Australian Children's Education & Care Quality Authority

GUIDE TO THE NATIONAL QUALITY FRAMEWORK

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1. INTRODUCTION

INTRODUCTION

Purpose of guide

This guide aims to support education and care service providers, authorised officers and other regulatory authority staff understand the requirements under the National Quality Framework (NQF).

The guide should always be read with the ***Education and Care Services National Law*** (National Law) and the ***Education and Care Services National Regulations*** (National Regulations). It is not legal advice, and the National Law and Regulations take precedence over any material in this guide.

The guide is regularly reviewed and updated by the Australian Children's Education and Care Quality Authority (ACECQA) in consultation with regulatory authorities and the Australian Government. Updates are published on the ACECQA website at www.acecqa.gov.au.

This guide sometimes suggests other sources of information which readers may find useful.

The National Quality Framework

The NQF was the result of an agreement between all Australian governments to work together to provide better educational and developmental outcomes for children.

The NQF introduced a new quality standard in 2012 to improve education and care across long day care, family day care, preschool/kindergarten and outside school hours care services.

The NQF aims to raise quality and drive continuous improvement and consistency in children's education and care services through:

- the National Law and National Regulations
- the National Quality Standard
- an assessment and quality rating process
- national approved learning frameworks
- a regulatory authority in each state and territory responsible for the approval, monitoring and quality assessment of services in their state or territory
- a national body – ACECQA, which guides the implementation of the NQF and works with regulatory authorities.

The delivery of the NQF is guided by set objectives and guidelines to ensure consistent and effective function.

The National Quality Framework

Education and Care Services National Law

Education and Care Services National Regulations

National Quality Standard

- **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** Governance and leadership

Approved Learning Frameworks

Assessment and rating process by the regulatory authority

- **Excellent** (awarded by ACECQA)
- **Exceeding** National Quality Standard
- **Meeting** National Quality Standard
- **Working Towards** National Quality Standard
- **Significant Improvement Required**

The objectives of the NQF 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.

The guiding principles of the NQF are as follows:

THE RIGHTS AND BEST INTERESTS OF THE CHILD ARE PARAMOUNT

The NQF aligns with the United Nations Convention of the Rights of the Child. This treaty ensures that children have the right to be heard, to be free from violence, abuse and neglect, to have the opportunity to thrive, to be engaged in civics and citizenship and opportunities to take action and be accountable. A rights-based approach to delivering education and care means understanding these rights and implementing practice which reflects them.

CHILDREN ARE SUCCESSFUL, COMPETENT AND CAPABLE LEARNERS

The NQF views children as capable learners who actively construct their own understandings and contribute to others' learning. It recognises children's agency, capacity to initiate and lead learning, and their rights to participate in decisions that affect them, including their learning.

Viewing children as active participants and decision makers opens up possibilities for educators to move beyond pre-conceived expectations about what children can achieve. This requires educators to respect and work with each child's unique qualities and abilities.

EQUITY, INCLUSION AND DIVERSITY UNDERPIN THE FRAMEWORK

The NQF recognises all children's capacity and right to succeed regardless of diverse circumstances, cultural background and abilities. Inclusion is acknowledged as an approach where diversity is celebrated. It requires educators to hold high expectations for the learning and development of all children, recognising that every child treads an individual learning path and will progress in different and equally meaningful ways.

In recognising each child's experience of learning and development, educators implement responsive, equitable, individualised opportunities and additional support if barriers to success are identified.

AUSTRALIA'S ABORIGINAL AND TORRES STRAIT ISLANDER CULTURES ARE VALUED

The NQF is underpinned by a commitment to 'Closing the Gap' and acknowledges Australia is a nation of great diversity, and an ancient land that has been cared for by Indigenous Australians for many thousands of years. Education and care services have a shared responsibility to contribute to building a better society and sustainable environment and to support children, families, colleagues and the local community to understand, respect and value diversity. Through all aspects of their practice, educators challenge stereotyping and bias. They find sensitive and respectful ways to negotiate tensions that may arise, for instance, because of differing values, beliefs and expectations within the local context of the service, and between the local context and the broader contexts of Australian society. Educators take every opportunity to extend children's understanding of their local context and of their wider world.

