authority may suspend or cancel a supervisor certificate if:

- the regulatory authority considers that the person is no longer fit and proper to supervise an education and care service
- the certified supervisor has failed to comply with a condition of their certificate or the *National Law* and *National Regulations*.

Before a regulatory authority takes action to suspend or cancel a supervisor certificate it must:

- notify the certified supervisor and provide reasons for the action (a ‘show cause notice’)
- allow the certified supervisor to respond to the notification before making its final decision
- advise the certified supervisor in writing of the final decision.

The maximum period of suspension is 12 months. A regulatory authority may also suspend a supervisor certificate without prior notification if it is satisfied that there is immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the certified supervisor.

The decision to suspend a supervisor certificate with notification is reviewable. See *Chapter 5: Review, enforcement and compliance* for further information on applying for a review.

If a teacher registration of a person is suspended or cancelled, the supervisor certificate of that person will be suspended or cancelled after 14 days unless the regulatory authority has assessed the person under the *National Law* as being a fit and proper person.

If a working with children card of a certified supervisor is suspended or cancelled, the supervisor certificate of that person will be immediately suspended or cancelled.

A certified supervisor may also apply to voluntarily suspend their supervisor certificate for up to 12 months.

A certified supervisor may surrender their supervisor certificate by advising the regulatory authority in writing. Upon this notice, the supervisor certificate will be cancelled.

Summary of timeframes relating to approvals

Action	Responsibility	Timeframe	National Law section reference
Determine an application for provider approval	Regulatory authority	60 days	Section 15
Advise in writing of decision to grant or refuse provider approval	Regulatory authority	Within 7 days after decision is made	Section 16
Determine an application to amend provider approval	Regulatory authority	30 days	Section 22
Respond to show cause notice of intention to suspend provider approval	Approved provider	30 days	Section 26
Respond to show cause notice of intention to cancel provider approval	Approved provider	30 days	Section 32
Determine an application for service approval	Regulatory authority	90 days	Section 48
Advise in writing of decision to grant or refuse service approval	Regulatory authority	Within 7 days after decision is made	Section 50
Determine an application to amend service approval	Regulatory authority	60 days	Section 54
Advise regulatory authority of intended service approval transfer	Transferring approved provider and receiving approved provider	At least 42 days before intended transfer	Section 59
Notice that regulatory authority intends to intervene in service approval transfer	Regulatory authority	At least 28 days before intended transfer	Section 62
Advise of consent to service approval transfer after intervention	Regulatory authority	At least 7 days before intended transfer	Section 66

Action	Responsibility	Timeframe	National Law section reference
Respond to show cause notice of intention to suspend service approval	Approved provider	30 days	Section 71
Respond to show cause notice of intention to cancel service approval	Approved provider	30 days	Section 78
Determine an application for service waiver	Regulatory authority	60 days	Section 91
Determine an application for temporary waiver	Regulatory authority	60 days	Section 98
Determine an application for supervisor certificate	Regulatory authority	60 days	Section 111
Determine an application to amend supervisor certificate	Regulatory authority	30 days	Section 119
Respond to show cause notice of intention to suspend or cancel supervisor certificate	Certified supervisor	30 days	Section 124

Chapter 3: Assessments and ratings

A key function of regulatory authorities is to conduct regular assessments of an approved service against the *National Quality Standard* and the *National Regulations*. This is a key tool available to regulatory authorities to provide feedback and assist services to continually improve. This chapter outlines the *National Law* and *National Regulations* that underpin the assessment and ratings system.

Part 3.1 addresses Quality Improvement Plans.

Part 3.2 describes the rating levels.

Part 3.3 outlines the assessment process.

Part 3.4 provides for review of ratings.

Part 3.5 addresses the highest rating.

Part 3.6 describes an offence in relation to rating levels.

The National Quality Framework includes a national assessment and rating system against the *National Quality Standard* for all education and care services.

The *National Quality Standard* sets a national benchmark for the quality of education and care services. It gives services and families a better understanding of a quality service. This enables families to make informed decisions about the services providing education and care to their children.

The *National Quality Standard* comprises Quality Areas, Standards and Elements. There are seven Quality Areas in the *National Quality Standard*:

Quality Areas

QA1	Educational program and practice
QA2	Children's health and safety
QA3	Physical environment
QA4	Staffing arrangements
QA5	Relationships with children
QA6	Collaborative partnerships with families and communities
QA7	Leadership and service management

Each individual Quality Area contains a number of Standards, which are high-level outcome statements. The *National Quality Standard* contains 18 Standards, with two or three Standards in each Quality Area. Under each Standard sits Elements that describe the outcomes that contribute to the Standard being achieved.

Under the *National Law*, each approved service is assessed and rated against the *National Quality Standard* and the requirements of the *National Regulations* by the regulatory authority in their jurisdiction.

Each approved service receives a rating for each Quality Area and an overall rating.

Part 3.1: Quality Improvement Plans

National Regulations: Regulations 55-56

An approved provider must ensure that a Quality Improvement Plan is prepared for the service that:

- describes a self-assessment of the quality of the practices of the service against the *National Quality Standard* and the *National Regulations*
- identifies areas for improvement
- contains a statement of the approved service's philosophy.

A Quality Improvement Plan must be developed within three months of the grant of the service approval.

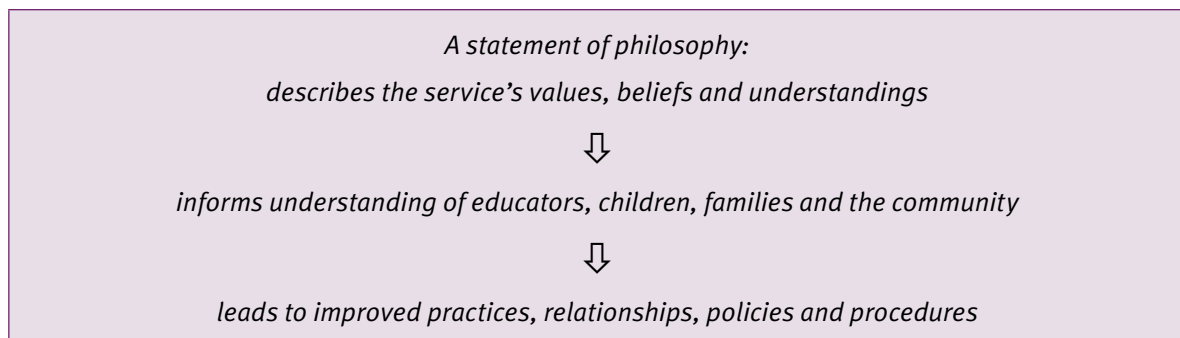
The Quality Improvement Plan must be:

- updated at least annually or at the direction of the regulatory authority
- available at the service
- submitted to the regulatory authority on request.

The National Regulations require the current Quality Improvement Plan to be kept at the service premises or family day care office. It is recommended that previous versions of the service's Quality Improvement Plan are also kept to demonstrate the service's achievements and progress.

The statement of philosophy might describe the service's values, beliefs and understandings about children, families, the role of educators and the ways children learn. To meet the *National Quality Standard*, the statement of philosophy should be used to guide all aspects of the service's operations.

It is suggested that educators, families and children are involved in the development and review of the service's philosophy statement. Regular review of the philosophy against new research, against the approved learning frameworks, and against families' views and expectations will support the service's goals for continuous improvement.



For further information see the *Self-assessment and quality improvement planning process*.

Part 3.2: Rating levels

National Law: Section 133–134

National Regulations: Regulations 57–62

Until a service is first assessed under the *National Law*, it will have a rating of Provisional—Not yet assessed under the National Quality Framework.

The following rating levels are prescribed:

Rating level	How overall rating is determined
<i>Significant Improvement Required</i>	The service receives a rating of Significant Improvement Required for one or more Quality Areas.
<i>Working Towards National Quality Standard</i>	The service receives a rating of Working Towards <i>National Quality Standard</i> for one or more Quality Areas (but does not receive any rating of <i>Significant improvement required</i>).
<i>Meeting National Quality Standard</i>	The service receives a rating of at least Meeting <i>National Quality Standard</i> in each Quality Area. It may receive a rating of Exceeding <i>National Quality Standard</i> in one or more Quality Areas, but not satisfy the requirements for Exceeding <i>National Quality Standard</i> .
<i>Exceeding National Quality Standard</i>	<p>The service meets all Standards and receives an <i>Exceeding National Quality Standard</i> rating in at least four Quality Areas, including at least two of the following areas:</p> <ul style="list-style-type: none"> • Educational program and practice • Relationships with children • Collaborative partnerships with families and communities • Leadership and service management. <p>A service that provides education and care to children of preschool age may only be given a rating of <i>Exceeding National Quality Standard</i> for Quality Area 1 (Educational program and practice) if the service:</p> <ul style="list-style-type: none"> • provides a preschool program, or • has a documented arrangement with another approved service to provide a preschool program and informs parents of this arrangement.
<i>Excellent</i>	The <i>Excellent</i> rating is given by ACECQA.

Part 3.3: Assessment process

National Law: Sections 135–137

National Regulations: Regulations 63–65

In assessing an approved service against the *National Quality Standard*, the regulatory authority must:

- consider the service’s current Quality Improvement Plan
- consider the service’s rating assessment history
- consider the service’s compliance history (including the period of three years prior to 1 January 2012)
- arrange a site visit by an authorised officer to a centre-based service or one or more family day care residences or approved venues.

The regulatory authority may also consider:

- relevant information provided by a government department, public authority or local authority
- information provided by a regulatory authority in another jurisdiction
- information about any steps taken to rectify matters identified during a rating assessment
- information about any other quality assurance or registration process under an education law applicable to the approved service
- information on how a service facilitates access to a preschool program
- any information obtained in any monitoring or investigation of the service under the *National Law*.

Assessment and rating process

The following table outlines the national quality rating and assessment process for evaluation of services against the *National Quality Standard* and *National Regulations*. It is designed to be a cooperative process with opportunities for services to discuss how they are meeting the *National Quality Standard* and enhancing outcomes for children.

Timeline	Step	Process
Week 1*	A: Notice of visit	<p>The approved provider receives a letter from the regulatory authority notifying of the four week period in which the assessment and rating visit will occur.</p> <p>The regulatory authority requests that the approved provider submits a copy of the service Quality Improvement Plan within three weeks. The regulatory authority may also request additional service specific information.</p>
Week 3	B: Quality Improvement Plan	The approved provider submits the Quality Improvement Plan to the regulatory authority.
Weeks 5 - 8	C: Visit occurs	<p>For all service types, the regulatory authority will give the approved provider at least five days notice of the visit. For family day care services the regulatory authority will give between 0-5 days notice of the educator sample to be visited.</p> <p>The authorised officer may give some general comments at the time of the visit but will not give an indication of the service rating. Feedback may include the opportunity to make minor adjustments to the service operation within specified areas and timeframes to address concerns identified at the visit. For further information on the minor adjustments policy refer to the Assessment and Rating chapter of the Operational Policy Manual for the Regulatory Authorities.</p>
After the visit		
Approx. 3 - 5 weeks after the visit date	D: Draft report	<p>The approved provider is issued the draft report.</p> <p>The approved provider has 10 working days to provide feedback on any factual inaccuracies in the report and provide evidence to support their feedback.</p>
Approx. 5 - 7 weeks after the visit date	E: Feedback due	Feedback on the draft report is provided to the regulatory authority. If no feedback is provided, the report is final and the notice of final ratings is issued to the approved provider.

Timeline	Step	Process
Approx. 8 weeks after the visit date	F: Final report	If feedback is provided on the draft report, this is considered by the regulatory authority, the report is then finalised and the notice of final ratings is issued to the approved provider.

* Note that the timeframes given in the table are guidelines only.

Once the report is finalised and received by the approved provider, the 14 day period in which a review can be requested commences. If the notice is sent electronically, the 14 days run from the day that it is sent. If posted, the 14 days run from the fourth day after the notice of ratings was posted.

Reassessment and re-rating

National Law: Sections 138–140

National Regulations: Regulations 66–67

A regulatory authority may reassess and re-rate an approved service at any time.

An approved provider may also apply in writing to the regulatory authority for a reassessment and re-rating. The approved provider must pay the relevant fee. The *National Law* permits an application for reassessment to be made only once every two years

For example, an approved provider may have implemented changes since the last rating was determined and want the opportunity to have an approved service reassessed.

Part 3.4: Review of ratings

Internal review of ratings by regulatory authority

National Law: Sections 141–143, 160

National Regulations: Regulation 68

An approved provider may request a review of a rating determined for an approved service. The request must be made in writing to the regulatory authority within 14 days after the approved provider receives the rating notice. The request must set out the grounds on which a review is sought and be accompanied by the required information set out in the *National Regulations*.

The review of the rating assessment must be conducted:

- by a person not involved in the original assessment and rating of the service
- within 30 days, unless extended with agreement of the approved provider and the regulatory authority.

The person conducting the review may request further information from the Approved Provider or anyone involved in the original assessment.

Following the review, the regulatory authority may confirm or amend the rating levels (by Quality Area or overall rating or both) and must give the approved provider notice in writing of the outcome of the review (including any revised rating levels) and the reasons for the decision made, within 30 days.

If no application is made for further review within 14 days of internal review decision, the rating levels set out in the notice may be published.

Further review by Ratings Review Panel

National Law: Sections 144–151, 160

National Regulations: Regulations 69–70

An approved provider may apply to ACECQA for a further review of a rating determined for an approved service. An application for further review can only be made on the grounds that the regulatory authority did not appropriately conduct the assessment processes for determining a rating level, or failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the rating assessment.

An application for further review must be made within 14 days after the decision of the regulatory authority’s internal review is received by the approved provider. The ACECQA Board will establish a Ratings Review Panel to conduct the review. The Ratings Review Panel will consist of up to three members appointed by the ACECQA Board who have expert knowledge in one or more of the following areas:

- early learning and development research or practice
- law
- the assessment of quality in education and care services or other relevant services
- best practice regulation.

The Ratings Review Panel must make a decision within 60 days to confirm or amend the rating levels (by Quality Area or overall rating or both). The panel must give the approved provider notice in writing of its decision and the reasons for the decision within 14 days.

A rating level confirmed or amended after a further review will be published.

Part 3.5: Award of highest rating

National Law: Sections 152–159

National Regulations: Regulation 71

Where an approved service has received an overall rating of *Exceeding National Quality Standard*, the approved provider may apply to ACECQA to be assessed for the Excellent rating. The application must be in writing and the approved provider must pay the relevant fee.

The ACECQA Board will assess the service against the published criteria. ACECQA must seek and take into account advice from the relevant regulatory authority and may seek any other relevant information to carry out the assessment.

See *Part 6.1 National Authority and regulatory authorities* for more information about the role of ACECQA and its Board.

The ACECQA Board must make a decision within 60 days after receiving the application, or the further information requested. This period can be extended by up to 30 days if additional information is required, or otherwise by agreement between the approved provider and the ACECQA Board.

The ACECQA Board must notify the approved provider and the regulatory authority of its decision within 14 days of making the decision.

If ACECQA awards the *Excellent rating*, that rating applies to the approved service for three years, unless revoked.

ACECQA may reassess an education and care service against the criteria of the Excellent rating at any time. The *Excellent rating* must be revoked if the approved service no longer meets the published criteria, or if the service's overall rating is no longer *Exceeding National Quality Standard*.

Part 3.6: Offences for falsely representing ratings

National Regulations: Regulations 72

It is an offence for an approved provider to falsely represent the overall rating or rating of a Quality Area in the *National Quality Standard*.

The approved provider must also take reasonable steps to ensure that neither its employees nor anyone engaged by the service falsely represents the overall rating or rating of a Quality Area in the *National Quality Standard*.

Chapter 4: Operational requirements

This chapter outlines the requirements of the *National Law* and *National Regulations* and provides the Standards and elements of the requirements of the *National Quality Standard* for each Quality Area, for operating an education and care service. The structure of this chapter is aligned with the Quality Areas of the *National Quality Standard*.

Part 4.1 outlines requirements for Quality Area 1: *Educational program and practice*.

Part 4.2 outlines requirements for Quality Area 2: *Children's health and safety*.

Part 4.3 outlines requirements for Quality Area 3: *Physical environment*.

Part 4.4 outlines requirements for Quality Area 4: *Staffing arrangements*, including qualification requirements.

Part 4.5 outlines requirements for Quality Area 5: *Relationships with children*.

Part 4.6 outlines requirements for Quality Area 6: *Collaborative partnerships with families and communities*.

Part 4.7 outlines requirements for Quality Area 7: *Leadership and service management*, including policies and procedures and record keeping requirements.

Each part begins with an outline of the relevant Standards and Elements of the National Quality Standard.

Part 4.1: Educational program and practice

Quality Area 1: Standards and Elements

Standard 1.1	An approved learning framework informs the development of a curriculum that enhances each child's learning and development.	
	Element 1.1.1	Curriculum decision making contributes to each child's learning and development outcomes in relation to their identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.
	Element 1.1.2	Each child's current knowledge, ideas, culture, abilities and interests are the foundation of the program.
	Element 1.1.3	The program, including routines, is organised in ways that maximise opportunities for each child's learning.
	Element 1.1.4	The documentation about each child's program and progress is available to families.
	Element 1.1.5	Every child is supported to participate in the program.
	Element 1.1.6	Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world.
Standard 1.2	Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child.	
	Element 1.2.1	Each child's learning and development is assessed as part of an ongoing cycle of planning, documentation and evaluation.
	Element 1.2.2	Educators respond to children's ideas and play and use intentional teaching to scaffold and extend each child's learning.
	Element 1.2.3	Critical reflection on children's learning and development, both as individuals and in groups, is regularly used to implement the program.

Educational program

National Law: Section 168

National Regulations: Regulations 73–76

The *National Law* and *National Regulations* require an approved service to provide a program that is:

- based on an approved learning framework

- delivered in accordance with that framework
- based on the developmental needs, interests and experiences of each child, and
- takes into account the individuality of each child.

The educational program should contribute to the following outcomes:

- children have a strong sense of identity.
- children are connected with and contribute to his or her world.
- children have a strong sense of wellbeing.
- children are confident and involved learners.
- children are effective communicators.

There are two national approved learning frameworks:

- Belonging, Being and Becoming—The Early Years Learning Framework for Australia
- My Time, Our Place—Framework for School Age Care in Australia.

There are also jurisdiction-specific declared approved learning frameworks:

- Australian Capital Territory: Every Chance to Learn—Curriculum Framework for ACT Schools Preschool to Year 10
- Victoria: Victorian Early Years Learning and Development Framework, Department of Education and Victorian Curriculum and Assessment Authority
- Western Australia: Curriculum Framework for Kindergarten to Year 12 Education in Western Australia
- Tasmania: Tasmanian Curriculum, Department of Education of Tasmania, 2008.

Assessment of children's learning

The approved national learning frameworks outline that assessment is a process used by educators to gather information about what children know, understand and can do. This information should be analysed by educators to plan effectively for each child's learning. Assessment information can also be used by educators to reflect on their own values, beliefs and teaching practices, and to communicate about children's learning with children and their families.

Assessment documentation must be kept for each child. There is no prescribed method in the *National Law* or *National Regulations* for documenting assessment of children's learning.

For children who are **preschool age and under**, this documentation should include:

- assessments of the child's development needs, interests, experiences and participation in the educational program
- assessments of the child's progress against the learning outcomes of the educational program.

The Early Years Learning Framework says that ‘Children’s learning is ongoing and each child will progress towards the outcomes in different and equally meaningful ways’ (page 40).

The *Educators’ Guide to the Early Years Learning Framework* (pages 40–41) provides further information about assessment for learning.

For children who are over preschool age, this documentation should focus on evaluations of the child’s wellbeing, development and learning within the educational program.

Consideration should also be given to the period of time a child is educated and cared for by the service (for example, full-time or part-time attendance), how the documentation will be used by the educators and ensuring the documents are easily understandable by parents of the child.

Some services may choose to produce portfolios or learning journals as a way of documenting assessment and progress towards learning outcomes. If so, these must include an analysis of children’s learning to meet the requirements of the National Regulations.

Information for parents about educational program

National Regulations: Regulations 75–76

Information about the educational program must be displayed at the service in a place that is easily accessible to parents. For a family day care service, the program must be available at each family day care residence or venue.

The following information must be given to a child’s parents when requested:

- the content and operation of the educational program as it relates to that child
- information about that child’s participation in the program
- a copy of assessments or evaluations in relation to that child.

Part 4.2: Children’s health and safety

Quality Area 2: Standards and Elements

Standard 2.1	Each child’s health is promoted.	
	Element 2.1.1	Each child’s health needs are supported.
	Element 2.1.2	Each child’s comfort is provided for and there are appropriate opportunities to meet each child’s need for sleep, rest and relaxation.
	Element 2.1.3	Effective hygiene practices are promoted and implemented.
	Element 2.1.4	Steps are taken to control the spread of infectious diseases and to manage injuries and illness, in accordance with recognised guidelines.
Standard 2.2	Healthy eating and physical activity are embedded in the program for children.	
	Element 2.2.1	Healthy eating is promoted and food and drinks provided by the service are nutritious and appropriate for each child.
	Element 2.2.2	Physical activity is promoted through planned and spontaneous experiences and is appropriate for each child.
Standard 2.3	Each child is protected.	
	Element 2.3.1	Children are adequately supervised at all times.
	Element 2.3.2	Every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
	Element 2.3.3	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
	Element 2.3.4	Educators, co-ordinators and staff members are aware of their roles and responsibilities to respond to every child at risk of abuse or neglect.

See also *Part 4.7: Leadership and service management* in relation to policies and procedures about health and safety.

Health, hygiene and safe food practices

National Regulations: Regulations 77, 168

To minimise risks to children, an education and care service or a family day care educator must implement:

- adequate health and hygiene practices
- safe practices for handling, preparing and storing food.

The service must also ensure that policies and procedures are in place about these practices.

Centre-based services that prepare and serve food may be required in some jurisdictions to register as a food business or comply with food safety legislation in each state and territory.

Educators should be particularly aware of safety standards for storing and reheating food brought in from home.

The National Health and Medical Research Council (NHMRC) publication, Staying Healthy: Preventing infectious diseases in early childhood education and care services provides further information on recommended health and hygiene practices.

Food safety authorities

State or territory	Authority	Telephone number
Australian Capital Territory	ACT Health Health Protection Service	02 6205 1700
New South Wales	NSW Food Authority	1300 552 406
Northern Territory	Northern Territory Department of Health Environmental Health	08 8922 7377
Queensland	Queensland Health Food Safety Policy and Regulation Unit	07 3234 0111
South Australia	Department of Health Food Policy and Programs Branch	08 8226 7100
Tasmania	Department of Health and Human Services Food Unit	1800 671 738
Victoria	Food Safety and Regulation	1300 364 352 <i>(Note: services in Victoria need to contact their local council for food business registration)</i>
Western Australia	WA Department of Health Environmental Health Food Unit	08 9388 4999

Food and beverages

National Regulations: Regulations 78–80, 168

While attending an approved service, children must have access to safe drinking water at all times, and have food and drinks available throughout the day.

If an approved service provides food and drinks, the food and drinks must be nutritious and adequate in quantity, and take into account dietary requirements appropriate to each child's growth and development needs, and any specific cultural, religious or health requirements. An accurate weekly menu must be displayed at the approved service's premises. Policies and procedures about nutrition, food and beverages, and dietary requirements must also be in place for the service.

It is common practice for education and care services to offer morning tea, lunch and afternoon tea. Services may also consider having a breakfast option available for children who have not already eaten before their arrival.

If the menu changes (for example, due to the unavailability of certain ingredients), parents should be informed of the substitute menu item offered to their child. This is sometimes done through a note on a whiteboard, daily journal or communication book.

Food and drinks provided should be consistent with recommendations of the Australian Government Healthy Eating and Physical Activity Guidelines for Early Childhood Settings and/or the Dietary Guidelines for Children and Adolescents in Australia.

Regulations 79 and 80 do not apply to food and beverages provided by a parent or family member for consumption by their child. However, services where children bring their own food and beverages could promote healthy choices through strategies such as information pamphlets from recognised nutrition authorities.

Sleep and rest

National Regulations: Regulation 81

An approved service must take reasonable steps to ensure that children's needs for sleep and rest are met, having regard to each child's age, development and needs.

Consideration should also be given to the hygienic handling of linen used in the provision of sleep and rest (including cushion covers). See Part 4.3 under Laundry and hygiene facilities

While many services implement planned ‘rest periods’ for young children, routines and environments should also be flexible enough to support children who do not require a sleep and those who seek rest and relaxation throughout the day.

Tobacco, drug and alcohol-free environment

National Law: Section 167

National Regulations: Regulations 82–83

An approved service (including centre-based and family day care services) must ensure the environment is free from the use of tobacco, illicit drugs and alcohol.

Exposure to tobacco smoke poses major health risks for both children and adults. In family day care where the service is also a family home, strategies should be developed to ensure that the educator’s home is a safe place for children, while recognising the rights of the educator’s family. For example, educators might suggest a space outside the premises where other household members and visitors may smoke. If tobacco is smoked in the family day care residence when the service is not operating, consideration should be given to issues such as ventilation, hygiene and safe storage of items including ashtrays and cigarette lighters.

Educators, staff and volunteers must not consume alcohol or be affected by alcohol or drugs (including prescription medications) that may impair their capacity to provide education and care to children at the approved service. This does not mean that educators, staff or volunteers who require prescription medication must be excluded, but rather that consideration be given as to whether that medication affects the person’s capacity to provide education and care to children.

The service’s Code of Conduct might include detail about this topic.

Child protection

National Law: Sections 166–167

National Regulations: Regulations 84, 168

The approved provider must ensure that all educators and staff at the service who work with children are aware of the current child protection law in the provider’s jurisdiction and understand their obligations under that law.

It is also an offence under the *National Law* to subject a child being educated and cared for by an approved service to any form of corporal punishment, or any discipline that is unreasonable in the circumstances.

Regulation 84 might be met by attending regular refresher training or in-house workshops, completing on line training, or by other ways. Compliance with this regulation will be determined by an outcome focus; that is, whether educators and staff are aware of the current child protection law and their responsibilities.

Note: New South Wales has a savings provision in relation to approved child protection courses—refer to the information sheet on transitional arrangements.

The service must ensure there are policies and procedures in place in relation to providing a child safe environment.

Incidents, injury, trauma and illness

National Law: Section 174

National Regulations: Regulations 85–87, 168, 177–178, 183

An approved service must have in place policies and procedures in the event that a child is injured, becomes ill, or suffers a trauma. These procedures should be followed and must include the requirement that a parent be notified, as soon as possible and within 24 hours, in the event of an incident, injury, illness or trauma relating to their child (including the death of a child).

The *National Regulations* require that an incident, injury, trauma and illness record be kept, and that the record be accurate and remain confidentially stored until the child is 25 years old. Information should be recorded as soon as possible, and within 24 hours after the incident, injury, trauma or illness. A sample ‘Incident, injury, trauma and illness record’ is included on page 164. This may be adapted for use by individual services, or providers may develop their own.

Serious incidents

National Law: Section 174

National Regulations: Regulation 12, 87

The *National Law* requires the regulatory authority to be notified of any serious incident at an approved service. A serious incident means:

- the death of a child while attending a service, or following an incident while attending a service.
- any incident involving serious injury, trauma or illness of a child while being educated and cared for at an education and care service which a reasonable person would consider required urgent medical attention from a registered medical practitioner, or for which the child attended or ought reasonably to have attended a hospital. This might include, for example, whooping cough, a broken limb or an anaphylactic reaction.
- an incident at the service premises where the attendance of emergency services was sought, or should have been sought.

- if a child:
 - appears to be missing or cannot be accounted for
 - appears to have been taken or removed from the service premises in a way that breaches the *National Regulations*, or
 - is mistakenly locked in or locked out of any part of the service premises.

'Medical attention' includes a visit to a registered medical practitioner or attendance at a hospital. 'Emergency services' may include ambulance, fire brigade, police and state emergency services.

A serious incident should be documented as an incident, injury, trauma and illness record as soon as possible and within 24 hours of the incident. Further information on notifications is included on page 113.

Infectious diseases

National Regulations: Regulations 4, 88

An approved service must take reasonable steps to prevent the spread of infectious diseases at the service, and ensure that the parent or emergency contact of each child enrolled at the service is notified of the occurrence of an infectious disease as soon as possible. The service must have policies and procedures in place about dealing with infectious diseases.

For family day care services, the service need only notify the parents of children being educated and cared for at the residence or venue where there is an occurrence of an infectious disease.

The National Health and Medical Research Council (NHMRC) publication, Staying Healthy: Preventing infectious diseases in early childhood education and care services provides detailed information on infections and diseases which are required to be notified to the local public health department. It also provides information about exclusion periods for infectious diseases.

Notifying all families of the occurrence of an infectious disease should be done in a manner that is not prejudicial to the rights of any child or staff member. For example, 'There is a case of chicken pox in the toddler room' rather than 'John has chicken pox'. This might be done through a notice at the entrance to the service.

Cases of some infectious diseases **are required to be notified to the local public health department.** Public health staff can provide valuable advice, support and resources to help manage outbreaks of illness, such as diarrhoea. Services should also notify families of exclusion periods for infectious conditions, such as in a policy document, through a poster displayed in the centre or in a family handbook.

Public health units

State or territory	Authority	Telephone number
Australian Capital Territory	ACT Health Health Protection Service, Communicable Disease Control	02 6205 2155
New South Wales	NSW Health Public Health Division	02 9391 9000 (general switchboard)
Northern Territory	Northern Territory Department of Health Centre for Disease Control	08 8922 8044
Queensland	Queensland Health Communicable Diseases Branch	07 3328 9724 07 3328 9728 <i>(Note: Each area also has a local public health number.)</i>
South Australia	SA Health Communicable Disease Control Branch	1300 232 272
Tasmania	Department of Health and Human Services Public and Environmental Health Service	1800 671 738
Victoria	Victorian Department of Health Communicable Disease and Prevention Unit	1300 651 160
Western Australia	WA Department of Health Communicable Disease Control Directorate	08 9388 4878 089388 4868

First aid kits

National Regulations: Regulations 89, 168

A centre-based service must provide an appropriate number of suitable first aid kits that are easily recognisable and readily accessible to adults. The service must have policies and procedures about the administration of first aid to children being educated and cared for by the service.

A family day care educator must provide a suitable first aid kit at the residence or family day care venue that is easily recognisable and readily accessible to adults.

First aid kits should also be taken when leaving the service premises for excursions, routine outings or emergency evacuations.

A belt bag is one way of taking a modified first aid kit on an excursion or to the outdoor play space.

First aid kit suppliers might advise about the contents of first aid kits. Kits should be checked regularly to ensure they are fully stocked, and no products have expired. For example, a service might keep a checklist of the contents inside each first aid kit, and initial the list each time the contents are checked.

When determining how many first aid kits are ‘appropriate’, the service should consider the number of children in attendance as well as the proximity of rooms to each other and the distances from outdoor spaces to the nearest first aid kit. For example, larger services may require a kit in each room or outside space, whereas a kit between two rooms might be appropriate in a smaller service with adjoining rooms.

Services might use data gathered from their incident, injury, trauma and illness records to determine the appropriate locations and contents for their first aid kits. First aid training providers may also be able to provide guidance.

Medical conditions

National Regulations: Regulations 90–91

An approved service must have a policy for managing medical conditions which sets out practices in relation to the following:

- the management of medical conditions
- if a child enrolled has a specific health care need, allergy or relevant medical condition, procedures requiring parents to provide a medical management plan
- requiring the development of a risk minimisation plan in consultation with the child’s parents
- requiring the development of a communications plan for staff members and parents.

Medical conditions that must be outlined in the service policy include asthma, diabetes, or a diagnosis that a child is at risk of anaphylaxis.

Staff members and volunteers must be informed about the practices to be followed.

If a child enrolled at the service has a specific health care need, allergy or other relevant medical condition, parents must be provided with a copy of the policy. Where a child has been diagnosed as at risk of anaphylaxis, a notice stating this must be displayed at the service.

Administration of medication

National Law: Section 167 (protection from harm and hazards)

National Regulations: Regulations 92–96, 178, 181–184

Medication (including prescription, over-the-counter and homeopathic medications) must not be administered to a child at a service without authorisation by a parent or person with the authority to consent to administration of medical attention to the child.

In the case of an emergency, it is acceptable to obtain verbal consent from a parent, or a registered medical practitioner or medical emergency services if the child's parent cannot be contacted. In the case of an anaphylaxis or asthma emergency, medication may be administered to a child without authorisation. In this circumstance, the child's parent and emergency services must be contacted as soon as possible.

The medication must be administered:

- from its original container before the expiry or use-by date
- in accordance with any instructions attached to the medication or provided by a registered medical practitioner
- for prescribed medications, from a container that bears the original label with the name of the child to whom it is prescribed
- with a second person checking the dosage of the medication and witnessing its administration
- details of the administration must be recorded in the medication record.

In the case of a family day care service, or a service that is permitted to have only one educator, a second person is not required to check the dosage and witness the administration of the medication.

The *National Regulations* set out requirements for confidentiality and the storage of medication records.

A sample 'Medication record' template is included on page 167. This may be adapted for use by individual services, or providers may develop their own.

A child over preschool age may self-administer medication under the following circumstances:

- written authorisation is provided by a person with the authority to consent to the administration of medication
- the medical conditions policy of the service includes practices for self-administration of medication.

Adequate supervision

National Law: Sections 165, 167, 174

National Regulations: Regulations 101, 176, 166, 168

All children must be adequately supervised at all times that the children are being educated and cared for at the approved service.

The regulatory authority must be notified within 24 hours if a child:

- appears to be missing or cannot be accounted for
- appears to have been taken or removed from the service premises in a way that breaches the *National Regulations*, or
- is mistakenly locked in or locked out of the education and care service premises.

Educator-to-child ratios alone do not determine what is considered adequate supervision.

Supervision is critical to the safety of children. At its most basic level, supervision helps to protect children from hazards or harm that may arise in their play and daily routines. Adequate supervision means that an educator can respond immediately, including when a child is distressed or in a hazardous situation.

Effective supervision also requires educators to be actively involved with children. It is not the intention of this requirement that educators merely ‘stand back and watch’.

Every child should always be monitored actively and diligently. This means knowing where children are at all times. Children of different ages and abilities will need different levels of supervision. In general, the younger children are, the more they may need an adult to be physically present and close by to support and help them.

For example, in a centre-based service for young children, adequate supervision might mean that the children remain in close proximity to the adult who is supervising them. With babies and toddlers who are sleeping, educators need to be able to see and hear the children. With preschool age children, the program may include experiences in both indoor and outdoor environments and it is important that the educators supervise the children in both these environments.

For school age children, educators should know where each child is and be in a position to respond if necessary.

In a family day care service, some children may be playing in different parts of the family day care residence or venue and the educator will need to consider how these children will be supervised.

The adequacy of supervision should be determined by a range of factors, including:

- number, ages and abilities of children
- number and positioning of educators
- each child's current activity
- areas where children are playing, in particular the visibility and accessibility of these area
- risks in the environment and experiences provided to children
- the educators' knowledge of each child and each group of children
- the experience, knowledge and skill of each educator.

At times a service may need to provide additional educators to adequately supervise and support children. For example, at the beginning of the year when a number of children are transitioning to new rooms, a service may need to roster educators in excess of minimum ratios. This could assist educators to respond to children's needs and foster children's sense of security and belonging.

Adequate supervision requires teamwork and good communication among staff. For example, educators should let their colleagues know if they need to leave the area for any reason such as to get a resource from another area, or to use the bathroom. Educators should also develop a handover routine when changing shifts. This might include implementing strategies such as a diary or communication book.

End-of-day procedures

Services should consider how children are grouped at the end of the day. Staff must ensure that end-of-day duties, such as cleaning and securing premises, do not compromise adequate supervision of children. Services should develop a combination of systems which show when each child is absent, is in attendance or has left for the day. For example, in a long day care service there might be a magnetic board in each room indicating each child's presence or absence, which is updated upon the child's arrival and departure. This might be used in combination with sign in/out records. Before closing a centre-based service, educators should look for visual cues that a child may still be on the premises (for example, a backpack left on a hook) and physically check each area, including sleeping areas, to ensure no child is accidentally locked inside.

Excursions

Undertaking a risk assessment is part of planning a routine outing or excursion. The risk assessment will need to take into account the levels of supervision and number of adults needed for the entire time the children are out of the service premises, residence or venue. Volunteers, such as parent helpers, may assist to provide additional supervision. Services might consider how attendance numbers will be verified at certain times during the excursion, such as when leaving the venue or travelling on public transport. Strategies that might be used include head counts, or allocating a group of children to a particular adult or educator.

For more information about requirements relating to excursions, see page 70.

Sleeping children

When considering the supervision requirements of sleeping children, an assessment of each child's circumstance and needs should be undertaken to determine any risk factors. For example, because a higher risk may be associated with small babies or children with colds or chronic lung disorders, they might require a higher level of supervision while sleeping.

Sleeping children should always be within sight and hearing distance so that educators can assess the child's breathing and colour of their skin to ensure their safety and wellbeing. Rooms that are very dark and have music playing may not provide adequate supervision of sleeping children. Supervision windows should be kept clear and not painted over or covered with curtains or posters.

For further advice on safe sleeping practices, contact SIDS and Kids
<http://www.sidsandkids.org/>

Nappy change

Preparing for a nappy change is fundamental to maintaining an adequate level of supervision of children. Educators should ensure that all of the required equipment is available and within reach prior to beginning the nappy change. During a nappy change, a child should never be left alone on the change table and physical contact should always be maintained with the child.

Nappy changing and toileting routines are also valuable opportunities to promote children's learning, meet individual needs and to develop strong relationships with children. Having their needs met in a caring and responsive way builds children's sense of trust and security—which relates strongly to the Early Years Learning Framework.

Protection from harm and hazards

National Law: Section 167

An approved provider must ensure that every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury. The service must have policies and procedures in place to support the protection of children from harm and hazards, including health and safety matters.

Reasonable precautions might include:

- daily safety checks of the environment and equipment
- secure storage of hazardous products including chemicals
- an equipment maintenance schedule
- risk assessments including for excursions
- hot drinks being made and consumed away from children
- purchasing products that meets Australian Standards - for example, cots and playground equipment and under-surfacing
- safety plugs in electrical outlets
- procedures for releasing children only into the care of authorised persons
- for family day care residences or venues, if there is a firearm on the premises, that a licence or permit is held for the firearm, that firearms and ammunition are securely stored separately from each other and out of access of children, and that the firearm is not used in the presence of children.

This list is not exhaustive and services should conduct regular risk assessments to identify potential hazards relevant to their own service, and strategies to protect children.

The *National Law* does not require services to eliminate all risk and challenge from children's play or environments.

Some family day care residences or venues may have licensed firearms on the premises, particularly in rural areas. Firearm owners must comply with the firearms law in their state or territory. Each state and territory has their own firearms registry administered by their police force, and can offer advice about licensing, permits and storage requirements.

Emergency procedures

National Regulations: Regulations 97, 168

An approved service is required to have policies and procedures which set out instructions for what must be done in an emergency and to have an emergency and evacuation floor plan. The policies and procedures must be based on a risk assessment that identifies potential emergencies relevant to the service.

The emergency and evacuation floor plan, and instructions should be displayed in a prominent position near each exit at the service premises, including a family day care residence or approved venue.

For centre-based services, the approved provider must ensure that emergency and evacuation procedures are rehearsed every three months by the staff members, volunteers and children present at the service on the day of the rehearsal. The responsible person present at the time must also participate in the rehearsal.

For family day care services, the approved provider must ensure each family day care educator rehearses every three months with the children present on that day.

The rehearsals must be documented, such as on a proforma, or noted in a centre diary or communications book.

In this section, 'emergency' refers to all situations or events posing an imminent or severe risk to those present in an education and care service premises.

For example, an emergency could include a fire, flood or situation that requires a service to be locked down.

Documenting the rehearsal allows the approved service to reflect on its procedures and determine necessary adjustments. Records can show who has been involved in emergency rehearsals, and can assist in ensuring that everyone participates regularly.

Rehearsals should take place at various times of the day and week.

Services may need to seek advice from their local fire brigade in regard to fire regulations for emergency exits.

Approved services for children over preschool age should plan rehearsals to cover before and after school sessions, and vacation care.

Telephone or other communication equipment

National Regulations: Regulation 98

An approved service is required to have ready access to an operating telephone or other similar means of communication, to communicate immediately with emergency services or parents of children attending or to receive calls.

This includes when children leave the premises, such as on an excursion or a routine walk to the local park.

The readily-accessible telephone might be a landline, or mobile phone that is charged and turned on. Similar means of communication that allow immediate contact to be made would satisfy this requirement, such as a satellite telephone or two-way radio.

Telephone numbers of emergency services should be displayed near each phone.

Telephones should be located where educators can easily access them without leaving children unsupervised. If this is a mobile phone, it must be capable of making and receiving calls – that is not locked for outgoing calls or out of credit.

Collection of children

National Law: Sections 165, 167

National Regulations: Regulations 99, 158–159, 176

A child may only leave the education and care service premises under any of the following circumstances:

- a parent or authorised nominee collects the child
- a parent or authorised nominee provides written authorisation for the child to leave the premises
- a parent or authorised nominee provides written authorisation for the child to attend an excursion
- the child requires medical, hospital or ambulance treatment, or there is another emergency.

In this regulation, the term ‘parent’ does not include a parent who is prohibited by a court order from having contact with the child.

If a child at the service appears to be missing or cannot be accounted for, or appears to have been taken or removed from the service premises in a way that breaches the *National Regulations*, it is considered a serious incident and the regulatory authority must be notified with 24 hours of the incident.

The *National Regulations* require children’s attendance records to be kept.

This regulation does not preclude an approved provider from restricting the persons that may be nominated to collect a child. For example, an approved service may take a policy position to not allow children to be collected by a person under the age of 16 years. This should be documented in the service’s policy about collection of children required under regulation 168(f).

Excursions

National Law: Section 167

National Regulations: Regulations 100–102, 168

A risk assessment must be carried out for an excursion before permission is sought. The risk assessment must identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion, and detail strategies for minimising and managing those risks. The risk assessment must consider:

- the proposed route and destination for the excursion

- any water hazards and risks associated with water based activities
- the method of transport
- the number of adults and children involved in the excursion
- given the risk/s posed, the number of educators or other responsible adults that is appropriate to provide supervision and whether any specialised skills are required to ensure children's safety
- the proposed activities
- the likely length of time of the excursion
- the items that should be taken on the excursion.

A visit to the proposed excursion destination will assist in conducting a risk assessment. During a site visit information can be gathered about the availability of toilets, hand washing, drinking and shade facilities at the destination and details can be checked such as mobile phone coverage and access for emergency services.

A centre-based service approval states the maximum number of children that may be educated and cared for at any one time, and there is a requirement to ensure this number is not exceeded (except for children being educated and cared for in an emergency under regulation 123). This also applies during excursions. Children are considered as being educated and cared for by a service if they are enrolled at the service and have been signed in.

While an increased educator to child ratio for excursions is not specified in the *National Regulations*, there is a requirement to adequately supervise children at all times. A thorough risk assessment should determine whether minimum ratios are sufficient to provide adequate supervision while attending an excursion.

When a service is provided at a school site, it is not considered an excursion if the child or children leave the education and care premises accompanied by an educator but do not leave the school site. For example, if a preschool group visits the library within their school site, it is not considered an excursion or regular outing.

If the excursion is a regular outing and a risk assessment has previously been conducted, a further risk assessment is not required unless the circumstances of the outing have changed.

A sample 'Excursion risk assessment' template is included on page 168. This may be adapted for use by individual services, or providers may develop their own.

A written authorisation must be given by a parent or other person with authority for an excursion, before a child leaves the approved service (including a family day care residence or venue). The authorisation must contain the information prescribed in the *National Regulations*.