THE ROLE OF PARENTS AND FAMILIES IS RESPECTED AND SUPPORTED

The NQF acknowledges a view of children in the context of their family and community, that families are children's first and most influential teachers. It is envisaged that education and care services will actively seek out partnerships and develop secure respectful relationships to ensure that families are informed, consulted and supported in regards to their child's learning and development.

BEST PRACTICE IS EXPECTED IN THE PROVISION OF EDUCATION AND CARE SERVICES

Inherent within the NQF is a commitment to continuous improvement and striving for best practice underpins this commitment. While the NQF does not prescribe what best practice looks like, it encourages education and care services to draw on a range of current research, theory and understandings about early and middle childhood. This can provide educators with an understanding of best and most suitable practice in the unique and changing context of their service.

The National Law and National Regulations

The *Education and Care Services National Law* (National Law) and the *Education and Care Services National Regulations* (National Regulations) apply to most long day care, family day care, kindergarten/preschool and outside school hours care services in Australia. The law and regulations detail the operational and legal requirements for an education and care service.

The National Quality Standard

The National Quality Standard (NQS) is part of the National Regulations.

The NQS sets a national benchmark for the quality of education and care services and includes seven quality areas that are important to outcomes for children:

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	Governance and leadership

The NQS contains two or three standards in each quality area. These standards are high-level outcome statements. Under each standard are elements that describe the outcomes that contribute to the standard being achieved. Each standard and

element is represented by a concept that support education and care services to navigate and reflect on the NQS.

Assessment and rating of services

Services are assessed and rated by their regulatory authority against the NQS, and given a rating for each of the seven quality areas and an overall rating based on these results.

The quality ratings are published on the national registers on the ACECQA website (www.acecqa.gov.au) and on the Starting Blocks website (www.startingblocks.gov.au).

Approved learning frameworks

The NQS is linked to approved learning frameworks that recognise children learn from birth. Services are required to base their educational program on an approved learning framework. The approved learning frameworks are:

- *Belonging, Being and Becoming: The Early Years Learning Framework for Australia ('Early Years Learning Framework')*
- *My Time, Our Place: Framework for School Age Care in Australia ('Framework for School Age Care')*

There is also a jurisdiction-specific approved learning framework in Victoria.

Governance arrangements under the NQF

Education Council

Education Council is made up of the Australian Government and state and territory government ministers responsible for education, including early childhood education and care. Education Council:

- reviews and approves the NQS, rating level system, and learning frameworks
- approves changes to the National Law and Regulations
- appoints members of the ACECQA Board.

Australian Children's Education and Care Quality Authority

ACECQA is a statutory authority which guides and monitors the implementation and administration of the NQF to promote consistency across all states and territories. ACECQA:

- approves qualifications for people who work in education and care services
- trains, tests and provides resources to state and territory regulatory authority authorised officers
- awards the Excellent rating
- undertakes second tier reviews of quality ratings
- hosts the National Quality Agenda IT System
- publishes guides and other resources
- publishes the national registers of approved providers and services (including their quality rating).

State/territory based regulatory authorities

Regulatory authorities have day-to-day contact with education and care providers and services and:

- grant all approvals, including provider and service approvals
- assess and quality rate services against the NQS and the National Regulations
- monitor and enforce compliance with the National Law and Regulations, including receive and investigate serious incidents and complaints
- work with ACECQA to promote continuous quality improvement and educate the sector and community about the NQF.

2. APPLICATIONS AND APPROVALS

Provider and service approvals
Fees
Waivers and other applications

ICONS LEGEND

National Law and Regulations

Sections of the Education and Care Services National Law (National Law) or regulations from the Education and Care Services National Regulations (National Regulations).

Offence

Offences against the National Law that attract a penalty, for example a fine.

Sight

Authorised officers will sight documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

Centre-based service

An education and care service other than a family day care service which includes most long day care, preschool and outside school hours care services that are delivered at a centre.

Family day care service

An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences.

Observe

Authorised officers will observe what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions).

State icons

WA TAS NSW SA QLD NT VIC ACT

Information that is specific to a state or territory.

Birth to three

Children birth to three years of age.

School age children

Includes children attending school in the year before grade 1, and above.

Discuss

Authorised officers will discuss why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members.