For a regular outing, authorisation is only required to be obtained once every 12 months.

Part 4.3: Physical environment

Quality Area 3: Standards and Elements

Standard 3.1	The design and location of the premises are appropriate for the operation of a service.	
	Element 3.1.1	Outdoor and indoor spaces, buildings, furniture, equipment, facilities and resources are suitable for their purpose.
	Element 3.1.2	Premises, furniture and equipment are safe, clean and well maintained.
	Element 3.1.3	Facilities are designed or adapted to ensure access and participation by every child in the service and to allow flexible use, and interaction between indoor and outdoor space.
Standard 3.2	The environment is inclusive, and promotes competence, independent exploration and learning through play.	
	Element 3.2.1	Outdoor and indoor spaces are designed and organised to engage every child in quality experiences in both built and natural environments.
	Element 3.2.2	Resources, materials and equipment are sufficient in number, organised in ways that ensure appropriate and effective implementation of the program and allow for multiple uses.
Standard 3.3	The service takes an active role in caring for its environment and contributes to a sustainable future.	
	Element 3.3.1	Sustainable practices are embedded in service operations.
	Element 3.3.2	Children are supported to become environmentally responsible and show respect for the environment.

For a *centre-based* service, an ‘education and care service premises’ is each place at which an education and care service operates.

For a *family day care* service, an ‘education and care service premises’ includes an office of the service, an approved family day care venue, and any part of a residence used to provide education and care to children as part of the service.

‘Residence’ means the habitable areas of a dwelling.

This section sets out the minimum requirements for the physical environment of an approved service, which plays a key role in supporting and extending children’s development and learning.

An approved service, including furniture and equipment, must be maintained in a safe and clean manner and kept in good repair. This requirement only applies to that part of a family day care residence that is used to provide education and care.

It is important to remember that the design and layout of an early childhood education and care environment can have a significant impact on the delivery of education and care programs and practices and on issues such as supervision, ease of access to materials and resources. When making decisions about the design, construction or renovation of facilities, consideration should be given to how the premises will contribute to meeting all seven of the Quality Areas outlined in the *National Quality Standard*.

Approved providers may apply for temporary or service waivers to particular physical requirements. See regulations 42 to 45.

Approved providers should be aware that they may be required to meet other legislative provisions in relation to their service premises, including the Building Code of Australia.

Fencing and security

National Law: Section 167

National Regulations: Regulation 104

Fencing requirements **do not apply** to centre-based services or family day care residences or venues that primarily provide education and care to children over preschool age.

The Building Code of Australia sets requirements for physical facilities in new education and care buildings, including, for example, the height of fences.

Any outdoor space used by children at an education and care service premises must be enclosed by a fence or barrier that is of such a height and design that children of preschool age and under, cannot go through, over or under it.

Services should also consider the placement of outdoor play equipment or permanent structures (such as a shed) in relation to the fence or barrier, noting that some equipment may provide potential footholds to scale a fence.

Where possible, fencing should be designed to allow children to view the outside world. This enables children to make connections with the activities of their local community. It also supports the development of long-range vision. The construction of the fence should be appropriate to any additional safety concerns.

Furniture, materials and equipment

National Regulations: Regulations 103, 105

An approved provider must ensure that each child at an approved service has access to sufficient furniture, materials and developmentally appropriate equipment.

Resources should be sufficient in variety and number to:

- Meet the range of interests, ages and abilities of children
- Avoid overcrowding and ensure that children do not have to wait for long periods to participate
- Minimise disputes over resources, materials and equipment.

Furniture provided should enable safe use by children. The use of appropriate furniture will assist to minimise accidents and enhances the development of independence, confidence and self-esteem. Considerations include the surface, corners, weight and stability of furniture and equipment used. For example, very young children should be provided with chairs that support the child to sit safely, rather than a backless stool.

An example of insufficient furniture or equipment might be if the service did not have enough seats or utensils to cater for each child's needs at meal time.

The range of resources available should allow children to represent their thinking, express their creativity and imagination, engage in energetic activities, explore mathematical and scientific concepts, experiment with different technologies, and participate in everyday tasks.

Laundry and hygiene facilities

National Regulations: Regulations 77, 106

An approved service must have laundry facilities on the premises or access to laundry facilities (or other arrangements) for dealing with soiled clothing, including access to hygienic facilities for storage prior to laundering or disposal.

For example, services that do not have a laundry on site may make arrangements for laundering off site.

Laundry or hygienic facilities on premises must be located and maintained in a way that does not pose a risk to children. If laundry facilities are located in areas which children can access, particular consideration must be given to storage of hazardous materials and adequate supervision.

Children's linen might be hygienically stored in labelled, individual drawstring bags. Used linen should not be stored in a way that allows it to touch clean linen or other children's linen.

Some centre-based services have laundry facilities located within nappy change areas. Services should ensure that chemicals and soiled clothing, nappies and linen are stored where children cannot access them. This also applies to laundries in a family day care residence which may be a thoroughfare to the backyard.

Indoor space requirements

National Regulations: Regulation 107

Note: this regulation only applies to centre-based services and family day care venues.

Education and care service premises must have at least 3.25 square metres of unencumbered indoor space for each child being educated and cared for at the service. This does not include children being educated and cared for in an emergency under regulation 123(5).

Areas such as passageways, bathrooms and nappy change areas, food preparation areas, space set aside for the use or storage of cots, staff or administrative rooms, storage areas and any space not suitable for children are not counted as unencumbered play space. The area of a kitchen is not counted as unencumbered space unless it is primarily used by children as part of the program.

This facilitates a safe environment free from overcrowding, and reduces the likelihood of health risks associated with cramped and confined spaces.

Furniture in home corners, mobile open shelving offering toys and equipment directly to children, and chairs and tables are not considered to encumber the play space, as they are an integral part of children's play area and are moveable.

The area of a verandah may be included in calculating the area of indoor space only with written approval of the regulatory authority. This may be considered if the verandah meets the purpose of indoor play space—for example, it has a solid roof and floor, is protected from sun and rain and is attached to the indoor space. A verandah included in the indoor space calculations cannot also be included in the outdoor space calculations—that is, it cannot be counted twice.

The area of indoor space must be exclusively available to the service during the time it is operating. For example, a library or hall that is available to an outside school hours care service on an ad hoc basis cannot be counted as part of the indoor space.

Outdoor space requirements

National Regulations: Regulation 108

Note: This regulation only applies to centre-based services and family day care venues.

An education and care service premises must have at least 7 square metres of unencumbered outdoor space for each child being educated and cared for at the service. This does not include children being educated and cared for in an emergency under regulation 123(5).

Areas such as thoroughfares, car parks and storage sheds are not counted as outdoor play space.

The area of a verandah is included in calculating the area of outdoor space. A verandah included in the outdoor space calculations cannot also be included in the indoor space calculations—that is, it cannot be counted twice.

For services that provide care and education to children over preschool age, an area of indoor space may be included in calculating the available outdoor space with the written approval of the regulatory authority, provided it has not already been used in calculating the indoor space.

For example, a school hall or gymnasium may be considered suitable for use by school age children where sufficient outdoor space is not available or convenient.

Regulation 108 refers only to the minimum requirements for area of outdoor space in a centre-based service. However, approved providers might also consider that the outdoor environment should be a place not only for children to release energy and engage in physical activity, but also for exploration, problem solving and creative expression. As far as possible, it is suggested that outdoor areas should include a variety of area surfaces such as sand, grass, mounds, flat areas and hard surfaces.

The Early Years Learning Framework states that ‘The outdoor space is of equal importance as the indoor space in providing engaging experiences for children. Outdoor learning spaces are a feature of Australian learning environments, and offer a vast array of possibilities not available indoors’ (page 15).

Outdoor environments should offer opportunities for learning through play, access to materials that stimulate investigation and reflection, as well as be enriched by natural resources and opportunities for children to connect with nature.

Toilet and hygiene facilities

National Regulations: Regulation 109

An approved service must provide adequate, developmentally and age-appropriate toilet, washing and drying facilities. The location and design of these facilities must enable safe and convenient use by children.

It is important to consider the age and number of children who will require access to the bathroom facilities and whether there are sufficient toilets and hand basins to ensure minimal delay for children requiring their use.

In a centre-based service, a practical layout of door openings and hand-drying facilities is important to avoid messy and hazardous situations. Generally, fixtures and joinery (for example, taps) should allow for easy access and use by children.

Services that cater for school age children also need to provide facilities for disposal of sanitary items.

In a family day care home, there should be appropriate facilities in place to support children's access to toilet and hand-washing facilities, for example stable steps.

Consideration should also be given to appropriate facilities for children with additional needs. As a guide, centre-based services might have at least one junior toilet pan and hand basin for every 15 children who are preschool age or under.

Also refer to the Building Code of Australia for requirements for new buildings in relation to number and size of toilet pans and hand basins.

Facilities should be able to be conveniently accessed by children from both the indoor and outdoor spaces of the education and care service premises.

'Convenient access' means that adequate supervision is able to be maintained while children access the facilities with a level of independence that is appropriate for their stage of development.

Ventilation and natural light

National Regulations: Regulation 110

Indoor spaces used by children at an education and care service must:

- be well ventilated
- have adequate natural light
- be maintained at a temperature that ensures the safety and wellbeing of children.

Flat skylights may be used to provide natural light. Domed skylights are not recommended in play rooms or sleep rooms as they concentrate sunlight and glare, which is reflected into the room.

Exposure to the changing natural light during the day has positive benefits for both adults and children. Rooms used by children should have windows on external walls that allow the direct transmission of natural light.

Ventilation in education and care services helps to reduce the spread of infection and control the circulation of unpleasant odours. Good ventilation also assists in providing a comfortable environment. Ventilation is important in cot rooms and bathrooms as well as main play rooms.

Natural ventilation might be provided by open windows and doors. If natural ventilation is not possible, the indoor space might be ventilated through the use of an air-conditioning system.

Administrative space

National Regulations: Regulation 111

Note: This regulation only applies to centre-based services.

An adequate area or areas must be provided for administration, discussions with families and private conversations. The adequacy of the administrative area is determined by whether it achieves the desired outcome, that is, there is sufficient space available to carry out the administrative functions required to operate the service.

This requirement can be met in a variety of ways, such as:

- use of a room in another part of the school, if located within a school site
- having a screen or moveable partition to separate an area
- using a space outside.

It is also ideal to provide facilities for the respite of educators, other staff and volunteers.

Nappy change facilities

National Regulations: Regulation 112

Note: This regulation applies to centre-based services that educate and care for children who wear nappies.

The service must ensure that adequate and appropriate hygienic facilities are provided for nappy changing, including adult hand washing facilities within the nappy change area.

If any of the children are under 3 years of age, there must be at least one properly constructed nappy changing bench.

Nappy change facilities must be designed and located in a way that prevents unsupervised access by children. A half door or child-proof gate might assist to meet this requirement.

The adequacy of the nappy change facilities is determined by whether the facilities are sufficient to meet the needs of all children being educated and cared for at the service.

To promote children's hand hygiene practices, the provider of a centre-based service might also consider locating a children's hand washing basin within the nappy change area.

Nappy change facilities must be designed and located in a way that prevents unsupervised access by children. A half door or child-proof gate might assist to meet this requirement.

Also refer to the Building Code of Australia for requirements relating to nappy change benches and bathing facilities.

Outdoor space—natural environment

National Regulations: Regulation 113

Note: This regulation only applies to centre-based services.

The outdoor spaces provided at the education and care service premises must allow children to explore and experience the natural environment.

Natural elements might include:

- gardens where children can grow their own plants
- sandpits and patches of dirt for digging
- a range of planting which provides resources such as gumnuts, seed pods, small branches, flowers and bark
- aspects that acknowledge the local community and cultural context
- small pits of pebbles, gravel, coarse sand and smooth river rocks
- plants for picking and eating
- plants that encourage birds, butterflies and insects
- trees which provide shade
- worm farms and compost areas
- water play areas.

Providers whose outdoor play spaces are largely made up of built environments should consider how they can bring in additional elements to increase children's access to natural features and play materials. Loose parts such as logs, rocks, hay bales, tree stumps, branches, pinecones and potted plants may be added at little cost. Natural materials in the education and care environment should reflect those found in the local community. It is important to consider allergies and other health and safety issues when selecting type and placement of materials.

Services should consider how to provide natural materials that will allow children to use all of their senses, experience and understand seasons and life cycles, and provide opportunities for open ended play.

Outdoor space—shade

National Law: Section 167 (protection from harm and hazards)

National Regulations: Regulations 114, 168

Note: This regulation only applies to centre-based services.

An education and care service must ensure that outdoor spaces at the premises include shaded areas to protect children and educators from over exposure to ultraviolet radiation.

Sun exposure can pose significant health risks for children, including sunburn, dehydration, eye damage and skin cancer. The need to provide adequate shade must also be balanced with the benefits of exposure to sunlight, which assists the body to produce vitamin D which is important for healthy bone development and maintenance.

The Cancer Council can provide advice specific to each jurisdiction about natural and constructed shade options, and recommended sun protection policies and practices.

Shaded areas may be provided by large trees, heavy shade cloth or a solid roof. Consideration should be given to ensure there is enough shade over areas for both active and passive outdoor play.

All approved services, including family day care services, are also required to have a sun protection policy.

Premises designed to facilitate supervision

National Law: Section 165

National Regulations: Regulation 115

Note: This regulation only applies to centre-based services.

The service premises, including toilet and nappy change facilities, must be designed and maintained in a way that facilitates the supervision of children at all times having regard to children's dignity and rights.

Also refer to the Building Code of Australia for requirements for new buildings in relation to visibility of children's bathrooms.

Safety underpins the requirement that educators can observe and supervise young children using toilets. Visibility into children's bathrooms allows educators to monitor and assist young children where appropriate. Educators may need to position themselves in such a way as to increase their ability to provide adequate supervision. Design elements such as viewing windows may be used. Low, open toilet partitions in bathrooms used by young children will provide a degree of privacy while allowing for visual supervision. A nappy change facility should allow an educator to also have visibility of the play room.

The design of children's play rooms should promote effective supervision and interaction. Consideration should be given to the height and placement of furniture to provide a variety of spaces that are visible to educators. However, private spaces for children can also be created that are appropriate to the level of close supervision required.

In services that educate and care for children over preschool age, it is not intended that educators must be able to view children while they are in the toilet. However, it is important that educators consider the location of their bathroom facilities when planning for supervision. Some outside school hours care services implement a toilet pass system to monitor school age children's access to bathrooms.

Assessments of family day care residences and venues

National Law: Section 167 (protection from harm and hazards)

National Regulations: Regulation 116

Note: This regulation only applies to family day care services.

The approved provider of a family day care service must conduct an assessment (including a risk assessment) of each residence and approved venue of the service before education and care is provided to children, and then at least annually.

The purpose of the assessment is to ensure the health, safety and wellbeing of children is protected.

The following matters must be considered as part of an assessment:

- the premises, furniture and equipment
- fencing and security
- the sufficiency of furniture, materials and equipment
- the adequacy of laundry facilities or other arrangements for dealing with soiled clothing
- the adequacy of toilet, washing and drying facilities
- the adequacy of ventilation and natural light
- glass safety issues
- the suitability of the residence or venue according to the number, ages and abilities of the children who attend or are likely to attend the service
- the suitability of nappy change arrangements for children who wear nappies
- the existence of any water hazards, water features or swimming pools at or near the premises
- any risk posed by animals.

The approved provider may also consider the following if there is a firearm at the residence or venue:

- that the firearm does not pose a threat to the health, safety or wellbeing of children
- a valid firearm licence or permit is held
- the firearm and ammunition are stored separately from each other
- the firearm and ammunition are securely stored away and out of reach of children
- the firearm is not used in the presence of children.

The [Kidsafe Family Day Care Safety Guidelines](#) has a Hazard Reduction Checklist which includes references to firearms.

Each **family day care** educator must advise the approved provider of:

- any proposed renovations to their residence or venue
- any changes in their residence or venue that may affect the matters considered as part of the assessment of the premises—for example, acquiring a pet
- any other changes to the residence or venue that will affect the education and care provided to children as part of the family day care service.

Glass

National Regulations: Regulation 117

Note: This regulation only applies to **family day care** services.

If a glazed area of a family day care residence or approved venue is accessible to children, and situated below a specified height above floor level (see below for further information), the following is required:

- safety glazing, if required by the Building Code of Australia, or
- treatment with a product that prevents glass from shattering if broken (such as safety film), or guarding with barriers that prevent a child from hitting or falling against the glass.

As the National Regulations were amended on 1 June 2014 to align with the Australian Standard for Glass (AS 1288-2006), the exact requirement depends on whether the premises were approved by the service's approved provider before or after this date, and whether the premises are a venue or a residence.

In addition, different requirements apply for FDC residences and venues in Western Australia, where the Regulations were amended from 1 December 2014.

FDC residences and venues in all states and territories apart from Western Australia:

- for FDC residences and FDC venues approved before **1 June 2014**, the above requirements apply to any accessible glazed area that is 0.75 metres or less above floor level
- for FDC residences approved from **1 June 2014** onwards, the above requirements apply to any accessible glazed area that is 0.5 metres or less above floor level
- for FDC venues approved from **1 June 2014** onwards, the requirements for glass depend on the particular type of building and how it is classified under the Building Code. For more information, contact the agency responsible for applying building standards in your state or territory.

FDC residences and venues in Western Australia:

- for FDC residences and FDC venues in Western Australia approved before **1 December 2014**, the above requirements apply to any accessible glazed area that is 0.75 metres or less above floor level
- for FDC residences and venues in Western Australia approved from **1 December 2014**, the above requirements apply to any accessible glazed area that is 1 metre or less above floor level.

Family day care services should consider placing easy-to-see stickers at adult and child height on glass panels or doors, and ensure that glass areas are well lit. For more information on safety in the family day care home, see Kidsafe's Family Day Care Safety Guidelines, or contact Kidsafe in each state or territory.

Part 4.4: Staffing arrangements

National transitional and savings provisions may apply for some staffing requirements. See Chapter 7.

Quality Area 4: Standards and Elements

Standard 4.1	Staffing arrangements enhance children’s learning and development and ensure their safety and wellbeing.	
	Element 4.1.1	Educator-to-child ratios and qualification requirements are maintained at all times.
Standard 4.2	Educators, co-ordinators and staff members are respectful and ethical.	
	Element 4.2.1	Professional standards guide practice, interactions and relationships.
	Element 4.2.2	Educators, co-ordinators and staff members work collaboratively and affirm, challenge, support and learn from each other to further develop their skills and to improve practice and relationships.
	Element 4.2.3	Interactions convey mutual respect, equity and recognition of each other’s strengths and skills.

Supervision of education and care services

National Law: Sections 162 (centre-based service), 164 (family day care service), 172

National Regulations: Regulation 173

A centre-based service must have at least one of the following people present at the service at all times the service is educating and caring for children:

- the approved provider, or
- the nominated supervisor, or
- a certified supervisor placed in day to day charge.

This person is sometimes referred to as the ‘responsible person’ for the service. The name and position of the responsible person must be clearly visible to anyone from the main entrance of the centre-based education and care service premises.

For a family day care service, either the approved provider, the nominated supervisor, or a certified supervisor placed in day to day charge must be available to provide support to family day care educators at all times the service is educating and caring for children. Being ‘available’ includes being available by telephone.

Given that the responsible person may change throughout the day (for example, at a changeover of shifts), this requirement might be met on a whiteboard or interchangeable nameplate in the entrance.

On 1 November 2016 the National Regulations were amended to expand the classes of people who may be covered by a prescribed class supervisor certificate. This change applies in all states and territories apart from Western Australia.

The new prescribed classes are set out at regulation 238A, and include a person who is:

- *responsible for the day to day management of the service, or*
- *exercising supervisory and leadership responsibilities for part of the service, or*
- *a family day care co-ordinator*

*Certificates issued for people working in one of these roles are referred to as ‘**service supervisor certificates**’.*

Service supervisor certificates will not be issued to a particular person. Instead they may apply to any person working at the service who has been identified by the approved provider within the service as working in one of the above roles.

With this new flexibility, most individuals do not need to apply to the regulatory authority for a supervisor certificate.

See Part 2.4 Supervisor Certificates for more information on these new arrangements.

Nominated supervisor

National Law: Sections 5, 44, 56, 161

National Regulations: Regulations 35, 146

Approved providers must not operate a service unless there is a nominated supervisor for the approved service. A ‘nominated supervisor’ is a person who is a certified supervisor, has been nominated by the approved provider and has consented to that nomination.

A person with an individual supervisor certificate, or who is covered by a prescribed class/ service supervisor certificate, may be appointed as the nominated supervisor of an approved service. The supervisor must accept the nomination in writing. This might be demonstrated through a signed and dated record, or by keeping a copy of the application for service approval where the nomination was accepted. This record is required to be available on request by the regulatory authority.

See also Part 2.3: supervisor certificates. See page 100 for information about the staff record.

Prescribed information about the nominated supervisor must be kept in the staff record.

The approved provider must notify the regulatory authority if the nominated supervisor for the service changes.

Being appointed as the nominated supervisor does not mean that the person must be in attendance at the approved service at all times. When the nominated supervisor is absent from the service, a person with an individual or prescribed class supervisor certificate can be placed in charge.

Certified Supervisor in day-to-day charge

A certified supervisor is placed in day-to-day charge of an education and care service if the approved provider or nominated supervisor nominates the certified supervisor as the person in day-to-day charge, and the certified supervisor accepts this nomination in writing. This might be demonstrated through a signed and dated record of acceptance to be placed in charge, which is available to be sighted by the regulatory authority on request.

Certified Supervisors who are placed in day-to-day charge of an education and care service are not the equivalent of a nominated supervisor and do not have the same responsibilities under the *National Law* as nominated supervisors.

Educational leader

National Law: Section 169

National Regulations: Regulations 118, 148

An educator, co-ordinator or other individual who is suitably qualified and experienced must be appointed to lead the development and implementation of the educational program (or curriculum) in the service. This person may have suitable qualifications and experience, as well as a thorough understanding of the Early Years Learning Framework and/or the Framework for School Age Care (or other approved learning framework) to be able to guide other educators in their planning and reflection, and mentor colleagues in their implementation practices.

See Chapter 7: Transitional and saving provisions for details of declared approved learning frameworks as outlined in regulation 248.

The educational leader might be a nominated supervisor (who has suitable experience and qualifications), an early childhood teacher, a manager or a diploma qualified educator within the service. The regulations do not specify a minimum qualification or the number of hours the educational leader should work, or whether this person must work directly with children. The approved provider should select the person most suited for this role in the service after considering the suitability of qualifications and experience of educators in the service.

The *National Regulations* require the approved provider to appoint the educational leader in writing, and note this designation in the staff record of the service.

As part of continuous improvement, the educational leader should consider what strategies are needed to improve the educational program in the approved service. Strategies might include:

- leading and being part of reflective practice discussions about practice and implementing the learning framework
- mentoring other educators by leading quality practice
- discussing routines and how to make them more effective learning experiences
- observing children and educator interactions, and making suggestions on how to improve interactions and intentional teaching
- talking to parents about the educational program
- working with other early childhood professionals such as maternal and child health nurses and early childhood intervention specialists
- considering how the program can be linked to the community by working with other community services such as Aboriginal Elders
- establishing systems across the service to ensure there is continuity of learning when children change room or attend other services, and then in their transition to school
- assisting with documenting children's learning and how these assessments can inform curriculum decision making.

Age and supervision requirements

National Law: Section 165

National Regulations: Regulations 119–120

A family day care educator and family day care assistant must be at least 18 years old.

An educator who is under the age of 18 years may work at a centre-based service, provided that the person does not work alone and is adequately supervised at all times by an educator who is over the age of 18 years.

A person who is under 18 years of age cannot be a certified supervisor.

It is important to ensure that all children are educated and cared for by educators that have the experience, judgment and maturity to deal with situations that may arise at a service.

It is also important to provide effective transitions from school to work for young people, especially given the responsibilities involved in educating and caring for children. In the interests of the children, their families, and the young people entering the workforce and their employers, it is appropriate for the transition to occur within a structured and supported work environment.

Educator-to-child ratios

National Law: Section 169

National Regulations: Regulations 121–122, 123 (centre-based services), 124 (family day care services)

The *National Law* and *National Regulations* require that services maintain the required educator-to-child ratios at all times based on the ages and number of children being educated and cared for at the service. When calculating educator-to-child ratios only those educators working directly with children can be counted.

‘Working directly with children’ means an educator is physically present with the children and is directly engaged in providing education and care to the children.

An educator cannot be included in calculating the educator-to-child ratio unless they are working directly with children.

Centre-based services

New national ratios have been set to apply from 2016, with some jurisdictions saving higher standards that over-ride the national educator to child ratios. It is suggested that all services seek advice from jurisdiction specific websites about the educator to child ratios that apply.

The table below summarises the minimum national educator-to-child ratios:

Age	Educator-to-child ratio	Compliance timeframe
Birth to 24 months	1:4	1 January 2012
25 to 35 months	1:5	1 January 2016
36 months up to and including preschool age	1:11	1 January 2016
Over preschool age (that is, school age children)	The National Quality Framework has been agreed to at this stage to include children over preschool age, however the National Quality Framework does not include a National Standard for children over preschool age—see individual jurisdiction arrangements	
Please note: Some jurisdiction-specific requirements override the national educator-to-child ratios.		

The National Regulations allow a child to be considered over preschool age from the beginning of the calendar year in which they will attend school as long as they are enrolled/registered. This will assist services that structure enrolments from the beginning of the school year, such as vacation care for school age children.

An approved provider can approve the service to care for one extra child, or two or more children if the children are in the same family, in an emergency. The service can educate and care for an extra child or children for up to two consecutive days on which the service operates. In such cases, the child/ren do not count towards educator to child ratios, early childhood teacher requirements, or minimum space requirements. This is to allow the service to provide for children who need to attend a service at short notice. For example, the child/ren may be in need of protection under a child protection order, or their parents may need urgent health care.

Before approving the inclusion of an extra child or children, the approved provider must consider the safety, health and wellbeing of all children attending the service.

The approved provider must notify their regulatory authority within 24 hours if the service is educating and caring for extra children.

Each regulatory authority can provide information on the jurisdiction-specific transitional or savings provisions in each state or territory.

The *National Law* does not set national educator-to-child ratios for educators working with children over preschool age. State and territory specific ratios apply in some jurisdictions.

Mixed age ratios in centre-based services

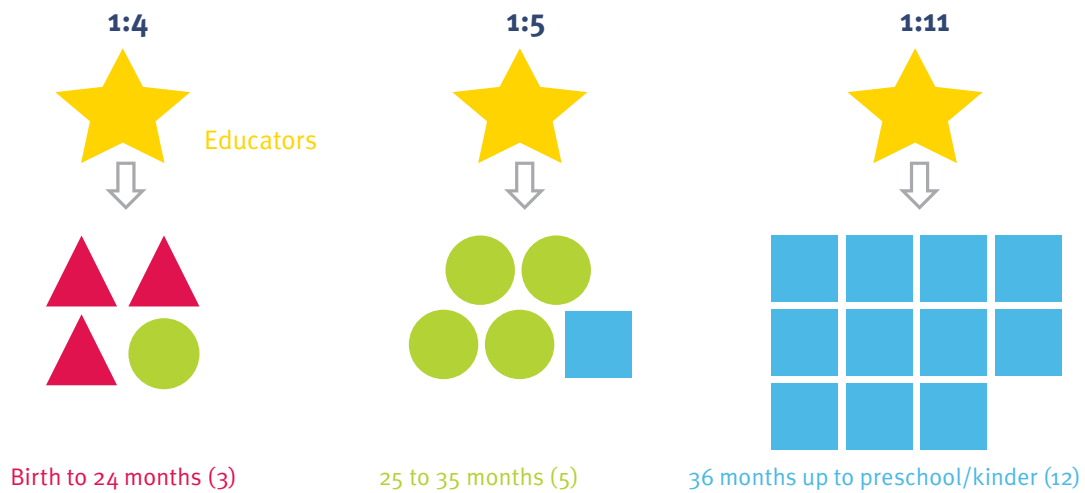
Maintaining the ratio for each age range of children does not mean that the educator to child ratio for the youngest age range must be applied to all children in an older age range. It is a requirement that the age range of children is met, adequate supervision is maintained and care provided to children is appropriate across the seven Quality Areas. An example is provided below based on the proposed new national ratios. Please note that calculations may be different in different jurisdictions due to transitional and savings provisions. Advice should be sought from the regulatory authority in your state or territory.

Age	Ratio requirements	Number of actual children at the service	Minimum number of educators required
Birth to 24 months	1:4	3	3
25 to 35 months	1:5	5	
36 months to preschool age	1:11	12	
Total children		20	

Note: In this example, no jurisdiction-specific ratios apply.

This is because to meet the ratios for 3 children aged 0–24 months, an educator is required. The educator has the capacity to, within the ratio requirements, work directly with another child as the ratio is 1:4. So in calculating the ratios, one of the children from the 25–35 months age range can be allocated against that educator for the purpose of calculating the ratios. This leaves 4 children in the 25–35 months age range, requiring another educator. However, given the ratio for this age range is 1:5, in calculating the ratios, one of the children from the 36 months and over age range can be allocated to this second educator and so a third educator is all that is required to meet the 1:11 ratio for the remaining children aged 36 months to preschool age.

Diagram 2:



The first step in calculating the number of educators necessary is to determine the number of children in each age range. The next step is to calculate the number of educators required to meet the ratio requirements for the youngest age range of children in the service. If the number of children in the youngest age range is not a multiple of the ratio requirement, calculations regarding ratios can include allocating this educator against children in the next age range provided that the ratio requirement of the Law is always met for the younger age range.

The above example shows how ratios can be calculated based on the ages of children while maintaining the ratio requirements for each age range. At all times adequate supervision must be considered and maintained.

Breaks

The *National Regulations* require the educator to child ratio to be maintained at all times. However, it is recognised that backfilling educators in centre-based services while they are on short breaks is difficult. The approach of regulatory authorities will be to allow each educator to take up to 30 minutes off the floor per day without being backfilled—for example, for personal hygiene, meal breaks or to take personal phone calls—without the service being in breach of prescribed ratio requirements. At all times the overarching consideration must be the needs of the children and adequate supervision must be maintained at all times.

For example, this provision might be used to provide educators with two 15 minute tea breaks without backfilling their position, or one 30-minute lunch break, where adequate supervision can be maintained. This provision is not intended to result in situations where accommodating the needs of the children is compromised. For example, children should not be required to rest for an unreasonable length of time to accommodate educators' breaks.

Family day care services

A family day care educator must not educate and care for more than seven children at any one time. A maximum of four of these children can be preschool age or under.

If the educator's own children or any other children are at the family day care residence while the service is operating, they are to be counted in the overall total of children if they are under 13 years of age and there is no other adult present and caring for the children.

A maximum of seven children can be educated and cared for at a family day care residence at any one time. This means that a family day care service cannot increase the number of educators at a residence in order to increase the number of available places for children.

Note: This does not apply if children are visiting another family day care residence, with their educator, as part of an excursion.

In exceptional circumstances, a family day care service may approve an educator to care for more than seven children, or more than four children who are preschool age or under, including when:

- all the children are siblings in the same family
- a child is in need of protection under child protection law, or
- the family day care residence or venue is in a rural or remote location and no alternative care is available.

In Queensland, an approved provider who has approved a family day care educator to educate and care for additional children in exceptional circumstances must notify the regulatory authority within 24 hours.

Family day care educator assistant

National Regulations: Regulation 144

A family day care educator assistant may provide assistance to a family day care educator while the educator is educating and caring for children as part of the approved service. A family day care educator assistant may educate and care for the children in the absence of the family day care educator in limited circumstances:

- transporting a child between the family day care residence or approved family day care venue and:
 - a school, or
 - another education and care service or children's service, or
 - the child's home, and
- providing education and care to a child in emergency situations, such as when the family day care educator requires urgent medical care or treatment, and
- providing education and care to a child when the family day care educator is absent to attend an appointment (other than a regular appointment) if:

- the absence is less than for four hours, and
- the approved provider of the family day care service has approved the absence, and
- notice of the absence has been given to the parents of the child(ren).

The approved provider of the family day care service must not approve a person to work as a family day care educator assistant unless the parents of the children to be educated and cared for have provided written consent to the use of the assistant.

The family day care educator assistant is not required to hold, or be actively working towards, a certificate III level education and care qualification. However, the family day care educator assistant is required to hold the first aid qualifications set out at *First aid qualifications and training*.

Qualification requirements: centre-based services

Educational qualifications are prescribed for educators working directly with children who are preschool age or under.

The Australian Capital Territory, Northern Territory, Queensland, South Australia, Victoria and Western Australia also have qualification requirements for school age care services, included in the transitional and savings requirements of the National Regulations. The list of approved qualifications for these jurisdictions is published by ACECQA.

General educator qualifications

National Law: Section 169
National Regulations: Regulations 125–135, 137

Note: Regulation 126 applies to centre-based services providing education and care to children who are preschool age or under.

A new educator without an approved qualification can be counted towards educator to child ratios for a three month probationary period. This applies only for centre-based services that educate and care for children preschool age or under. It does not apply in South Australia and New South Wales.

Note: a probationary period is not extended if the educator moves to another service operated by the same approved provider.

By 2014, at least 50% of educators in a service must have (or be actively working towards) at least an approved diploma level education and care qualification.

The remaining educators necessary to meet minimum educator to child ratios are required to have (or be actively working towards) at least an approved Certificate III level education and care qualification.

A list of approved qualifications is published by ACECQA.

The *National Regulations* refer to the number of educators required to meet minimum educator to child ratios as they apply to specific jurisdictions. If an approved provider chooses to staff their approved service in excess of prescribed ratios, the additional educators are not required to meet qualification requirements.

An approved provider may apply for a temporary or service waiver for particular staffing requirements. See regulations 41 and 44.

Regulation 10 defines ‘actively working towards a qualification’ as being enrolled in a course for the qualification, making satisfactory progress towards completion of the course and maintaining enrolment requirements. The approved provider should collect documentary evidence that the educator meets these requirements, such as a current academic transcript of the completed units of the qualification.

In the case of requirements to hold or be actively working towards an approved diploma level course, the educator must:

- hold an approved Certificate III level qualification, or
- have completed the units of *study in an approved Certificate III* as published by ACECQA, or
- have completed the percentage of total units of study required for completion of an approved early childhood teaching qualification determined by ACECQA.

Note: the required percentage of total units of study (above) as determined by ACECQA is published on the ACECQA website.

Early childhood teacher

National Law: Section 169

National Regulations: Regulations 129–135

Regulations 129 to 135 apply to centre-based services providing education and care to children who are preschool age or under.

Some jurisdictions have specific requirements which override these requirements. regulatory authorities in these states and territories will provide information specific to their jurisdiction.

The educational qualifications held by educators contribute to the quality of education and care. Those with higher qualification levels and standards of training are better equipped to provide improved learning environments and mentor other educators in quality practices, leading to better outcomes for children.

Centre-based services are required to have access to or attendance of an early childhood teacher. The requirements are based on the size of the service (see the table on page 95).

For services of fewer than 25 places, a service must have **access to** an early childhood teacher for at least 20% of the time that the service operates. An approved service may facilitate this through information and communications technology, such as videoconferencing, and the access may be calculated on a quarterly basis. This flexibility will be particularly useful for rural and remote services.

A list of approved qualifications, including approved early childhood teaching qualifications, is published by ACECQA.

For centre-based services with 25 or more children on a given day, the requirement is for an early childhood teacher to be in attendance. In attendance means being physically present at the service, and carrying out education and care activities including one or more of the following:

- working directly with children (included in ratios)
- planning programs
- mentoring, coaching or supporting educators
- facilitating education and care research
- performing the role of educational leader.

Early childhood teacher requirements do not apply in relation to a child, or children, who are being educated and cared for because of an emergency, under regulation 123(5)).

Replacing early childhood teacher during leave

If an early childhood teacher is absent from the service because of short-term illness or leave (for a period of up to, but not exceeding 12 weeks), the teacher may be replaced by an educator who holds an approved diploma qualification, or a qualification in primary teaching.

Qualification requirements: family day care services

National Law: Sections 51, 169

National Regulations: Regulations 127–128

By 2014 a family day care educator must have (or be actively working towards) at least an approved Certificate III level education and care qualification.

By 2014 a family day care co-ordinator must have an approved diploma level education and care qualification.

A list of approved qualifications is published by ACECQA.

It is a condition of the service approval that an approved provider appoint sufficient co-ordinators to adequately monitor and support the family day care educators.

The National Regulations do not prescribe how many co-ordinators are required in a family day care service. The approved provider should determine how many co-ordinators are needed to provide support and assistance to all family day care educators engaged by the service, and to monitor each educator's compliance with the National Law and National Regulations.

The actual number of co-ordinators required to provide an appropriate level of support may differ between services, considering factors such as the number of jurisdictions and local government areas a service is provided across, the number of family day care educators, the distance between family day care residences and the qualifications and experience of educators.

Summary of qualification requirements

Family day care services			
Position		Qualification requirements	Compliance timeframe
Family day care educator		All family day care educators must have (or be actively working towards) an approved Certificate III level education and care qualification.	1 Jan 2014
Family day care co-ordinator		Co-ordinators must have an approved diploma level (or higher) education and care qualification.	1 Jan 2014
Centre-based services			
Age group	No. of children	Qualification requirements	Compliance timeframe
	All services	At least 50% of educators must have (or be actively working towards) a diploma level education and care qualification. Other educators must have (or be actively working towards) a Certificate III level education and care qualification.	1 Jan 2014
Preschool age and under	< 25	The service must have access to an early childhood teacher working with the service for at least 20% of the time the service provides education and care. (Ie access to an early childhood teacher 20% of service operating hours)	1 Jan 2014

Centre-based services			
Age group	No. of children	Qualification requirements	Compliance timeframe
Preschool age and under	25–59	<p>An early childhood teacher must be in attendance at the service whenever the service is being provided to 25 – 59 children at any point in the given day:</p> <ul style="list-style-type: none"> • if the service operates for 50 or more hours in a week, for at least 6 hours on the day in question • if the service operates for less than 50 hours a week, for 60% of the operating hours of the service on the day in question. <p>OR</p> <p>An approved service with 25 – 59 approved places for children must employ or engage a full-time or full-time equivalent early childhood teacher.</p>	1 Jan 2014
Preschool age and under	60–80	<p>An early childhood teacher must be in attendance at the service whenever the service is being provided to 60 – 80 children at any point in the given day:</p> <ul style="list-style-type: none"> • if the service operates for 50 or more hours in a week, for at least 6 hours on the day in question • if the service operates for less than 50 hours a week, for 60% of the operating hours of the service on the day in question. <p>OR</p> <p>An approved service with 60 – 80 approved places for children must employ or engage a full-time or full-time equivalent early childhood teacher.</p>	1 Jan 2014
		<p>A second early childhood teacher or another suitably qualified person must be in attendance whenever the service is being provided to 60 – 80 children at any point in the given day:</p> <ul style="list-style-type: none"> • if the service operates for 50 or more hours in a week, for at least 3 hours on the day in question • if the service operates for less than 50 hours a week, for 30% of the operating hours of the service on the day in question. <p>OR</p> <p>An approved service with 60 – 80 approved places for children must employ or engage a second early childhood teacher or suitably qualified person for 0.5 full-time equivalent hours.</p>	1 Jan 2020

Centre-based services			
Age group	No. of children	Qualification requirements	Compliance timeframe
Preschool age and under	> 80	<p>An early childhood teacher must be in attendance at the service whenever the service is being provided to more than 80 children (that is 81 children or more) at any point in the given day:</p> <ul style="list-style-type: none"> • if the service operates for 50 or more hours in a week, for at least 6 hours on the day in question • if the service operates for less than 50 hours a week, for 60% of the operating hours of the service on the day in question. <p>OR</p> <p>An approved service with more than 80 approved places must employ or engage a full-time or full-time equivalent early childhood teacher.</p>	1 Jan 2014
		<p>A second early childhood teacher or another suitably qualified leader must be in attendance at the service whenever the service is being provided to 80 or more children:</p> <ul style="list-style-type: none"> • if the service operates for 50 or more hours in a week, for at least 6 hours on the day in question • if the service operates for less than 50 hours a week, for 60% of the operating hours of the service on the day in question. <p>OR</p> <p>An approved service with more than 80 approved places must employ or engage a second early childhood teacher or suitably qualified person for full-time or full-time equivalent hours.</p>	1 Jan 2020
Over preschool age children	Any number	<p>No national qualification requirements have been agreed for the National Quality Framework at this stage, however where jurisdictions have a qualification requirement for out of school hours care, this requirement will continue. Jurisdictional specific qualification requirements apply.</p>	

Jurisdictional provisions

Some jurisdictions have transitional and savings provisions in relation to qualification requirements. Regulatory authorities in these states and territories will provide information specific to their jurisdiction.

First aid qualification requirements

National Law: Section 169

National Regulations: Regulation 136

Centre-based services

At all times and at any place that an approved service is operating, the following person/s must be in attendance and immediately available in case of emergency:

- at least one educator who holds a current approved first aid qualification, and
- at least one educator who has undertaken anaphylaxis management training, and
- at least one educator who has undertaken emergency asthma management training.

The same person may hold one or more of these qualifications.

A list of approved first aid qualifications is published by ACECQA.

If the approved service is **provided by a school on a school site** (for example, a government kindergarten or preschool), the person/s holding these qualifications may be an educator or staff member at the school who holds one or more of the above qualifications. The person/s holding these qualifications may be on the school site as long as they are immediately available in an emergency.

The service should consider how it will meet this requirement during all parts of the day, including breaks, and have contingency plans in place for educator illness or leave.

Family day care services

Each family day care educator engaged by or registered with the service must:

- hold a current approved first aid qualification, and
- have undertaken anaphylaxis management training, and
- have undertaken emergency asthma management training.

Approval of qualifications

National Law: Section 225

National Regulations: Regulations 137–143

ACECQA publishes on its website a list of approved qualifications, including:

- approved Certificate III level education and care qualifications
- approved diploma level education and care qualifications
- approved early childhood teacher qualifications
- approved first aid qualifications, including anaphylaxis management and asthma training
- approved qualifications suitable for a ‘suitably qualified person’ (that is, second or subsequent early childhood teacher).

The list of approved qualifications includes suitable qualifications for all types of services. This list will include school age care qualifications for jurisdictions that prescribe qualification requirements to work with children over preschool age.

ACECQA also publishes a list of qualifications that have been approved for transitioning into the National Quality Framework. This list includes some qualifications that are no longer approved or no longer offered.

See www.acecqa.gov.au.

A person may apply to ACECQA to assess a qualification that is not included in the approved list. The application must include a detailed outline of the course of study for the qualification, including details of any practical placements and the length of the course. For example, a higher education provider might apply to ACECQA to recognise a newly developed course of study. There is a fee for this application.

A person may also apply to ACECQA to have their qualification recognised as equivalent to an approved qualification. For example, an educator may apply to ACECQA to have their overseas qualification recognised as equivalent to an approved qualification. There is a fee for this application.

Staff records: centre-based services

National Regulations: Regulations 145–152

An approved provider of a centre-based service must keep a staff record which contains information about:

- the nominated supervisor, including evidence of any relevant qualifications (or progress towards those qualifications) and approved training, and their fitness and propriety
- other educators and staff, including evidence of any relevant qualifications (or progress towards those qualifications) and approved training, and their fitness and propriety
- the designated educational leader
- details of volunteers and students.

In addition, other records are required that are more like a staff roster or time sheet. These records include:

- record of educators working directly with children
- record of access to early childhood teachers, including when the teacher worked directly with children
- record of each date and times a volunteer participates in the service
- the name of the responsible person at each time that children are being educated and cared for by the service.

A sign in/out register, staff roster or time sheets might be some of the ways an approved provider can meet these requirements. The record should note the hours that each educator works directly with children and should exclude time spent off the floor for breaks, programming and preparation.