APPLICATIONS AND APPROVALS

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PROVIDER AND SERVICE APPROVALS

There are two main approval processes:

- **Provider approval** – a person may apply to obtain a provider approval, which is ongoing and recognised nationally. A person who has applied for a provider approval may also apply for a service approval to operate one or more services.
- **Service approval** – each service operated by an approved provider requires service approval. Service approvals relate to the individual site/premises and the type of care provided.

This section explains how applications are made and processed.

1. PROVIDER APPROVAL

National Law

Section 103

A person must have provider approval to operate an education and care service under the National Law and Regulations.

Regulatory authorities are responsible for assessing and determining provider approval applications.

1.1 APPLICATION FOR PROVIDER APPROVAL

National Law

Sections 10, 11

WA

An individual, body corporate, eligible association, partnership or prescribed entity may apply to be an approved provider. See the ***Glossary*** for the meaning of these terms.

The application must include all information listed in the National Regulations and payment of the set fee. See ***Application checklists – Tables I, II*** and ***Fees***.

Applications by individuals

- The application must be sent to the regulatory authority in the state or territory where the applicant/s live.

Applications by non-individuals

- The application must be sent to the regulatory authority in the state or territory where the applicant's principal office is located (or where any of the applicants' principal offices are located if there is more than one).

The prescribed information must be included for each person with management or control of the service.

A person with management or control is:

- If the provider is a body corporate – an officer of the body corporate within the meaning of the *Corporations Act 2001* (see the ***Glossary***) who is responsible for managing the delivery of the education and care service
- If the provider is an eligible association – each member of the executive committee who has responsibility for managing the delivery of the education and care service
- If the provider is 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.

Each entity is jointly and severally responsible for complying with the National Law and Regulations. Regulatory authorities may assess the risk associated with joint applicants when determining applications for approvals.

Note: A trust is not a legal entity and therefore cannot hold property or enter into contractual arrangements. For example, a trust cannot hold a provider approval. A trustee can apply for and hold a provider approval, as an individual or body corporate.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

The National Regulations do not specify what type of documentation is required as proof of identity when applying, and do not require applicants to submit 100 points of identity or certified copies of their documentation. The regulatory authority may request certified copies if it is concerned about the authenticity of documents included in an application.

Incomplete applications

The timeframe for processing an application does not begin until an application is 'valid', meaning complete with all prescribed information.

If an application does not include all prescribed information the regulatory authority may treat the application as invalid and either request missing information be provided within a set timeframe, or close the invalid application.

The National Law does not specify how much time applicants have to provide this information once requested by a regulatory authority. Regulatory authorities will set timeframes taking into consideration:

- the amount and complexity of the information requested
- the applicant's capacity to provide information in that timeframe
- whether a timeframe applies to when the applicant must submit the application.

The regulatory authorities must keep records of incomplete applications. The *State Records Act 1998* (NSW) applies to all jurisdictions for the purposes of the National Law and Regulations except to the extent that the National Law applies to a regulatory authority and the records of a regulatory authority (section 265).

Generally, the regulatory authority will not complete applications on behalf of applicants using the information held on file as this information could be out of date. Procedural fairness issues could arise if information is taken into account without the knowledge of the applicant.

Timeframe for assessing an application

National Law

Sections 14–15

The regulatory authority must make a decision within 60 calendar days of receiving a complete application.

If more information is requested, the time taken to provide it is not included in the 60-day period. If the applicant agrees, the 60-day period (not including any time taken to provide additional information) may be extended by up to 30 calendar days.

If a decision is not made within 60 calendar days, the application is taken to be refused.

The regulatory authority must give the applicant written notice of its decision and the supporting reasons, within seven (7) calendar days of making the decision.

National Law

Sections 15, 16

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

When calculating the timeframe, the day the application is received is excluded. If the timeframe is expressed in the legislation in terms of a number of days, the last day of that timeframe is also excluded. 'Day' means calendar day. For example, a regulatory authority must make a decision on a provider approval application within 60 days after the application is received (see section 15). If the regulatory authority receives the application on 1 March, the 60-day timeframe commences on 2 March and runs until the end of 1 May. 1 March is excluded from the calculation, and 30 April, the 60th day, is also excluded.

If the last day of the timeframe falls on a non-business day, the next business day will be the last day. Using the example above, if 1 May is a Saturday, Sunday or public holiday, the regulatory authority's decision will be due the first working day after 1 May.