For more information about the responsible person, see page 84.

A sample template for a staff record is included on page 169. This might be adapted for use by individual services, or providers may develop their own system of recording this information.

Register of family day care educators

National Law: Section 269

National Regulations: Regulations 153

The approved provider of a family day care service must keep a register of each family day care educator engaged by or registered with the service. This must contain the following information:

- name, address and date of birth of each educator
- contact details of the educator
- address of the residence or venue
- date the educator was engaged or registered, and date the educator ceased to be engaged or registered
- days and hours when each educator usually provides education and care
- if the educator is an approved provider or certified supervisor, the number of the provider approval or supervisor certificate, and the date it was granted
- copies of each educator's qualifications, including first aid qualifications and details of qualifications the educator is actively working towards (or evidence of working towards the qualification)
- evidence of any training completed by the educator
- details of the working with children or working with vulnerable people check for each educator including an identifying number and expiry date (if applicable)
- the name and date of birth of each child the educator cares for, and the days and hours the educator usually provides care to each child
- name and date of birth of other people who live at the family day care residence and details of any working with children or working with vulnerable people checks for those people.

A sample template for a register of family day care educators is included on page 173. This may be adapted for use by individual services, or providers may develop their own.

Staff, educator, coordinator and educator assistant records: family day care services

National Regulations: Regulations 154

An approved provider of a family day care service must keep a record which contains information about:

- the nominated supervisor and copies of their relevant qualifications and working with children checks
- details of educators and staff members, and copies of their relevant qualifications and working with children checks
- the designated educational leader
- details of volunteers and students.

Part 4.5: Relationships with children

Quality Area 5: Standards and Elements

Standard 5.1	Respectful and equitable relationships are developed and maintained with each child.	
	Element 5.1.1	Interactions with each child are warm, responsive and build trusting relationships.
	Element 5.1.2	Every child is able to engage with educators in meaningful, open interactions that support the acquisition of skills for life and learning.
	Element 5.1.3	Each child is supported to feel secure, confident and included.
Standard 5.2	Each child is supported to build and maintain sensitive and responsive relationships with other children and adults.	
	Element 5.2.1	Each child is supported to work with, learn from and help others through collaborative learning opportunities.
	Element 5.2.2	Each child is supported to manage their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.
	Element 5.2.3	The dignity and rights of every child are maintained at all times.

Interactions with children

National Regulations: Regulations 155, 168

In an approved service, interactions with children should:

- encourage children to express themselves and their opinions
- allow children to undertake experiences that develop self-reliance and self-esteem
- maintain the dignity and rights of each child
- give positive guidance and encouragement to each child

- consider the family and cultural values, age, and physical and intellectual development and abilities of each child.

An approved service must have a policy on interactions with children. This policy must outline the service's procedures and strategies for ensuring that interactions with children meet the above requirements.

Relationships in groups

National Regulations: Regulations 156, 168

An approved provider must ensure that an approved service provides opportunities for children to interact and develop respectful and positive relationships with each other and with educators and staff.

This requires consideration of the size and composition of groups in which children are being educated and cared for by the service.

It is suggested that children should be educated and cared for in small groups to minimise the risk of overcrowding, injury, illness and prolonged exposure to excess noise, facilitate the development of trusting relationships, and promote children's learning and development. Large groups can lead to an overly restrictive or controlling environment.

The *National Regulations* have deliberately not prescribed maximum group sizes for centre-based services, as the emphasis under the National Quality Framework is on the outcomes for children. Therefore, when assessing a service against the *National Law*, *National Regulations* or the *National Quality Standard*, the regulatory authority will consider the experience for children as part of a group. That is, the grouping of children should allow children to experience agency, to develop secure relationships and to progress towards the outcomes of the learning framework. The groupings should also minimise risks to children's health, safety and wellbeing.

Examples of effective grouping could be one that does not exceed three times the ratio pertaining to the relevant age group or a grouping that achieves the outcomes sought through limiting the group size.

In services for school age children, this does not necessarily mean that enrolments must be restricted. Rather, consider minimising the times throughout the session where children are required to be part of a very large group. This might be achieved through sub grouping or by offering sufficient activities or workshops where children are able to participate in smaller groups. Services should consider how the grouping of children enables or restricts children's sense of agency and identity.

In centre-based services for children who are preschool age or under, the service should also minimise the number of times children transition to different groups during the day. Moving children multiple times throughout the day can affect children's sense of belonging to a group, their wellbeing and opportunities for developing and extending play. When making decisions about children's grouping throughout the day, the best interests of children should be the primary consideration.

Part 4.6: Collaborative partnerships with families and communities

Quality Area 6: Standards and Elements

Standard 6.1	Respectful, supportive relationships with families are developed and maintained.	
	Element 6.1.1	There is an effective enrolment and orientation process for families.
	Element 6.1.2	Families have opportunities to be involved in the service and contribute to service decisions.
	Element 6.1.3	Current information about the service is available to families
Standard 6.2	Families are supported in their parenting role and their values and beliefs about childrearing are respected.	
	Element 6.2.1	The expertise of families is recognised and they share in decision making about their child's learning and wellbeing.
	Element 6.2.2	Current information is available to families about community services and resources to support parenting and family wellbeing.
Standard 6.3	The service collaborates with other organisations and service providers to enhance children's learning and wellbeing.	
	Element 6.3.1	Links with relevant community and support agencies are established and maintained.
	Element 6.3.2	Continuity of learning and transitions for each child are supported by sharing relevant information and clarifying responsibilities.
	Element 6.3.3	Access to inclusion and support assistance is facilitated.
	Element 6.3.4	The service builds relationships and engages with their local community.

National Law: Sections 172, 175

National Regulations: Regulations 73, 75–76, 80, 86, 99, 102, 111, 157, 168, 171, 173

The *National Regulations* provide that a parent of a child being educated and cared for by a service may enter the premises at any time that their child is attending the service. However, a parent can be refused entry to an approved service premises if permitting the parent's entry would pose a risk to the safety of children and staff, or if the provider, supervisor or family day care educator reasonably believes that permitting the parent's entry would contravene a court order.

A 'parent' includes a guardian of a child or a person who has parental responsibility for a child under a decision or order of a court.

Other provisions within the *National Law* and *National Regulations* support collaboration with parents. These include requirements to:

- provide information about the educational program
- document and share with parents, assessments or evaluations of their child's development needs, interests, experiences and participation in the program and assessments of the child's progress against the learning outcomes
- maintain enrolment records and procedures that provide information about the family and children's health needs
- display or provide a range of information to parents
- enable families to have access and provide input to reviews of policies and procedures
- provide for an administration space to consult with parents.

An approved service must have policies and procedures in place to manage the service. The current policies and procedures are required to be available for inspection at the approved service including at a family day care residence or venue. The policies and procedures should be readily available for families (and potential families) to read and review. It would be appropriate for the service's policies and procedures to be available online as well as at the premises.

An approved provider is also required to notify families of changes to certain policies and procedures—see Part 4.7: Leadership and service management.

Partnerships with families contribute to building a strong and inclusive community within the service. Shared decision making with families demonstrates respect for the role of the parent and supports consistency between children's experiences at home and at the service.

Some services encourage families to access their child's assessment documentation throughout the year and add to it. It is usual for approved services to send home children's artwork, information and photographs throughout the year, which may then be presented to the child's family at the end of the year as a record for them to keep.

Part 4.7: Leadership and service management

Quality Area 7: Standards and Elements

Standard 7.1	Effective leadership promotes a positive organisational culture and builds a professional learning community.	
	Element 7.1.1	Appropriate governance arrangements are in place to manage the service.
	Element 7.1.2	The induction of educators, co-ordinators and staff members, is comprehensive.
	Element 7.1.3	Every effort is made to promote continuity of educators and co-ordinators at the service.
	Element 7.1.4	Provision is made to ensure a suitably qualified and experienced educator or co-ordinator leads the development of the curriculum and ensures the establishment of clear goals and expectations for teaching and learning.
	Element 7.1.5	Adults working with children and those engaged in management of the service or residing on the premises are fit and proper.
Standard 7.2	There is a commitment to continuous improvement.	
	Element 7.2.1	A statement of philosophy is developed and guides all aspects of the service's operations.
	Element 7.2.2	The performance of educators, co-ordinators and staff members is evaluated and individual development plans are in place to support performance improvement.
	Element 7.2.3	An effective self-assessment and quality improvement process is in place.
Standard 7.3	Administrative systems enable the effective management of a quality service.	
	Element 7.3.1	Records and information are stored appropriately to ensure confidentiality, are available from the service and are maintained in accordance with legislative requirements.
	Element 7.3.2	Administrative systems are established and maintained to ensure the effective operation of the service.
	Element 7.3.3	The regulatory authority is notified of any relevant changes to the operation of the service, of serious incidents and of any complaints which allege a breach of legislation.
	Element 7.3.4	Processes are in place to ensure that all grievances and complaints are addressed, investigated fairly and documented in a timely manner.
	Element 7.3.5	Service practices are based on effectively documented policies and procedures that are available at the service and reviewed regularly.

Child attendance records

National Regulations: Regulations 158 (centre-based service), 159 (family day care service)

The approved provider must ensure that an accurate attendance record is kept which:

- records the full name of each child attending the service
- records the date and time each child arrives and departs
- is signed on the child's arrival and departure by either:
 - the person who delivers or collects the child
 - the nominated supervisor or an educator
 - for family day care services, if the signature of the person who delivers the child cannot be reasonably obtained, the family day care educator may sign.

A preschool program provided by a school is not required to comply with this requirement if it keeps attendance records in accordance with the education law or government education department policy that applies in that jurisdiction.

Child enrolment records

National Regulations: Regulations 102, 160-162

The approved provider and family day care educator must keep an enrolment record for each child enrolled at an approved service. The enrolment record must contain the following information:

- full name, date of birth and address of the child
- name, address and contact details for:
 - each known parent
 - any emergency contact
 - any authorised nominee
 - any person who is authorised to consent to medical treatment or administration of medication
 - any person who is authorised to give permission to an educator to remove the child from the education and care service premises
- details of any court orders, parenting orders or parenting plans
- gender of the child
- language used in the child's home
- cultural background of the child and parents

- any special considerations for the child, such as any cultural, religious or dietary requirements or additional needs
- authorisations for:
 - the approved provider, nominated supervisor or an educator (including family day care educator) to seek medical treatment for the child and/or ambulance transportation
 - the service to take the child on regular outings
- name, address and telephone number of the child’s registered medical practitioner or medical service
- child’s Medicare number (if available)
- details of any specific healthcare needs of the child, including any medical condition, allergies or a diagnosis that the child is at risk of anaphylaxis
- any medical management plan, anaphylaxis management plan or risk minimisation plan for the child
- any dietary requirements of the child
- immunisation status of the child
- if the approved provider or staff member has sighted a health record for that child, a notation of that fact
- certificates of immunisation or exemption for services in NSW, as required under the Public Health Act 2010.

Other adults at the family day care residence to be fit and proper

National Regulations: Regulations 163, 169

The approved provider of a family day care service must take reasonable steps to ensure that persons 18 years old or older who live at a family day care residence, and persons who are family day care educator assistants, are fit and proper. In Western Australia, South Australia, the ACT and the Northern Territory, the approved provider must assess each person by taking into account one of the following:

- a criminal history check issued in the previous six months
- a current working with children check or card, or working with vulnerable people check based on a criminal history record check, or
- a current teacher registration.

In NSW and Queensland, the approved provider must consider the person’s current working with children check or card. In Victoria, the approved provider must consider the person’s current working with children check or current teacher registration. In Tasmania, the approved provider must consider the person’s safety screening clearance or working with vulnerable people registration.

Notice of new persons at residence

National Regulations: Regulation 164

The approved provider of a family day care service must require each family day care educator to notify the provider of any new person (18 years old or older) who resides, or intends to reside at the educator's residence. The provider must also require the family day care educator to notify the provider of any change to circumstances which may affect the fitness or propriety of a person (18 years old or older) who resides at the family day care residence, or a family day care educator assistant.

Visitors to family day care residence or venue

National Regulations: Regulations 165-166, 169

A record must be kept of all visitors to a family day care residence or venue while children are being educated and cared for at the residence or venue as part of the service. The record must include the signature of the visitor and their arrival and departure time. A sample template is included on page 178. This may be adapted for use by individual services, or providers might develop their own.

A family day care educator must not leave a child or children alone with a visitor to a family day care residence or approved venue, while providing care and education to that child as part of the family day care service. An approved provider must have policies and procedures in place to ensure that children are not left alone with visitors in a family day care residence or venue.

Policies and procedures

National Regulations: Regulations 168–172

Policies and procedures must be available at the service and readily accessible by all educators, staff, volunteers, families and regulatory authority staff. The approved provider must take all reasonable steps to ensure that the written policies and procedures are followed.

Policies should be informed by the service's philosophy statement, Early Childhood Australia's Code of Ethics and current advice from recognised authorities.

The approved provider must also give 14 days' notice to parents of children enrolled at the service before making any change to a policy or procedure that would:

- have a significant impact on any enrolled child
- affect the family's ability to utilise the service, or
- affect the fees charged or the way fees are collected.

The notice period is not required if the change to a policy or procedure is to address an issue in relation to the safety, health or wellbeing of any child enrolled at the service.

The National Regulations do not specify how often a philosophy or policy must be reviewed. A review schedule should be developed, where policies are prioritised according to how often the content is expected to change. Other events which might trigger a review are a change in legislation, or a serious incident at the service. Policies should be up to date with current research and contemporary views on best practice.

Required policies and procedures all service types (National Regulations, regulation 168)	
Content of policy and/or procedure	Reference
Health and safety	
Delivery and collection of children *Approved providers in WA must ensure the service has a policy about the delivery and collection of children that is consistent with the procedures for ensuring children's safety set out at section 165A of the <i>National Law</i> (WA).	Regulation 99, 168(2)(f)
Excursions	Regulations 100–102, 168(2)(g)
Acceptance and refusal of authorisations	Regulation 168(2)(m)
Dealing with infectious disease	Regulations 88, 168(2)(c) Standard 2.1
Dealing with medical conditions	Regulations 90, 168(2)(d) Standard 2.1
Emergency and evacuation	Regulations 97, 168(2)(e) Standard 2.3
Health and safety, including matters relating to: <ul style="list-style-type: none"> • nutrition, food and beverages, and dietary requirements • sun protection • water safety • administration of first aid 	Regulation 168(2)(a) Standard 2.2 Standard 2.3 Standard 2.3 Standard 2.1
Incident, injury, trauma and illness	Regulations 85, 168(2)(b) Standard 2.1
Child-safe environment	Regulation 168(2)(h) Standards 2.3, 7.1
Staffing arrangements	
Staffing, including: <ul style="list-style-type: none"> • code of conduct • determining the responsible person present • participation of volunteers and students 	Regulation 168(2)(i) Standard 4.2

Relationships with children	
Interactions with children	Regulations 155–156, 168(2)(j) Standards 5.1, 5.2
Service management	
Governance and management of the service, including confidentiality of records	Regulation 168(2)(l) Standard 7.3
Enrolment and orientation	Regulation 168(2)(k) Standard 6.1
Payment of fees	Regulation 168(2)(n) Standard 7.3
Dealing with complaints	Regulation 168(2)(o) Standard 7.3
Additional policies and procedures for family day care services (National Regulations, regulation 169)	
Content of policy and/or procedure	Reference
Assessment, approval and reassessment of approved family day care residences and family day care venues	Regulations 116, 169(2)(a) Standard 2.3
Engagement and Registration of family day care educators	Regulation 169(2)(b) Standard 7.1
Keeping a register of family day care educators	Regulations 153, 169(2)(c)
Monitoring, support and supervision of family day care educators	Regulation 169(2)(d) Standards 4.2, 7.1, 7.2
Fit and proper assessment of family day care educators, assistants and adults residing at family day care residences	Regulations 163, 169(2)(e) Standard 7.1
Visitors to family day care residences and venues	Regulations 165, 169(2)(f)
Provision of information, assistance and training to family day care educators	Regulation 169(2)(g) Standards 4.2, 7.1, 7.2, 7.3
Engagement and registration of family day care assistants	Regulations 154, 169(2)(h)

Prescribed information to be displayed

National Law: Section 172

National Regulations: Regulation 173

Certain information must be displayed at an approved service premises. It must be displayed so that it is clearly visible from the main entrance to the service.

The *National Regulations* do not specify how this information must be displayed. Some information could be permanently displayed as a laminated poster or framed certificate, while other information (such as information that is updated regularly) could be displayed on a whiteboard.

Prescribed information to be displayed (National Law, section 172; National Regulations, regulation 173)	
Provider approval	Name of the approved provider Provider approval number Any conditions on the provider approval
Service approval	Name of the approved service Service approval number Any conditions on the service approval
Nominated supervisor	Name of the nominated supervisor; or, if the nominated supervisor belongs to a class under Regulation 49, the class
Service rating	Current ratings for each Quality Area in the <i>National Quality Standard</i> Overall rating of the service
Service or temporary waivers	The elements of the <i>National Quality Standard</i> and/or <i>National Regulations</i> that have been waived The duration of the waiver Whether the waiver is a service waiver or temporary waiver
Service operation	Days and hours of operation Name and position of the responsible person in charge at any given time (except in the case of a family day care residence or approved family day care venue) Name and phone number of the person who can be contacted to receive a complaint Name of the educational leader Contact details for the regulatory authority

Prescribed information to be displayed (National Law, section 172; National Regulations, regulation 173)	
Health and safety	<p>If applicable, a notice stating that a child at risk of anaphylaxis is enrolled at the service</p> <p>If applicable, a notice of an occurrence of an infectious disease at the service</p>

Notifications required

National Law: Sections 173–174
National Regulations: Regulations 175–176

An approved provider must notify the regulatory authority of certain circumstances and information, such as a serious incident, or a change in the management or control of an approved provider or responsible persons at the service. Certified supervisors are also responsible for notifying certain information to the regulatory authority, such as a change to their mailing address, or circumstances that affect their fitness and propriety such as the suspension of a working with children check.

Notifications required (National Law, sections 173, 174; National Regulations, regulations 174, 175)			
Type of notification	Responsibility	Timeframe	Reference
Change to information about approved provider			
Notice of change in name of approved provider	Approved provider	Within 14 days	Section 173(1)(a)
Change to address or contact details of approved provider	Approved provider	Within 7 days	Section 174(1) Regulation 175
Any change relevant to approved provider's fitness and propriety	Approved provider	Within 7 days	Section 174(1)(a)
Notice of any appointment or removal of a person with management or control of service	Approved provider	Within 14 days	Section 173(1)(b)

Notifications required (National Law, sections 173, 174; National Regulations, regulations 174, 175)			
Type of notification	Responsibility	Timeframe	Reference
The appointment of receivers or liquidators to the approved provider or any matters that affect the financial viability and ongoing operation of the service	Approved provider	Within 7 days	Section 174(1)(b)
Death of approved provider	Nominated supervisor or person in day-to-day control	Within 7 days of the death	Section 39
Change to information about approved service			
A failure to commence operating within 6 months of grant of service approval	Approved provider	Within 14 days	Section 172(1)(b)
Any change to the hours and days of operation of the service	Approved provider	Within 7 days	Section 174(2)(c)
A change in the location of the principal office of a family day care service	Approved provider	Within 7 days	Section 173(2)(e)
Any change to the state or territory in which a family day care service operates	Approved provider	Within 7 days	Section 174(2)(c)
Change to nominated supervisor	Approved provider	7 days prior to commencement	Section 56 Regulation 35
A nominated supervisor is no longer employed by the service, or withdraws consent to the nomination	Approved provider	Within 7 days	Section 173(2)(b)

Notifications required (National Law, sections 173, 174; National Regulations, regulations 174, 175)			
Type of notification	Responsibility	Timeframe	Reference
Any proposed change to the premises, such as refurbishment (other than a family day care residence)	Approved provider	Within 7 days	Section 173(2)(c)
A new approved family day care venue is added to the service	Approved provider	Within 7 days	Section 174(2)(e)
Intention to transfer service approval	Transferring and receiving approved providers	42 days before transfer	Section 59 Regulations 36–37
Ceasing to operate the education and care service	Approved provider	Within 7 days	Section 173(2)(d)
Change to information about nominated supervisor or certified supervisor			
Suspension or cancellation of a working with children card or teacher registration of, or disciplinary proceedings against, nominated supervisor or certified supervisor employed by the service	Approved provider	Within 7 days of the approved provide being notified	Section 173(2)(a)
Notice of change of name or mailing address of certified supervisor	Certified supervisor	Within 7 days of the change	Section 115(3)
Notice of change of circumstances of certified supervisor	Certified supervisor	Within 7 days of the change	Section 121
Incidents and complaints			

Notifications required (National Law, sections 173, 174; National Regulations, regulations 174, 175)			
Type of notification	Responsibility	Timeframe	Reference
Serious incident at education and care service	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12 Regulation 176(2)(a)(ii)
Death of a child	Approved provider	As soon as practicable, but within 24 hours	Section 174(2)(a) Regulation 176(2)(a)(i)
Complaints alleging that the safety, health or wellbeing of a child was or is being compromised, or that the law has been breached	Approved provider	Within 24 hours of the complaint	Section 174(2)(b) Regulation 176(2)(b)
Any incident that requires the approved provider to close, or reduce the number of children attending, the service for a period	Approved provider	Within 24 hours of the event	Section 174(2)(c) Regulation 175(2)(b) Regulation 176(2)(c)
Any circumstance at the service that poses a significant risk to the health, safety or wellbeing of a child attending the service	Approved provider	Within 7 days	Section 174(2)(c) Regulation 175(2)(c) Regulation 176(2)(c)
The centre-based service is educating and caring for extra child/ren due to an emergency	Approved provider	Within 24 hours	Regulation 175(2)(ca)

Record keeping

National Law: Section 175

National Regulations: Regulations 177–184

Under the *National Law* enrolment and other documents, must to the extent practicable be kept at the education and care service premises, if they relate to the operation of the service, any staff member or child for the previous 12 months. If not kept on the premises, they must be kept at a place readily accessible by an authorised officer, for example, the records are available online from the service premises.