1.2 CONSIDERING AN APPLICATION FOR FITNESS AND PROPRIETY

When reviewing the application, the regulatory authority will consider:

- if the applicant is a fit and proper person to provide an education and care service
- the applicant's history of compliance or criminal history
- whether the applicant is bankrupt or other financial or medical matters which may limit their capacity to meet their obligations under the National Law.

There may be other circumstances in which a person is considered not to be fit and proper.

National Law

Section 12

Is the applicant a fit and proper person?

Provider approval will not be granted unless the regulatory authority is satisfied the applicant, and/or each person with management and control, is fit and proper to provide an education and care service.

The head of a government department administering an education law is taken to be a fit and proper person.

National Law

Sections 14–15

The regulatory authority may ask the applicant for more information or make enquiries to assess whether they are fit and proper. This may be in relation to their history of compliance, criminal history or any other relevant matter. If more information is requested, the time taken to provide it is not included in the period for determining the application.

Regulatory authorities may require applicants to attend an information session or interview, or undertake an NQF knowledge test.

If the regulatory authority obtains information from a source other than from the applicant and is considering making a decision that will adversely affect the applicant, principles of natural justice must be taken into account. Decisions that

adversely affect a person include refusing to grant provider approval or granting provider approval subject to conditions. For more information (see ***Good Regulatory Practice – Good decision-making***).

It is the applicant's responsibility to identify each individual who will be in management or control (see ***Glossary***).

For companies, this will generally include directors, and for committees and associations it will usually include executive members. Generally, a person with management or control is someone:

- who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or
- has the capacity to affect significantly the entity's financial standing.

Therefore, while a person – such as a centre manager or nominated supervisor – may have 'day to day charge' of a service, they may not be a person with management or control of a provider.

National Law

Section 13

History of compliance

When determining whether a person is fit and proper, the regulatory authority must consider:

- the person's history of compliance with any current or former education and care services law, children's services law or education law
- any decision made under a former education and care services law, a children's services law or an education law of any state or territory to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification issued to the person under that law.

If a person has been served with an infringement notice for an offence under the National Law and has paid the penalty, the offence cannot be taken into account when determining the person's fitness and propriety (section 291).

The National Law does not specify a time period in relation to a person's compliance history. When considering a person's history of compliance the regulatory authority may consider:

- the severity of any issues and how recently they occurred
- the person's willingness to comply, for example, whether escalation was required to resolve compliance issues. See also ***Good Regulatory Practice – Good decision-making***.

National Law & Regulations

Section 13
Regulation 16

Criminal history

Regulatory authorities must consider the person's criminal history when determining whether they are fit and proper to be involved in providing an education and care service. Because working with children/vulnerable people legislation differs between states and territories, the National Law includes two options for considering a person's criminal history, set out below.

Matters the regulatory authority must consider about criminal history	
Option 1	**Option 2**
The regulatory authority must consider the below matters, to the extent that they may affect the person's suitability to provide an education and care service: • any matters included in a criminal history check, and • if there is a working with children law: – whether the person has a current working with children check or card, or – whether the person is a registered teacher under an education law in their state or territory.	The regulatory authority must consider the person's working with vulnerable people check.

In some instances, a check may show information about a person's criminal history that is not relevant to whether they are fit and proper. Regulatory authorities must not take into account irrelevant information which may lead to an unlawful decision (see *Good Regulatory Practice – Good decision-making*).

TAS

Working with children check legislation applies in all states and territories except for Tasmania. In Tasmania, registration to work with vulnerable people is required. See the table at the end of this section for details of screening units in each state and territory.

Financial matters

National Law

Section 13

Regulatory authorities must consider whether the applicant is bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors. In the case of a body corporate, the regulatory authority must consider whether the applicant is insolvent under administration or an externally-administered body corporate.

Regulatory authorities may also consider whether the applicant's financial circumstances may limit their capacity to meet their obligations under the National Law.

Applicant is bankrupt or insolvent

If the applicant is bankrupt or insolvent according to their declaration, the regulatory authority may consider:

- the period when bankruptcy is discharged
- past circumstances and changes of circumstances
- legal advice about whether the regulatory authority is bound by other law.

The National Personal Insolvency Index, maintained by the Australian Financial Security Authority (Australian Government), may have information about an applicant's financial position and can be accessed at: www.afsa.gov.au.

Concerns about financial circumstances

Where there are concerns about an applicant's financial circumstances, raised through the initial application, notification or other sources of information, the regulatory authority may ask an applicant to provide more information about their financial capacity, to determine the likelihood that they will be able to sustain ongoing operation of a service. For example, information about:

- liquidity
- cash flow
- asset sustainability
- capital structure and debt protection
- operating efficiency.

Regulatory authorities may make inquiries for more information to determine if a person is fit and proper. This includes seeking advice from an external expert, for example about the financial viability of an applicant to help analyse the applicant's financial capacity.

Although there is a duty of confidentiality (section 273), a regulatory authority can disclose information when assessing a provider approval application.

National Law

Section 13

Medical conditions

The regulatory authority may consider whether the person has a medical condition that may limit their capacity to meet their obligations under the National Law.

Applicants are not required to provide medical information in their initial application. However, the regulatory authority can ask for information, such as an assessment by a medical practitioner if concerned about the applicant's capacity. The regulatory authority will detail why the assessment is needed and give a description of the role, to guide the person doing the assessment. The regulatory authority may require a written report.

Management capability

The regulatory authority may consider whether the person has the management capability to operate an education and care service in accordance with the National Law and National Regulations.

Evidence of management capability does not need to relate only to education and care services, or qualifications in education and care. Evidence of management capability may be related to any previous expertise, experience or qualification in a leadership, governance, administrative or management role in:

- a business, or
- a not-for-profit organisation, or
- a sporting or social club, or
- a community-based committee.

This may include experience gained as a volunteer.

Actions taken under Family Assistance Law

In assessing an applicant's fitness and propriety, the regulatory authority may also take into account certain actions taken under Commonwealth Family Assistance Law, including sanctions and suspensions.

Conditions on provider approval

National Law

Section 19

A condition is a requirement that the person holding the approval must comply with to avoid committing an offence under the National Law.

A provider approval is granted subject to the condition that the approved provider complies with the National Law. It may also be granted subject to other conditions imposed. For example, if there are concerns about an applicant's management capacity, the regulatory authority may limit the number of services or size of services the applicant can operate.

A condition applies to the provider unless the condition expressly provides otherwise.

See *Monitoring, Compliance and Enforcement – Conditions* for more information about using conditions on a provider approval.

Determining an application

National Law

Section 16

The regulatory authority must give the applicant written notice of its decision and the supporting reasons, within seven (7) calendar days of making the decision (see *Timeframe for assessing an application*, above).

Granting provider approval

National Law

Section 20
Schedule 1, Clause 31

If granted, the regulatory authority must give the approved provider a copy of the provider approval, stating:

- the name of the approved provider
- if the approved provider is not an individual, the address of the principal office of the provider
- any conditions to which the approval is subject (see *Conditions on provider approval*, above)
- the date the provider approval was granted
- the provider approval number.

The National Law does not specify how much time the regulatory authority has to give the approved provider a copy of the provider approval but it must be done as soon as possible.

Refusing to grant provider approval

National Law

Section 15

The regulatory authority may refuse to grant provider approval if it is not satisfied that the grounds for granting provider approval are met and the applicant is fit and proper (see *Considering an application*, above).

National Law

Section 190

Appeals

A decision to refuse to grant a provider approval, or to grant provider approval subject to conditions, is a reviewable decision under the National Law (see *Reviews*).

After an application has been determined

National Law & Regulations

Sections 266, 270
Regulation 229

Publication on the register of approved providers

ACECQA must keep and publish a register of approved providers which includes the information set out below.

The regulatory authority may publish the name of the approved provider.

Information on the register of approved providers
The name of the approved provider
The postal address of the approved provider
Any conditions on the approval
The date the provider approval was granted
The provider approval number
The service approval numbers of all education and care services provided by the approved provider.

National Law

Sections 17–18

WA

Duration and effect of provider approval

A provider approval authorises the holder to operate an approved education and care service and an associated children's service. It is valid nationally and is ongoing unless cancelled or suspended by the regulatory authority, or surrendered by the approved provider.

In Western Australia, a provider approval granted to an individual is also ongoing until the individual dies.

National Law

Section 21

Reassessing fitness and propriety

The regulatory authority may reassess an approved provider's fitness and propriety at any time. This includes assessment of a person with management or control. If a person is no longer a fit and proper person, the provider approval may be suspended or cancelled (see *Monitoring, Compliance and Enforcement*).