Records required to be kept under an education law in relation to a preschool within a school may be used to satisfy the recordkeeping requirements of the *National Law* or the *National Regulations*. This is consistent with the objective of the National Quality Framework to reduce regulatory burden.

Accurate record keeping assists in the management of the service, ensures the safety of children and provides a level of transparency and accountability for services, regulatory authorities and families.

Insurance records

National Law: Section 51

National Regulations: Regulations 29–30, 180

The approved provider must keep evidence of the current insurance at the education and care service premises, or for a family day care service, at the principal office. A family day care educator must keep evidence of the educator's current public liability insurance at the residence or family day care venue.

This evidence, usually in the form of a 'certificate of currency', must be made available for inspection by the regulatory authority or an authorised officer.

This does not apply if the insurance (or indemnity) for the education and care service is provided by a state or territory government.

Confidentiality and storage of records

National Regulations: Regulations 181–184

Records must be kept in a safe and secure place. They must be kept for the period of time specified in the *National Regulations* (see table on page 118). Records may be kept in hard copy or electronic form, provided that they are accessible as required.

Information that is kept in a record as required by the *National Regulations* must not be communicated (either directly or indirectly) with anyone other than:

- educators who require the information for the education and care of the child
- medical personnel who require the information for medical treatment of the child
- the parent of the child that the record relates to (except for a staff record), or
- the regulatory authority or an authorised officer.

It may also be communicated if authorised or required under any Act or Law, or if the person who provided the information gives written permission. For example, a parent may give written permission for the service to share information about their child with a support agency such as Inclusion Support.

Storage of records after service approval transferred

National Regulations: Regulations 181–184

If a service approval is to be transferred, the transferring approved provider must obtain consent from parents to transfer their children's records listed in Regulation 171 (see table below) to the new approved provider on the date that the transfer takes effect.

Records and documents required to be kept

Records and documents required to be kept at the service (National Regulations 183)			
Type of record	Responsibility	Timeframe	Reference
Evidence of current public liability insurance Note: Does not apply if the insurance is provided by a state or territory government.	Approved provider Family day care educator	Available for inspection at service premises or family day care office	Regulations 29, 30, 180
Quality Improvement Plan	Approved provider	Current plan is to be kept	Regulations 31, 55
Child assessments	Approved provider Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 74, 183
Incident, injury, trauma and illness record	Approved provider Family day care educator	Until the child is 25 years old	Regulations 87, 183
Medication record	Approved provider Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 92, 183
Child attendance	Approved provider Family day care educator	Until the end of 3 years after the last date on which the child was educated and cared for by the service	Regulations 158–159, 183
Child enrolment	Approved provider Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 160, 183
Death of a child while being educated and cared for by the service	Approved provider	Until the end of 7 years after the death	Regulations 12, 183
Record of service's compliance history	Approved provider	Until the end of 3 years after the approved provider operated the service	Regulation 167

Records and documents required to be kept at the service (National Regulations 183)			
Type of record	Responsibility	Timeframe	Reference
Record of responsible person in day-to-day charge including certified supervisors placed in day-to-day charge	Approved provider	Until the end of 3 years after the staff member works for the service	Section 162 Regulations 150, 177
For centre-based services only			
Staff record	Approved provider	Until the end of 3 years after the staff member works for the service	Regulation 145
Record of access to early childhood teachers	Approved provider	Until the end of 3 years after the staff member works for the service	Regulation 152
Record of educators working directly with children	Approved provider	Until the end of 3 years after the staff member works for the service	Regulation 151
Record of volunteers and students	Approved provider	Until the end of 3 years after the volunteer or student attended the service	Regulation 149
For family day care services only			
Assessment of family day care residences and approved family day care venues	Approved provider	Until the end of 3 years after the record was made	Regulation 116
Record of family day care staff (including educators, co-ordinators and assistants)	Approved provider	Until the end of 3 years after the staff member works for the service	Regulation 154
Record of visitors to family day care residence or approved family day care venue	Family day care educator	Until the end of 3 years after the record was made	Regulation 165

Chapter 5: Review, enforcement and compliance

State and territory regulatory authorities are responsible for the administration of the National Quality Framework, including monitoring and enforcing compliance with the *National Law* and the *National Regulations*.

Consistent with the objectives of the National Quality Framework, the approach to enforcement and compliance is to:

- ensure the safety, health and wellbeing of children
- improve children's educational and developmental outcomes
- promote continuous quality improvement in education and care services.

Regulatory authorities have a range of approaches and tools to facilitate these objectives and consistently reinforce the requirements of the National Quality Framework.

Regulatory authorities will educate and inform providers and services and empower them to understand and meet their obligations.

Regulatory authorities are also guided by the principle of proportionality and will focus on achieving the desired outcome in the most efficient manner. When deciding how to respond to an incident or issue, regulatory authorities will consider the circumstances of each case and the risk to children (both short and long term). They may also take into account the compliance history of the approved provider or approved service.

Regulatory authorities will endeavour to take action that is proportionate to the issue and is most likely to achieve improved outcomes for children.

For more information about the role and functions of a regulatory authority, see *Chapter 6.1 – ACECQA and regulatory authorities*.

Approaches and tools to assist with compliance

Approaches/Tools	Examples
Empowering parents and families	<ul style="list-style-type: none"> Quality assessment ratings Education and information about the National Quality Framework
education and Information	<ul style="list-style-type: none"> Targeted advisory visits Guidance on completing the Quality Improvement Plan Guidance on how to meet the <i>National Law</i>, National Regulations and <i>National Quality Standard</i>, (for example, through publications or discussions during a visit) Referrals to resources and support agencies Feedback and acknowledgement of progress
Monitoring	<ul style="list-style-type: none"> Formal and informal interactions with services Unannounced service visits Targeted monitoring campaigns—visits to services or other monitoring actions targeted at specific issues (for example, record keeping or staffing arrangements) Responding to complaints or notifications Collection and analysis of compliance information
Regulatory actions, including administrative and compliance actions	<ul style="list-style-type: none"> Service interactions and discussions Enforceable undertakings Sanctions, prosecutions, prohibition notices, emergency action notices, suspensions of family day care educators, emergency removal of children Conditions on approvals or certificates Compliance notices and directions Suspension or cancellation of approvals

Authorised officers

National Law: Section 195-197, 204-208, 210, 212

National Regulations: Regulation 187

A regulatory authority will appoint authorised officers to monitor and enforce compliance with the *National Law* and *National Regulations*. Each authorised officer will be issued with an identity card which must be carried whenever the officer is exercising their functions under the *National Law* and *National Regulations*. Authorised officers will have a range of powers, including to:

- enter and inspect education and care service premises (including unapproved premises under a search warrant)
- obtain information, documents and evidence

- inspect and copy documents
- require a person to provide evidence of their age, name and address.

An authorised officer may exercise these powers in order to:

- monitor compliance with the *National Law*
- conduct a rating assessment or
- obtain information requested by the regulatory authority.

In addition, the *National Law* provides for offences related to the enforcement activities of regulatory authorities, such as obstructing authorised officers or refusing to answer questions or provide information.

Monitoring of education and care services

A schedule of visits (announced, unannounced, random, targeted campaign, and assessment and rating) will ensure that education and care services are regularly monitored by regulatory authorities. Notification of incidents by approved services and complaints provide additional monitoring opportunities to ensure ongoing compliance by approved services.

Regulatory authorities will use a risk-based methodology to target monitoring and compliance activities effectively. This is consistent with the principle of earned autonomy and means that regulatory authorities will allocate resources to the areas of greatest need.

Regulatory authorities will provide guidance and information to assist approved providers and services to understand their responsibilities and comply with the *National Law* and *National Regulations*.

Compliance actions

National Law: Sections 176-180, 182, 189, 291

National Regulations: Regulation 190

The *National Law* gives the regulatory authority a range of tools to enable appropriate and proportionate responses to non-compliance, including the power to:

- issue infringement notices
- enter into enforceable undertakings
- issue compliance directions or compliance notices
- issue prohibition notices
- issue a notice to suspend a family day care educator
- issue an emergency action notice to remove or reduce an immediate risk to the safety, health or wellbeing of a child or children

- remove children from an education and care service if there is an immediate danger to their safety, health or wellbeing
- suspend or cancel an approval
- prosecute for breaches of the *National Law*.

Examples of when the regulatory authority may remove a child or children from an education and care service under section 189 of the National Law include:

- *when there is a fire in the surrounding areas and the assistance of the regulatory authority to remove children from the service will assist with ensuring the safety of children*
- *where the regulatory authority visits a service and determines that a child or children are not being provided with adequate care because the service has exceeded the maximum number of children to whom care is approved to be provided.*

Regulatory authorities may escalate their response to non-compliance over time or may choose a specific response based on the context, the level of risk and available information.

Infringement notices

National Law: Sections 172, 173, 176, 291

National Regulations: Regulation 190

The *National Law* and *National Regulations* set out offences for which an infringement notice may be issued. An infringement notice operates like a fine.

The *National Law* sets out three offences that are subject to an infringement notice:

- failure to display prescribed information
- failure to notify certain circumstances to the regulatory authority
- failure to comply with a compliance direction.

The *National Regulations* set out offences which are also subject to an infringement notice—**see Attachment B** (page 133)

An authorised officer may issue an infringement notice which imposes an amount of 10% of the maximum penalty that could be enforced by a court for that offence. For example, the maximum penalty for not complying with Regulation 104 (fencing and security) is \$2000, therefore an infringement notice may impose an on-the-spot fine of \$200 for non-compliance with the requirement. The use of infringement notices provides a more targeted enforcement option. Offences that are suitable for applying an infringement notice are typically minor offences and are clear and unambiguous. They also provide an immediate sanction for a breach.

Once an infringement notice is paid, the infringement can no longer be taken into account as part of a person's compliance history—that is, it cannot be considered in assessing a person's fitness and propriety or a service's rating assessment.

However, the payment of a fine does not mean that an approved provider or approved service is not required to take necessary actions to become compliant with the *National Law* and *National Regulations*. If the identified non-compliance continues, the regulatory action will escalate to more serious sanctions.

Enforceable undertaking

National Law: Sections 180-181

If a person has allegedly breached the *National Law* or *National Regulations*, a regulatory authority may enter into a written agreement where the person agrees to take certain action, or refrain from taking certain action, to comply with the *National Law* or *National Regulations*. An enforceable undertaking could be used where strict compliance with the provision may not achieve the desired outcome. For example, where health and hygiene practices are not being followed, a regulatory authority might request an approved provider to agree to train staff in health and hygiene practices, rather than issuing a compliance notice. This is consistent with the principle of an ‘outcomes focus’ in regulatory actions.

By agreeing to, and complying with, an enforceable undertaking, proceedings cannot be brought against the person for the offence. The regulatory authority may withdraw its acceptance of the undertaking at any time. It may also publish an enforceable undertaking on its website.

If the person fails to comply with the enforceable undertaking, the regulatory authority can apply to a tribunal or court for an order to enforce the undertaking. If the tribunal or court determines that the undertaking has not been complied with, the regulatory authority can bring proceedings for the alleged breach.

Compliance directions

National Law: Sections 176, 190

National Regulations: Regulation 188, Schedule 3

The *National Law* enables a regulatory authority to issue a compliance direction, if it is satisfied that an approved service has not complied with a provision prescribed by the *National Regulations*.

A compliance direction is a written enforcement notice that directs an approved provider to take certain steps to comply with that provision, within a specified timeframe. This is a low-order enforcement notice.

A decision to issue a compliance direction is subject to internal review.

It is an offence under the *National Law* to fail to comply with a compliance direction. If an approved provider does not comply with a compliance direction, a regulatory authority may bring proceedings before a court to enforce the compliance direction. The maximum penalty for not complying with a compliance direction is \$2000 for an individual or \$10 000 for an entity.

The provisions that are prescribed in the *National Regulations* generally apply to obligations that are unambiguous (for example, obtaining a first aid kit). The regulations that are subject to a compliance direction are set out in the table at Attachment B.

Compliance notices

National Law: Sections 177, 190

A regulatory authority may issue a compliance notice if it is satisfied that an approved provider is not complying with any provision of the *National Law* or *National Regulations*, and direct the approved provider to take certain steps within a specified period of time to comply with the provision. This is a high order enforcement notice.

A decision to issue a compliance notice is subject to internal review.

It is an offence under the *National Law* to fail to comply with a compliance notice. If an approved provider does not comply with a compliance notice, a regulatory authority may bring proceedings before a court to enforce the compliance notice. The maximum penalty for not complying with a compliance notice is \$6000 for an individual or \$30 000 for an entity.

Prohibition notice

National Law: Sections 182-188

National Regulations: Regulation 189

A regulatory authority may issue a prohibition notice to a person if it considers that there may be an unacceptable risk of harm to a child if the person was allowed to provide education and care to a child or remain at a service. A prohibition notice may be given to an approved provider, certified supervisor, educator (centre-based or family day care), employee, contractor, volunteer or anyone else involved in the provision of education and care.

Before a regulatory authority issues a prohibition notice, it must:

- notify the person and provide reasons for the action
- allow the person to respond to the notification before making its final decision
- advise the person of the final decision.

A regulatory authority may also issue a prohibition notice without prior notification if there is immediate risk to the safety, health or wellbeing of a child or children.

A prohibition notice prohibits the person to whom it applies from:

- providing education and care to children for an approved service
- being engaged as a supervisor, educator, family day care educator, contractor or staff member, or being a volunteer at, an approved service
- carrying out any other activity relating to an approved service.

A prohibition notice is ongoing. A person subject to a prohibition notice may apply for it to be cancelled. In addition, if the regulatory authority is satisfied that there is no sufficient reason for the prohibition notice to remain in force, the regulatory authority must cancel the prohibition notice.

It is an offence to engage a person if the approved provider knows, or should have reasonably known, that the person has been issued with a prohibition notice.

Notice to suspend a family day care educator

National Law: Section 178

A regulatory authority may issue a notice directing the approved provider of a family day care service to suspend education and care by a family day care educator, if the regulatory authority is satisfied that, because of the conduct of, or the service provided by a family day care educator :

- the approved provider or nominated supervisor is not compliant with the *National Law* or *National Regulations*, or
- there is a risk to the safety, health or wellbeing of the children at the service.

The regulatory authority may issue a show cause notice outlining its intention to direct the provider to suspend the provision of education and care by the family day care educator, and the reasons for doing so. The show cause notice must be delivered personally to the family day care educator.

The approved provider, the nominated supervisor and the family day care educator may make a submission to the regulatory authority regarding the proposed direction within 14 days of receiving the show cause notice. The regulatory authority must consider any submissions received within this timeframe in making its decision.

Emergency action notice

National Law: Section 179

If a regulatory authority is satisfied that an approved service is operating in a way that poses (or is likely to pose) an immediate risk to the safety, health or wellbeing of children being educated and cared for by that service, the regulatory authority may direct the approved provider to take certain steps to remove or reduce the risk.

The direction must be in writing and must:

- specify the steps to be taken by the approved provider
- specify the timeframe for the steps to be taken (not more than 14 days).

Emergency removal of children

National Law: Section 189

Where the regulatory authority considers on reasonable grounds that there is an immediate danger to the safety, health or wellbeing of a child or children, the regulatory authority (with the assistance of others such as police officers) may take emergency action to remove the child or children from the approved service premises. If this occurs, the regulatory authority must ensure that the parents of any children impacted are immediately notified of the situation and provided their child's location.

Offences under the National Law and National Regulations

The *National Law* sets out a range of higher order offences, which relate to matters such as staffing arrangements, the educational programs, inadequate supervision and failing to protect children from harm and hazards.

The *National Law* and *National Regulations* prescribe penalties which are the maximum penalty a court might apply to the offence outlines in the Law.

These are set out in Attachment A (page 131)

Most offences apply only to the approved provider as the person with the overall responsibility for ensuring that the approved service complies with the *National Law* and the *National Regulations*. However, in limited circumstances, some offences apply to nominated supervisors, family day care educators, or educators or staff members based on the person's control over the particular action or omission. For example, the approach of regulatory authorities would be to hold an educator responsible for inappropriately disciplining children, if an approved service had a thorough induction and clear policies in place, but the educator did not follow these.

The *National Regulations* also sets out a number of lower order offences.

These are set out in Attachment B (page 133)

The *National Regulations* provide for two tiers of penalty— \$1000 or \$2000.

- offences relating to a risk to the health, safety or wellbeing of a child or children, or that affect the integrity of the operation of the national regulatory system, incur the maximum penalty of \$2000
- matters relating to records, policies and procedures have a maximum penalty of \$1000.

In most cases the responsibility for complying with the Law rests with the approved provider. For example, the approved provider would be responsible (and therefore subject to the penalty) for failing to provide adequate shaded space. Some offences may apply to nominated supervisors, educators or other staff members based on the person's control over the particular action or omission. For example, a family day care educator could be held responsible (and therefore subject to the penalty) for being affected by drugs or alcohol while providing education and care to children as part of the service.

The following persons may bring proceedings for an offence:

- the regulatory authority
- a person authorised by the regulatory authority
- a police officer.

Proceedings for an offence must be commenced within two years of the date of the alleged offence.

Publication of enforcement action taken under the National Law

National Law: Section 270

National Regulations: Regulations 227-228

A regulatory authority may publish information about enforcement actions, including:

- a prosecution for an offence against the *National Law* or *National Regulations* leading to a conviction or finding of guilt or a plea of guilt
- the acceptance by the regulatory authority of an enforceable undertaking
- the issue of a compliance notice
- the suspension or cancellation (other than a voluntary suspension or surrender) of a provider approval, service approval or supervisor certificate
- an amendment made to a provider approval, service approval or supervisor certificate for the purposes of enforcement.

The information published by a regulatory authority is subject to a Privacy Framework created under the *National Law*. For further information see *Chapter 6.2-Information, records and privacy*.

The information that may be published includes:

- the nature of the enforcement action
- the details of the person in relation to whom enforcement action was taken (eg name of the approved provider)
- the reasons for the taking the enforcement action (for example, details of the alleged breach)
- the details of the enforcement action taken.

Information published must not include information that could:

- identify an individual other than an approved provider or certified supervisor, or a person who is being prosecuted for an offence under the *National Law*
- identify or lead to the identification of a child.

If the enforcement action is a reviewable decision, the information will not be published by the regulatory authority until the end of the period in which an application for review can be made.

Review of decision— internal review

National Law: Sections 190-191

National Regulations: Regulations 186, 228

A reviewable decision for internal review is a decision made by the regulatory authority under the *National Law* including:

- to refuse to grant a provider approval, service approval or supervisor certificate
- to amend or refuse to amend a provider approval, service approval or supervisor certificate
- to impose a condition on a provider approval, service approval or supervisor certificate
- to suspend a provider approval, service approval or supervisor certificate without a show cause notice
- to refuse to consent to the transfer of a service approval
- to revoke a service waiver
- to issue a compliance direction
- to issue a compliance notice.

A person who is the subject of a decision listed above may apply to the regulatory authority in writing for a review of the decision. The application must be made within 14 days after the person is notified, or becomes aware of, the decision. There is no fee for an internal review by a regulatory authority.

A separate process applies to a review of assessment and ratings decisions - for more information see *Chapter 3.4- Review of ratings*.

The person who conducts the review for the regulatory authority must not be a person who was involved in making the initial decision. The person conducting the review may ask the applicant for further information.

The regulatory authority must conduct an internal review under the *National Law* within 30 days after the application is made, unless the regulatory authority requests further information or the applicant otherwise agrees. In this case, the period may be extended for up to 30 days.

Any consequences that may occur from a decision cannot come into effect until the outcome of a review is known. For example, if a decision to issue a compliance notice is under review, it would not be published unless the decision is confirmed after the review.

Review of decision—external review

National Law: Sections 192-193

National Regulations: Regulation 228

A reviewable decision for external review is a decision made by the regulatory authority as a result of an internal review (other than in relation to the issue of a compliance direction or compliance notice), or a decision made:

- to suspend a provider approval, service approval or supervisor certificate after the show cause process
- to cancel a provider approval, service approval or supervisor certificate after the show cause process
- to direct an approved provider of a family day care service to suspend the education and care of children by a family day care educator, or
- to give a prohibition notice or to refuse to cancel a prohibition notice.

A person who is the subject of a decision listed above may apply to the relevant tribunal or court for a review of the decision. The application must be made within 30 days after the person is notified of the decision.

The tribunal or court may confirm, amend or substitute another decision for the decision made by the regulatory authority.

The rules and procedures of the relevant tribunal or court, including any fees, apply to an external review.

The relevant tribunal or court for each jurisdiction is:

ACT: ACT Civil and Administrative Tribunal

NSW: Administrative Decisions Tribunal of New South Wales

SA: Administrative and Disciplinary Division of the District Court of South Australia

NT: Local Court

Tas: Magistrates Court (Administrative Appeals Division)

Qld: Queensland Civil and Administrative Tribunal

WA: State Administrative Tribunal

Vic: Victorian Civil and Administrative Tribunal

Attachment A

Summary of offences under the National Law

Offence	Reference	Approved provider	Nominated supervisor	Family Day Care Educator	Staff member	Infringement Notices
Provide an education and care service without service approval	Section 103	✓				
Advertise a service without service approval	Section 104	✓				
Claim to be a certified supervisor without a supervisor certificate	Section 132		✓		✓	
Operate a service without nominated supervisor	Section 161	✓				
Operate a service without responsible person present (centre-based service only)	Section 162	✓				
Fail to employ or engage at least one family day care co-ordinator (family day care service only)	Section 163	✓				
Fail to provide support to family day care educators	Section 164	✓				
Inadequate supervision	Section 165	✓	✓	✓		
Inappropriate discipline	Section 166	✓	✓	✓	✓	
Fail to protect children from harm and hazards	Section 167	✓	✓	✓		
Fail to provide required program	Section 168	✓	✓			
Fail to meet minimum staffing requirements, including ratios and qualifications	Section 169	✓	✓	✓		
Allow unauthorised person to remain on premises	Section 170	✓	✓	✓		
Fail to comply with direction to exclude inappropriate person	Section 171	✓	✓	✓		
Fail to display prescribed information	Section 172	✓				✓

Offence	Reference	Approved provider	Nominated supervisor	Family Day Care Educator	Staff member	Infringement Notices
Fail to notify circumstances to the regulatory authority	Section 173	✓				✓
Fail to notify information to the regulatory authority	Section 174	✓				
Fail to keep enrolment and other documents	Section 175	✓		✓		
Compliance Directions	Section 176	✓				✓
Engage person to whom prohibition notice applies	Section 188	✓				
Obstruct an authorised officer	Section 207	Any or all persons				
Fail to assist an authorised officer	Section 208	Any or all persons				
Destroy or damage notices or documents	Section 209	Any or all persons				
Impersonate an authorised officer	Section 210	Any or all persons				
Fail to comply with notice or requirement	Section 217	Any or all persons				
Hinder or obstruct regulatory authority	Section 218	Any or all persons				

Attachment B

Summary of offences under the National Regulations

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Quality Improvement Plans (Regulation 55)	✓				✓	
Offences in relation to giving false or misleading statements about ratings (Regulation 72)	✓				✓	\$2000
Record of child assessments or evaluations for delivery of education program (Regulation 74)	✓				✓	
Information about education program to be kept available (Regulation 75)	✓				✓	
Health and hygiene practices and safe food practices (Regulation 77)	✓	✓	✓	✓	✓	\$2000
Access to safe drinking water and regular food and beverages (Regulation 78)	✓	✓	✓		✓	\$2000
Service providing food and beverages (Regulation 79)	✓	✓	✓		✓	\$2000
Weekly menu (Regulation 80)	✓	✓	✓	✓	✓	\$1000
Sleep and rest (Regulation 81)	✓	✓	✓		✓	\$1000

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Tobacco, drug and alcohol free environment (Regulation 82)	✓		✓		✓	\$2000
Staff members not to be affected by alcohol or drugs (Regulation 83)	✓	✓	✓	✓	✓	\$2000
Awareness of child protection law (Regulation 84)	✓				✓	\$1000
Notification to parents of incident, injury, trauma and illness (Regulation 86)	✓			✓		\$2000
Infectious diseases (Regulation 88)	✓			✓		\$2000
First aid kits (Regulation 89)	✓		✓	✓	✓	\$2000
Medical conditions policy to be provided to parents (Regulation 91)	✓				✓	
Administration of medication (Regulation 93)	✓	✓	✓			\$2000
Emergency and evacuation procedures (Regulation 97)	✓			✓	✓	\$2000
Telephone or other communication equipment (Regulation 98)	✓			✓	✓	\$1000
Children leaving the education and care service premises (Regulation 99)	✓	✓	✓			\$2000

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Risk assessment must be conducted before excursion (Regulation 100)	✓	✓	✓			\$2000
Authorisation for excursions (Regulation 102)	✓	✓	✓			\$1000
Premises, furniture and equipment to be safe, clean and in good repair (Regulation 103)	✓				✓	\$2000
Fencing and security (Regulation 104)	✓			✓	✓	\$2000
Access to sufficient furniture, materials and developmentally appropriate equipment (Regulation 105)	✓				✓	
Laundry and hygiene facilities (Regulation 106)	✓				✓	
Space requirements- indoors (Regulation 107)	✓				✓	\$2000
Space requirements- outdoor space (Regulation 108)	✓				✓	\$2000
Ventilation and natural light (Regulation 110)	✓				✓	\$2000
Administrative space (Regulation 111)	✓				✓	
Nappy change facilities (Regulation 112)	✓			✓	✓	\$1000

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Outdoor space-natural environment (Regulation 113)	✓				✓	
Outdoor space-shade (Regulation 114)	✓				✓	\$1000
Premises designed to facilitate supervision (Regulation 115)	✓				✓	
Assessments of family day care residences and approved venues (Regulation 116)	✓				✓	\$2000
Glass (Regulation 117)	✓				✓	
Educational leader (Regulation 118)	✓				✓	
Family day care educator to be at least 18 years old (Regulation 119)	✓				✓	\$1000
Educators who are under 18 to be supervised (Regulation 120)	✓				✓	\$1000
Relationships in groups (Regulation 156)	✓				✓	
Access for parents (Regulation 157)	✓	✓	✓		✓	\$1000
Residents at family day care residence and family day care educator assistants to be fit and proper persons (Regulation 163)	✓				✓	\$2000

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Requirement for notice of new persons at residence (Regulation 164)	✓				✓	\$2000
Children not to be alone with visitors (Regulation 166)	✓		✓			\$2000
Policies and procedures in place (Regulation 168)	✓				✓	\$1000
Additional policies and procedures for family day care (Regulation 169)	✓				✓	\$1000
Policies and procedures to be followed (Regulation 170)	✓				✓	\$1000
Policies and procedures to be available (Regulation 171)	✓				✓	\$1000
Notification of change to policies and procedures (Regulation 172)	✓				✓	
Prescribed enrolment and other documents to be kept by approved provider (Regulation 177)	✓			✓	✓	\$2000
Prescribed enrolment and other records to be kept by family day care educator (Regulation 178)			✓	✓		\$2000

Offence	Approved provider	Nominated supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Confidentiality of records kept by approved provider (Regulation 181)	✓					\$2000
Confidentiality of records kept by family day care educator (Regulation 182)			✓			\$2000
Storage of records and other documents (Regulation 183)	✓				✓	
Law and regulations to be available (Regulation 185)	✓				✓	
Prescribed form of identity card (Regulation 187)	Applies to an authorised officer					\$1000
False or misleading documents (Regulation 191)	Applies to an authorised officer					\$2000

Chapter 6: Administration

This chapter addresses administrative matters.

Part 6.1 describes the Australian Children’s Education and Care Quality Authority—the national body responsible for overseeing the implementation of the National Quality Framework across Australia. It also describes the role and functions of a regulatory authority.

Part 6.2 outlines matters relating to information, records and privacy. It also sets out the privacy, freedom of information and legislative framework that applies to ACECQA and to regulatory authorities.

In addition it sets out the ombudsman legislative framework that applies to ACECQA.

These frameworks are based on the Commonwealth *Privacy Act 1988*, *Commonwealth Freedom of Information Act 1982*, *Commonwealth Ombudsman Act 1976* and operate as a law of each participating jurisdiction. It outlines the requirements for registers of approved providers, education and care services and certified supervisors.

Part 6.3 outlines the application of fees.

Part 6.4 outlines who the regulatory authority can delegate its authority to.

Part 6.1: The National Authority and regulatory authorities

Australian Children’s Education and Care Quality Authority

National Law: Sections 198, 224-259, 274-281

National Regulations: Regulations 192-194

The Australian Children’s Education and Care Quality Authority (ACECQA) is the National Authority established under the *National Law*.

The main role of ACECQA is to guide the administration of the National Quality Framework to ensure consistent implementation across all states and territories.

ACECQA’s other functions include:

- establish consistent, effective and efficient procedures for the operation of the National Quality Framework
- promote and foster continuous quality improvement by approved services
- in conjunction with the regulatory authorities, educate and inform education and care services and the community about the National Quality Framework
- establish and maintain national registers of approved providers, approved services and certified supervisors, and to publish those registers
- determine the qualifications for authorised officers and provide support and training for staff of regulatory authorities
- determine the qualifications required to be held by educators, including the assessment of equivalent qualifications
- keep national information on the assessment, rating and regulation of education and care services
- assess and determine applications for the highest level of rating (the Excellent rating) for approved education and care services
- publish, monitor and review ratings of approved education and care services
- conduct national auditing for the purposes of the national legislation
- publish guides and resources to support parents and the community in understanding quality in relation to education and care services and to support the education and care services sector in understanding the National Quality Framework
- publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children
- publish practice notes and guidelines for the application of the *National Law* and *National Regulations*
- report to and advise the Ministerial Council on the National Quality Framework

- report to the regulatory authorities and the Australian Government Department of Education, Employment and Workplace Relations in relation to the evaluation of the National Quality Framework.

Under the National Law, ACECQA may also:

- collect, hold and use information obtained under the *National Law* by ACECQA or a regulatory authority about the provision of education and care to children and about providers of education and care services
- develop protocols for communication and dispute resolution among ACECQA, regulatory authorities and the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) to provide for consistency in the implementation and administration of the National Quality Framework
- collect, waive, reduce, defer and refund fees and enter into agreements in relation to fees
- enter into agreements in relation to fees and funding with regulatory authorities
- undertake research and evaluation activities for the purpose of its functions under the *National Law*
- enter into contracts
- acquire, hold, dispose of, and deal with, real and personal property
- borrow and invest money
- develop and supply resources and consultancy services to the education and care sector on a commercial basis
- do anything necessary to be done in carrying out its functions under the National Law.

ACECQA is governed by a board of 13 members consisting of one nominee from each state and territory, four members nominated by the Commonwealth and one independent chair. Board members have skills and expertise in areas such as assessment of quality in education and care services, early childhood development, labour market and workforce participation, best practice regulation, research, evaluation and performance, and financial management and corporate governance. Members of the board hold office for up to three years. They can be reappointed for a further period of up to three years.

The Board is responsible for ensuring that ACECQA meets its statutory requirements and undertakes its responsibilities under the *National Law* properly and efficiently. The Board provides strategic direction and leadership for the ACECQA and formulates strategies for carrying out its functions under the National Quality Framework. The Board must work collaboratively with regulatory authorities and the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) to support and promote the National Quality Framework.

ACECQA has a Chief Executive Officer (CEO) responsible for day-to-day management and is accountable to the ACECQA Board. The CEO may attend board meetings but is not a member of the Board and is not entitled to vote.

In keeping with the objectives of the National Quality Framework, ACECQA will ensure that the regulatory burden on education and care services is minimised as much as possible. ACECQA oversees jurisdictions to ensure that regulatory actions are open and transparent, and to encourage public confidence in the quality and integrity of decision making. ACECQA will undertake national auditing of the administration of the National Quality Framework.

Approved providers and approved services will rarely deal directly with ACECQA, as most interactions will occur through the regulatory authority. The *National Law* allows a representative of ACECQA to enter an approved education and care service premises when accompanied by an authorised officer from a regulatory authority. The purpose of such a visit would be to audit the assessment and ratings process to promote consistency across all states and territories.

An approved provider might contact ACECQA to apply for a further review of a reviewable decision by a regulatory authority, or to apply for the Excellent rating. Providers, services and educators are also able to access information and resources provided by ACECQA through their website:

www.acecqa.gov.au

ACECQA may exercise its functions in cooperation with, or with the assistance of, a range of agencies or types of bodies such as the Australian Bureau of Statistics, research-specific bodies, and education and training institutions and related organisations.

ACECQA is required to submit an annual report to the Standing Council within four months after the end of each financial year.

The *National Law* and *National Regulations* also set out the arrangements for money and property payable into the Australian Children's Education and Care Quality Authority Fund, the procedures for the allocation, transfer or reimbursement of money to state and territory regulatory authorities and the procedures for the proper investment of money.

Regulatory authorities

National Law: Sections 260–261

The role of a regulatory authority is to:

- administer the National Quality Framework
- assess approved education and care services against the *National Quality Standard* and the *National Regulations*, and to determine the ratings of those services
- monitor and enforce compliance with the *National Law* and *National Regulations*
- receive and investigate complaints
- educate and inform education and care services and the community about the National Quality Framework, in conjunction with ACECQA and the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR)
- support and promote continuous quality improvements in education and care services, in collaboration with ACECQA
- undertake information collection, review and reporting.

Under the *National Law*, a regulatory authority has the power to:

- collect, hold and use information obtained under the *National Law* and *National Regulations* about the provision of education and care
- collect, hold and use information about approved providers, family day care educators and certified supervisors
- maintain and publish registers of approved providers, approved services and certified supervisors
- publish information about the National Quality Framework, including ratings and prescribed information about compliance with the *National Law* and *National Regulations*
- collect, waive, reduce, defer and refund fees, and enter into agreements about fees
- enter into agreements about fees and funding with ACECQA
- exercise any other powers as required by the *National Law* or *National Regulations*.

The collection and use of information about approved providers, family day care educators and certified supervisors is subject to a privacy framework created under the *National Law*. For further information see *Part 6.2: Information, records and privacy*.

Part 6.2: Information, records and privacy

One of the principles underlying the National Quality Framework is promoting greater transparency and accountability. This is achieved not only through the publication of ratings and other types of information, but also the sharing of information between ACECQA, regulatory authorities and other government agencies.

The National Quality Framework seeks to improve public knowledge, and access to information, about the quality of education and care services. As part of this, the *National Law* allows ACECQA and regulatory authorities to publish certain information about education and care services, such as their quality ratings and compliance actions.

To ensure a uniform national system, the *National Law* applies a consistent privacy framework to regulatory authorities. This means that the same privacy and freedom of information laws will apply for information related to the National Quality Framework in each regulatory authority instead of having separate state and territory laws apply.

Application of laws

National Law: Sections 263–265

National Regulations: Regulations 195–223

The *National Law* establishes a privacy and freedom of information framework that applies to ACECQA and the regulatory authorities. This includes the appointment of an Education and Care Services Privacy Commissioner, an Education and Care Services Freedom of Information Commissioner and an Education and Care Services Ombudsman. State and territory privacy and freedom of information laws do not apply to ACECQA and the regulatory authorities. The *National Law* also establishes an ombudsman framework to deal with complaints against ACECQA. Relevant state and territory ombudsman legislation continues to apply to regulatory authorities.

Records for ACECQA are kept according to the New South Wales State Records Act 1998 (as applied as a Law of each state or territory for the purposes of the National Quality Framework). The records kept by regulatory authorities are subject to the applicable records law for each state or territory.

Publication of registers and information

National Law: Sections 266–270

National Regulations: Regulations 226–231

The *National Law* provides for the keeping and publication of registers as follows:

- ACECQA must keep a register of approved providers and certified supervisors, which may be inspected or copied
- regulatory authorities must keep a register of education and care services, which may be inspected or copied
- Approved providers of family day care services must keep a register of their family day care educators, and provide this information to the regulatory authority on request.

ACECQA must keep and publish on its website a register of approved providers. The following information must be included in the register of approved providers:

- the name of each approved provider
- the postal address of the approved provider
- any conditions to which the provider approval is subject
- the date the approval was granted
- the provider approval number
- the service approval number of each education and care service operated by the approved provider.

Each regulatory authority must keep and publish on its website a register of approved services operating in its jurisdiction. The following information must be included in the register of approved services:

- the name and contact details of each service
- the address of each centre-based service
- the address of the principal office of a family day care service
- the operating hours of a centre-based service
- the approved number of places of a centre-based service
- the date the service approval was granted
- any conditions applicable to the service approval
- the service approval number
- the name of the approved provider for each service
- the provider approval number
- the rating levels for each service.

ACECQA must keep and publish on its website a register of certified supervisors. The following information must be included in the register of certified supervisors:

- the name of each certified supervisor
- the prescribed class of persons to which the certified supervisor belongs, if applicable, and the name of any relevant education and care service or school
- the date the supervisor certificate was granted
- the supervisor certificate number.

The *National Law* also allows ACECQA and a regulatory authority to publish a range of information, including:

- name of each approved provider, approved service and certified supervisor
- conditions on any service approval
- for a centre-based service, the address of the service
- for a family day care service, the address of its principal office
- rating levels of each service
- contact details and operating hours of an approved service
- approved number of places for a centre-based service.

A regulatory authority may also publish information about enforcement actions, such as information about compliance notices, prosecutions, enforceable undertakings, amendments, suspension or cancellation of approvals or certificates, or prosecutions for offences under the *National Law* or *National Regulations*.

This, along with information about the rating levels of each service, enables families or prospective families to have ready access to transparent information about the quality of services, including any history of action that has been or is being taken to address non compliance with the legislative requirements.

If the compliance action to be published is a reviewable decision, a regulatory authority will not publish details of that compliance action until all review processes have been completed. If an application is made for an external review, the *National Regulations* allow the information to be published if the enforcement action is confirmed, amended or another action is substituted.

For more information about requesting a review of a decision made by a regulatory authority, see Part 5: Review, enforcement and compliance.

Information published under section 270 of the *National Law* must not include information that could lead to the identification of an individual, other than an approved provider, certified supervisor, or person being prosecuted under the *National Law* or *National Regulations*.

Disclosure of information

National Law: Sections 271–273

Regulatory authorities may disclose information about education and care services to other regulatory authorities, to ACECQA or to the Commonwealth for the purposes of:

- the *National Law* and *National Regulations*
- research and the development of national policy with respect to education and care services
- the funding of education and care services or the payment of benefits or allowances to persons using education and care services
- compliance and disciplinary action.

Communication between jurisdictions promotes effective regulation of the education and care sector under a national system. Regulatory authorities will develop communication protocols for sharing information between jurisdictions that is consistent with the objectives of the National Quality Framework and meets obligations under applicable privacy and freedom of information laws.

The *National Law* requires a regulatory authority to disclose to other regulatory authorities the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor or certified supervisor. It also allows a regulatory authority to disclose a prohibition notice issued under the *National Law* to the head of the government department responsible for administering the working with children law in that jurisdiction.

Information provided under section 271 of the *National Law* must not include information that could lead to the identification of an individual, other than an approved provider, a certified supervisor, a family day care educator who has been suspended, a person issued with a prohibition notice, or a person being prosecuted for an offence under the *National Law*.

The *National Law* also allows a regulatory authority to disclose information to an education and care service in certain circumstances. An approved provider may request the regulatory authority to disclose whether a person is subject to a prohibition notice issued under the *National Law*, or whether a family day care educator has been suspended from providing education and care as part of a family day care service.

Any person who is exercising their functions under the *National Law* must not disclose protected information to another person. This does not apply if:

- the information is disclosed in accordance with the *National Law* and *National Regulations*
- the disclosure is authorised or required under any law of a participating jurisdiction
- the disclosure is with the agreement of the person to whom the information relates
- the information relates to proceedings that are before a court or tribunal that are or were open to the public
- the information is (or was) accessible to the public—for example, because it was published for the purposes of the *National Law* or *National Regulations*, or
- the disclosure is authorised by the Standing Council.

‘Protected information’ means information that is personal to a particular individual and that identifies or could lead to the identification of that individual and comes to a person’s knowledge in the course of, or because of, the person exercising functions under the National Law.

Part 6.3: Fees

National Law: Sections 227, 261,
National Regulations: Regulations 232–236

The *National Law* allows for fees to be paid where specified in the *National Regulations*. In setting fees for various transactions under the *National Law*, the objectives are to:

- set a nationally consistent and equitable fee structure that will provide funding for the activities of regulatory authorities and ACECQA
- streamline all fees to make it simpler and easier for services
- provide certainty for services with regard to costs.

The *National Law* sets out the transactions that may be subject to a fee as prescribed in the *National Regulations*. Not all transactions are subject to fees.

All fees are linked to transactions which are self-initiated, such as applications for provider approval and service waivers, other than the annual fee for continuing service approval.

Multiple service types

Where an approved provider operates multiple service types from the same premises (for example, a preschool and outside school hours care), only one approval is required and therefore only one annual service fee applies.

However, if an approved provider delivers education and care at separate premises, separate approvals are required for each premises and therefore separate fees apply.

Late payment fees (annual fees)

If the annual fee for a service approval is not paid on or before 1 July, the regulatory authority may charge the approved provider a late payment fee, in addition to the annual fee, for every 30 days (or part of 30 days) that the annual fee is overdue.

The late payment fee is 15% of the relevant annual fee required under regulation 33 of the *National Regulations*.

For example, if the annual fee is \$275, then the late payment fee would be \$41.25 for each 30 days (or part of 30 days) that the payment is overdue.

Waiver, reduction, deferral and refund of fees

The *National Law* allows a regulatory authority to waive, reduce, defer or refund a fee payable to it or paid under the *National Law*, or enter into agreements in relation to fees.

ACECQA may also waive, reduce, defer or refund any fee payable to it or paid if there are exceptional circumstances.

Indexation of fees

Fees required to be paid under the *National Law* and *National Regulations* are subject to annual indexation, which ensures that fees are consistent with inflation. ACECQA publishes the fees applicable for each financial year on its website at www.acecqa.gov.au

Part 6.4: Delegations

National Law: Section 262

National Regulations: Regulation 237

The *National Law* allows each participating jurisdiction to declare who will be the regulatory authority for that jurisdiction.

A regulatory authority may delegate any of its functions and powers under the *National Law* to any person employed under a public sector law of the jurisdiction, or any person in a class of persons prescribed in Regulation 237.

The *National Law* also allows a regulatory authority to declare there to be a regulatory authority for a class of education and care services within that jurisdiction; that is, there would be more than one regulatory authority in that jurisdiction. This may occur where there is a current division of regulatory responsibility within a jurisdiction, for example, where government preschools are regulated by a separate authority. However, the National Partnership Agreement on the Quality Agenda for Early Childhood Education and Care requires each jurisdiction to have a lead regulatory authority.

Any delegate of a regulatory authority must inform the regulatory authority of any conflict of interest they may have in relation to the delegated functions and powers.

Chapter 7: Transitional and Savings Arrangements

The *National Law* allows for the provision of transitional arrangements that will facilitate the change from the operation of an existing service to operating under the National Quality Framework.

The *National Regulations* set out two kinds of provisions:

- Transitional provisions - arrangements that are permitted to remain in place for a defined period of time;
- Saving provisions - arrangements that are permitted to remain in place indefinitely or until a decision is made in the future to amend such arrangements.

This chapter details the transitional and saving provisions that apply nationally. For details about specific arrangements which apply in each jurisdiction, see information sheets available from each regulatory authority, or refer to Chapter 7 of the *National Regulations*.

This chapter of the guide is divided into sections covering:

- Approvals
- Staffing arrangements and qualifications
- Physical environment
- Assessment and rating
- Compliance
- Information retention and sharing
- Approved Learning Frameworks
- regulatory authority contacts.

Approvals

Declared approvals

National Law: Sections 305 (definition), 306 (approved provider), 307 (approved service), 308 (family day care venue), 315 (Certified Supervisor), 316 (nominated supervisor)

The *National Law* allows for state or territory laws to make a range of declarations that deem existing licences or approvals to be approvals under the National Quality Framework.

For example state and territory laws may declare:

- that an owner or licensee of an education and care service is taken to be an approved provider
- an education and care service holding an approval or licence under a former education and care services law is taken to be an approved service
- a person to be taken to be a certified supervisor
- a person to be taken to be a nominated supervisor.

Each jurisdiction may have different positions under their former education and care services laws that are equivalent to nominated supervisor or certified supervisor. Regulatory authorities in each jurisdiction can provide further information about which positions in a service will be deemed to be equivalent.

This does not apply to an approved provider or approved service if the approval or licence was suspended immediately before 1 January 2012 under the jurisdiction law because the provider was not a fit and proper person to operate the service. If the service approval or licence was suspended immediately before 1 January 2012 for another reason, the service approval is taken to be suspended under the *National Law* for the period of the suspension.

Any conditions that applied to a former approval of the provider or service are taken to be conditions of the provider approval or service approval (as applicable) unless they are inconsistent with the *National Law*.

A family day care venue that is declared by a law of a participating jurisdiction to be a declared approved family day care venue is taken to be an approved family day care venue under the *National Law*.

Existing multiple approvals to merge

National Law: Section 312

If a provider held more than one former approval or licence for centre-based services operating from the same premises, the former approvals or licences can be considered to be one approved service under the *National Law*.

For example, if a provider operates a preschool and an outside school hours care service from the same school site, one joint service approval can cover those services under the National Law.

This does not apply to family day care services, or to an application for approval pending immediately before 1 January 2012.

Service waiver and temporary waiver

National Law: Section 310

If the provider applies to the regulatory authority for a service waiver or temporary waiver under the *National Law*, and the application was received by 31 March 2012, the service is considered to comply until the outcome of the application for waiver is determined by the regulatory authority.

Declared out of scope services

National Law: Sections 305 (definition), 309

National Regulations: Regulation 255

If a service was not required to be approved or licensed under a former education and care services law in that jurisdiction before 1 January 2012, and is an education and care service under the *National Law* from 1 January 2012, the service and its provider are taken to be an approved provider and approved service until 30 June 2012.

If the provider applies to the regulatory authority for a provider approval and service approval under the *National Law*, and the applications are received by 30 June 2012, the provider and service are considered to be an approved provider and approved service until the outcome of the application is determined by the regulatory authority.

There is no fee for an application for provider approval for a declared out of scope service.

Staffing arrangements

Preschool program in a composite class in a school

National Law: Section 172

National Regulations: Regulations 123, 126, 239, 256

A centre-based service that delivers a preschool program in a school, in a composite class where a full-time education program is also being delivered to school children, is exempt from regulations 123 (educator-to-child ratios) and 126 (general educator qualifications). For the purposes of a rating assessment, the service is considered to comply with these requirements.

The service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services *National Regulations*.”

Persons taken to count as an educator holding an approved Certificate III qualification

National Regulations: Regulations 126, 240

If an educator at a centre-based service has been continuously employed as an educator for at least 15 years immediately before 1 January 2012, the educator can be counted in the relevant educator to child ratio for a service even if they do not hold (or are not actively working towards) a Certificate III level education and care qualification.

The educator can be counted in the relevant ratio for the service until 31 December 2015 (or 1 January 2018 if the service is located in a remote or very remote area). This applies only as long as the person is employed by the same approved provider.

Certificate III qualified educators

National Regulations: Regulations 126, 137, 244

A person is considered to hold an approved Certificate III level education and care qualification if, immediately before 1 January 2012, the person:

- was recognised under the former education and care services law of any Australian state or territory as a Certificate III level educator, and was employed or engaged in a declared approved service, or
- held a qualification included in the list of former approved Certificate III level qualifications published by ACECQA.

Diploma qualified educators

National Regulations: Regulations 126, 137, 243

A person is considered to hold an approved diploma level education and care qualification if, immediately before 1 January 2012, the person:

- was recognised under the former education and care services law of any Australian state or territory as a diploma level educator, and was employed or engaged in a declared approved service, or
- held a qualification included in the list of former approved diploma qualifications published by ACECQA.

Early childhood teachers

National Regulations: Regulations 137, 241-242

An educator is considered to hold an approved early childhood teaching qualification if, immediately before 1 January 2012, the educator:

- was-
 - recognised under the former education and care services law, or for the purposes of a preschool funding program, of any Australian state or territory as an early childhood teacher; and
 - was employed or engaged in a declared approved service as an early childhood teacher; or
- held a qualification in the list of former qualifications approved as early childhood teacher qualifications that is published by ACECQA; or
- was registered or accredited as an early childhood teacher in accordance with the requirements of any Australian state or territory (this does not apply if the person was registered or accredited on the basis that they were working towards an early childhood teaching qualification); or
- was employed to deliver a pre-preparatory learning program in Queensland under the Education (General Provisions) Act 2006; or
- was registered as a teacher in South Australia under the Teachers Registration and Standards Act 2004 and was employed to deliver a preschool program operated under the Education Act 1972 or the Children's Services Act 1985; or
- was registered as a teacher in Tasmania under the Teachers Registration Act 2000 and was employed to deliver a preschool program at a school established or registered under the Education Act 1994 of Tasmania.

If, immediately before 1 January 2012, a person was enrolled in a course for a qualification that is published in the list of former approved early childhood teacher qualifications published by ACECQA, the person is taken to hold an approved early childhood teaching qualification for the purposes of the *National Regulations* when they complete that qualification.

If, immediately before 1 January 2012, there were any conditions or restrictions on a person's recognition, registration, accreditation or qualification as an early childhood teacher, those conditions or restrictions continue to apply.

In addition, a person may be taken to be an early childhood teacher from 1 January 2014 to 1 January 2018 if the person:

- is actively working towards an approved early childhood teaching qualification, and
- provides documentary evidence that the person
 - has completed at least 50% of the course, or
 - holds an approved diploma level early childhood education and care qualification.

Access to an Early Childhood Teacher

National Regulations: Regulations 126, 239A

Centre-based services in remote or very remote areas can meet early childhood teacher requirements by having access to an early childhood teacher, for example through information technology, rather than requiring the early childhood teacher to be in attendance. Services must have access to the early childhood teacher for at least 20% of the time. This applies regardless of the number of children attending the service, until 1 January 2018.

Physical environment

Exemptions – declared approved centre-based service

National Law: Section 172, 309

National Regulations: Regulations 104, 114, 115, 249, 256

If the premises of a declared approved centre-based service does not comply with regulation 104 (fencing and security), 114 (outdoor space—shade) or 115 (premises designed to facilitate supervision), and the service was not required to comply with a similar requirement immediately before 1 January 2012, that regulation does not apply until one of the following events happen:

- the service premises are renovated, or
- the service approval is transferred to another approved provider.

This means that if the service does not meet regulation 104, 114 or 115, compliance action would not be taken in relation to the regulations (unless the premises have been renovated or service

approval is transferred). For the purposes of a rating assessment, the service is taken to comply with these requirements until the earlier of the following occurs:

- the premises are renovated, or
- the service approval is transferred to another approved provider, or
- 31 December 2015.

Until the earlier of the above occurs, the fact that these requirements are not met would not affect a service's rating for Quality Area 3 – Physical environment.

The service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services National Regulations.”

Exemptions – declared out of scope service

National Law: Section 172

National Regulations: Regulations 104, 114, 115, 251, 256

If the premises of a declared out of scope service does not comply with regulation 104 (fencing and security), 114 (outdoor space—shade) or 115 (premises designed to facilitate supervision), that regulation does not apply to the service until:

- the service premises are renovated, or
- the service approval is transferred to another approved provider.

This means that if the service does not meet regulation 104, 114 or 115, compliance action would not be taken in relation to the regulations (unless the premises have been renovated or service approval is transferred).

For the purposes of a rating assessment, the service is taken to comply with these requirements until the earlier of the following occurs:

- the premises are renovated, or
- the service approval is transferred to another approved provider, or
- 31 December 2015.

Until the earlier of the above dates, the fact that these requirements are not met would not be reflected in the service's rating for Quality Area 3 – Physical environment.

The service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services National Regulations.”

Fencing and security exemption – declared approved family day care service

National Law: Section 172

National Regulations: Regulations 104, 250, 256

If an approved family day care venue or family day care residence does not comply with regulation 104 (fencing and security), and was not required to comply with a similar requirement immediately before 1 January 2012, regulation 104 does not apply to the declared approved service in respect to that venue or residence until:

- the venue or residence is renovated, or
- the family day care educator is no longer registered or engaged by the service.

This means that compliance action would not be taken in relation to regulation 104 in respect to that venue or residence, unless the premises has been renovated or the family day care educator is no longer registered or engaged by the service.

For the purposes of a rating assessment, the service is considered to comply with regulation 104 until the earlier of the following occurs:

- the venue or residence is renovated, or
- the family day care educator is no longer registered or engaged by the service, or
- 31 December 2015.

Until the earlier of the above dates, the fact that the requirements of regulation 104 are not met for that venue or residence would not be reflected in the service’s rating for Quality Area 3 – Physical environment.

The service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services National Regulations.”

Preschool program in a composite class in a school

National Law: Section 172

National Regulations: Regulations 104, 114, 115, 248, 256

A centre-based service that delivers a preschool program in a school in a composite class where a full-time education program is also being delivered to school children is exempt from regulations 104 (fencing and security), 114 (outdoor space—shade) and 115 (premises designed to facilitate supervision). For the purposes of a rating assessment, the service is considered to comply with these requirements and there will be no impact on the service’s rating assessment.

The service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services National Regulations.”

Assessment and rating

Display of accreditation and rating

National Law: Sections 172, 313

National Regulations: Regulation 58

An approved provider of a declared approved service must display a provisional rating of “Provisional – not yet assessed under the National Quality Framework” until a first rating assessment of the approved service is completed and published.

If an education and care service was accredited by the National Childcare Accreditation Council before 1 January 2012, the service must continue to display that accreditation at the service as well as the provisional rating.

Taken to comply

National Law: Section 172

National Regulations: Regulations 239, 248, 249, 250, 251, 256, 257, 285, 290, 337-339, 353, 383

If a service is taken to comply with a provision of the *National Regulations* for the purpose of a rating assessment, the service is required to display the following statement so that it is visible from the main entrance of the service:

“This service is taken to comply with regulations [insert regulations that service is taken to comply with for the purpose of rating assessment] of the Education and Care Services National Regulations.”

Compliance

Effect of non-compliance before 1 January 2012

National Law: Sections 135, 306, 307, 314

National Regulations: Regulation 63

If a regulatory authority is considering suspending or cancelling a Provider Approval or Service Approval for a declared approved provider or a declared approved service, the regulatory authority may take into account any non-compliance with a former education and care services law by that provider or service in the three years before 1 January 2012. However, the previous non-compliance before 1 January 2012 must not be the only reason for a decision to suspend or cancel the approval under the *National Law*.

A regulatory authority will also consider a service’s history of compliance when conducting a rating assessment of the service under the *National Law* and *National Regulations*.

Notices and undertakings

National Law: Section 317

A declared compliance notice or declared enforceable undertaking that was in force under a former education and care services law immediately before 1 January 2012 is considered to be a compliance notice or enforceable undertaking under the *National Law* from 1 January 2012.

Offences

National Law: Section 318

A regulatory authority may bring or continue a prosecution for any offence under a former education and care services law for a service that is considered to be an approved service under the *National Law*.

Information retention and sharing

Information held by regulatory authorities

National Law: Section 322

National Regulations: Regulation 252

A regulatory authority must keep all information held in relation to:

- the licensing or approval of education and care services under the former education and care services law
- the monitoring and enforcement of the former education and care services law in relation to education and care services.

This information may be used for information purposes under the *National Law* and may be made available to the regulatory authorities of other jurisdictions and to the ACECQA.

Information held by providers

National Law: Section 322

National Regulations: Regulations 183, 253

A provider of a service existing before 1 January 2012 must continue to keep all documents required under the former education and care services law for that service in a safe and secure place and for the specific timeframes set out in the *National Regulations*, and make these available to the regulatory authority on request.

Approved Learning Frameworks

National Law: Sections 168, 323

National Regulations: Regulation 254

There are two national approved Learning Frameworks:

- Belonging, Being and Becoming: The Early Years Learning Framework for Australia
- My Time, Our Place: A Framework for School Age Care in Australia.

There are also jurisdictional specific declared approved learning frameworks:

- Every Chance to Learn – Curriculum Framework for ACT Schools Preschool to Year 10 (this applies until 31 December 2015 only)
- Victorian Early Years Learning and Development Framework
- the Curriculum Framework for Kindergarten to Year 12 Education in Western Australia
- the Tasmanian Curriculum by the Department of Education of Tasmania.

Contacts

For information about jurisdiction-specific provisions that apply, contact your state or territory regulatory authority. Contact details are available on the ACECQA website: acecqa.gov.au

Sample forms and templates

Incident, injury, trauma and illness record

Details of person completing this record

Name: Position/role:

Date and time record was made/...../..... Signature:

Child details

Child's full name:

Date of birth:/...../..... Age: Gender : Male Female

Incident details

Incident date:/...../..... Time: am/pm Location:

Name of witness:

Witness signature:

Date:/...../.....

General activity at the time of **incident/injury/trauma/illness**:

.....
.....

Cause of **injury/trauma**:

.....
.....

Circumstances surrounding any **illness**, including apparent symptoms:

.....
.....

Circumstances if child appeared to be **missing** or otherwise unaccounted for (incl duration, who found child etc):.....

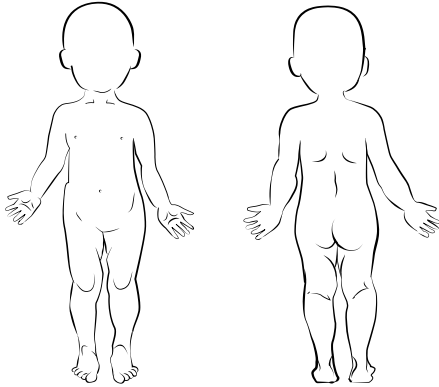
.....
.....

Circumstances if child appeared to have been **taken or removed** from service or was **locked in/out** of service (incl who took the child, duration):

.....
.....

Nature of injury/trauma/illness:

Indicate on diagram the part of body affected



- | | |
|--|---|
| <input type="checkbox"/> Abrasion, scrape | <input type="checkbox"/> Eye injury |
| <input type="checkbox"/> Allergic reaction (not anaphylaxis) | <input type="checkbox"/> Infectious disease (incl gastrointestinal) |
| <input type="checkbox"/> Amputation | <input type="checkbox"/> High temperature |
| <input type="checkbox"/> Anaphylaxis | <input type="checkbox"/> Ingestion / inhalation/ insertion |
| <input type="checkbox"/> Asthma /respiratory | <input type="checkbox"/> Internal injury / Infection |
| <input type="checkbox"/> Bite/wound | <input type="checkbox"/> Poisoning |
| <input type="checkbox"/> Bruise | <input type="checkbox"/> Rash |
| <input type="checkbox"/> Broken bone / fracture/ dislocation | <input type="checkbox"/> Respiratory |
| <input type="checkbox"/> Burn /sunburn | <input type="checkbox"/> Seizure/unconscious/convulsion |
| <input type="checkbox"/> Choking | <input type="checkbox"/> Sprain /swelling |
| <input type="checkbox"/> Concussion | <input type="checkbox"/> Stabbing /piercing |
| <input type="checkbox"/> Crush /jam | <input type="checkbox"/> Tooth |
| <input type="checkbox"/> Cut / openwound | <input type="checkbox"/> Venomous bite/sting |
| <input type="checkbox"/> Drowning(non-fatal) | <input type="checkbox"/> Other (please specify) |
| <input type="checkbox"/> Electric shock | |

Action taken

Details of action taken (including first aid, administration of medication etc):

.....

.....

Did emergency services attend?: Yes / No

Was medical attention sought from a registered practitioner / hospital?: Yes / No

If yes to either of the above, provide details:

.....

.....

Medication record

Childs name:

Date of birth:

To be completed by the parent/guardian										To be completed by the educator when administered					
Name of medication	Last administered		Time	Date	To be administered					Signature of Parent/ Guardian	Name of educator administering	Signature of educator administering	Name of witness	Signature of witness	
	Time	Date			Time	Date	Circumstances	Dosage	Method						

Excursion risk management plan

Excursion details		
Date(s) of excursion	Excursion destination	
Departure and arrival times		
Proposed activities	Water hazards? If yes, detail in risk assessment below.	Yes/No
Method of transport, including proposed route		
Name of excursion co-ordinator		
Contact number of excursion co-ordinator	(BH)	(M)
Number of children attending excursion		Number of educators/ parents/volunteers
Educator to child ratio, including whether this excursion warrants a higher ratio? Please provide details.		
Excursion details		
First aid kit	<input type="checkbox"/>	List of adults participating in the excursion
<input type="checkbox"/>	<input type="checkbox"/>	Contact information for each adult
<input type="checkbox"/>	<input type="checkbox"/>	Mobile phone / other means of communicating with the service & emergency services
<input type="checkbox"/>	<input type="checkbox"/>	Other items, please list

Risk assessment						
Activity	Hazard identified	Risk assessment (use matrix)	Elimination/control measures	Who	When	
Plan prepared by						
Prepared in consultation with:						
Communicated to:						
Venue and safety information reviewed and attached		Yes / No	Comment if needed:			
Reminder: Monitor the effectiveness of controls and change if necessary. Review the risk assessment if an incident or significant change occurs.						

Risk matrix						
Consequence						
	Insignificant	Minor	Moderate	Major	Catastrophic	
Almost certain	Moderate	High	High	Extreme	Extreme	Extreme
Likely	Moderate	Moderate	High	Extreme	Extreme	Extreme
Possible	Low	Moderate	High	High	High	High
Unlikely	Low	Low	Moderate	High	High	High
Rare	Low	Low	Low	Moderate	Moderate	Moderate
Likelihood						

Staff record

Nominated supervisor			
Name		Date of birth	
Address			
Relevant qualification/s, or course enrolled in			<input type="checkbox"/> copies attached
Other approved training completed			<input type="checkbox"/> copies attached
Identification number of relevant working with children / vulnerable people check		Check Expiry Date	Supervisor Certificate number
I (insert name) accept the designation of nominated supervisor of (insert name of education and care service)			
and understand and accept my responsibilities under the Education and Care Services <i>National Law</i> and <i>National Regulations</i> .			
Signature of approved provider:		Date:	
Signature of nominated supervisor:		Date:	
Designated educational leader			
Name			

Educators and other staff				
Name		Date of birth		
Address				
Relevant qualification/s, or course enrolled in			<input type="checkbox"/> copies attached	
Other approved training completed, including First Aid			<input type="checkbox"/> copies attached	
Identification number of relevant working with children check or working with vulnerable people check		Expiry Date	Certified supervisor number, if applicable	
Students and volunteers				
Name		Date of birth		
Address				

Register of family day care educators

Educator details					
Full name					
Date of birth					
Contact phone	(BH)	(AH)	(M)		
Email address					
Postal address					
Physical address <input type="checkbox"/> Residence <input type="checkbox"/> Venue					
Educator qualifications and study					
Relevant qualification, or name of relevant course enrolled in, including details of progress <i>(attach copies)</i>					
Mandatory training completed <i>(attach copies)</i>	<input type="checkbox"/> Approved first aid training – DD MM YY <input type="checkbox"/> Anaphylaxis management training – DD MM YY <input type="checkbox"/> Emergency asthma management training – DD MM YY				
Any other training completed					
Operation details					
Date registered with the service			Date registration ceased		
Provider approval number of educator (if applicable)			Date approval was granted		
Supervisor certificate number of educator (if applicable)			Date certificate was issued		
Days and hours of operation	Monday	Tuesday	Wednesday	Thursday	Friday

Child enrolment details			
Child's full name	Date of birth	Days of attendance	Hours of attendance

Security details	
People who normally reside at the family day care residence (including children under 18 years old):	
Full name	Date of birth

Working with children check /working with vulnerable people/ record of criminal history:		
Full name	Type of check, identifying number and expiry date	Date check was sighted by the approved provider/ nominated supervisor

Record of family day care co-ordinators, assistants and staff

Educational leader			
Full name			
Nominated supervisor			
Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in <i>(attach copies)</i>			
Other approved training completed <i>(attach copies)</i>			
Identifying number of working with children check (or equivalent)		Expiry date	
Co-ordinators			
Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in <i>(attach copies)</i>			
Other approved training completed <i>(attach copies)</i>			
Identifying number of working with children check (or equivalent)		Expiry date	

Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in <i>(attach copies)</i>			
Other approved training completed <i>(attach copies)</i>			
Identifying number of working with children check (or equivalent)		Expiry date	

Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in <i>(attach copies)</i>			
Other approved training completed <i>(attach copies)</i>			
Identifying number of working with children check (or equivalent)		Expiry date	

Volunteers and students

Full name				
Address				
Date of birth				
Date and hours of attendance				

Family day care educator assistants			
Full name			
Address			
Date of birth			
Contact phone	(BH)	(M)	
Name of educator to be assisted			
Date approved by the service		Date approval ceased	
Mandatory training completed <i>(attach copies)</i>	<input type="checkbox"/> Approved first aid training – DD MM YY <input type="checkbox"/> Anaphylaxis management training – DD MM YY <input type="checkbox"/> Emergency asthma management training – DD MM YY		
Identifying number of working with children check (or equivalent)		Expiry Date	

Full name			
Address			
Date of birth			
Contact phone	(BH)	(M)	
Name of educator to be assisted			
Date approved by the service		Date approval ceased	
Mandatory training completed <i>(attach copies)</i>	<input type="checkbox"/> Approved first aid training – DD MM YY <input type="checkbox"/> Anaphylaxis management training – DD MM YY <input type="checkbox"/> Emergency asthma management training – DD MM YY		
Identifying number of working with children check (or equivalent)		Expiry Date	

Record of visitors to family day care residence or approved venue

Address of residence/venue:							
Date	Name of visitor	Address & phone number	Reason for visiting	Time in	Time out	Signature of visitor	