1.3 AMENDING PROVIDER APPROVAL ON APPLICATION

National Law & Regulations

Section 22
Regulation 17

An approved provider may apply to the regulatory authority for an amendment to their provider approval. The application must be in writing and include:

- the approved provider's full name and provider approval number
- the name and contact details for the application
- details of the amendment applied for
- sufficient information or documentation to support the application for amendment.

The National Law and Regulations do not specify the type or level of information needed to support an application for an amendment, however information must be sufficient for the regulatory authority to make a decision.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Incomplete applications

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* in *Application for provider approval* above.

Timeframe for assessing an application

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31. An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in *Application for provider approval*.

Considering an application

National Law
Section 42

The regulatory authority may only amend a provider approval after consulting with the regulatory authority of each jurisdiction where the provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.

Determining an application

National Law
Section 22

Once the regulatory authority has received a complete application, it must decide to:

- amend the provider approval in the way that was applied for; or
- amend the provider approval in another way, with the applicant's written approval; or
- refuse the amendment of the provider approval.

An amendment may include a change to a condition of the provider approval or introduce a new condition.

Appeals

National Law
Section 190

A decision to refuse to amend a provider approval is a reviewable decision under the National Law. Refer to ***Reviews***.

After approval has been amended

National Law
Section 24

If the regulatory authority amends the approval, it must give the approved provider a copy. The regulatory authority must also make any necessary amendments to any service approval held by the approved provider and give the approved provider a copy.

The regulatory authority will record these amendments in the National Quality Agenda IT System. ACECQA will publish the national registers on the ACECQA website at www.acecqa.gov.au.

1.4 AMENDING PROVIDER APPROVAL WITHOUT APPLICATION

National Law

Sections 23, 42

The regulatory authority may amend a provider approval at any time, without application from the approved provider.

Amendment may include varying a condition on the provider approval or imposing a new condition.

The regulatory authority may only amend a provider approval after consulting with the regulatory authority of each jurisdiction where the provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.

After approval has been amended

The regulatory authority must give the approved provider written notice of the amendment.

Amendment without application takes effect 14 calendar days after the regulatory authority notifies the approved provider of the amendment, or at the end of another period specified by the regulatory authority.

The regulatory authority must give the approved provider a copy of the amended provider approval. It must also make any necessary amendments to any service approval held by the approved provider and give the approved provider a copy.

The regulatory authority will record these amendments in the National Quality Agenda IT System. ACECQA will publish the national registers on the ACECQA website at www.acecqa.gov.au.

Appeals

National Law

Section 190

A decision to amend a provider approval is a reviewable decision under the National Law (see ***Reviews***).

1.5 DETERMINING AN APPLICATION FOR PROVIDER APPROVAL IN CASE OF DEATH OR INCAPACITY OF APPROVED PROVIDER

National Law

Sections 39–40

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

The regulatory authority may receive an application from the executor for a provider approval.

If an approved provider becomes incapacitated, their legal personal representative or guardian may apply to the regulatory authority for a provider approval.

A nominated supervisor or a person in day-to-day charge of an education and care service operated by the approved provider must notify the regulatory authority within seven (7) calendar days if the approved provider dies.

The executor of the approved provider's estate may continue to operate any approved service for the relevant period, if at least one nominated supervisor continues to manage the day-to-day operation of the service. 'Relevant period' means 30 calendar days after the death of the approved provider or, if the executor applies for a provider approval, until the regulatory authority determines the application.

WA

In Western Australia, an executor includes a person entitled to a grant of letters of administration to the intestate estate of an approved provider, in addition to a person who has been granted letters of administration or probate or has been named executor in the approved provider's will.

How does an executor, legal representative or guardian apply?

National Law

Sections 39–40

WA

An application must be made in writing and include payment of the set fee.

An application from an executor must be made within 30 calendar days of the provider's death. The National Regulations specify information that must be included in an application (see *Application checklists – Tables III, IV, V, VI*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Because a provider approval granted to an executor, legal personal representative or guardian only relates to the service formerly operated by the deceased or incapacitated approved provider, the person cannot apply for any additional service approvals, or receive a service approval transferred from another approved provider.

Incomplete applications

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to ***Incomplete applications*** within ***Application for provider approval*** above.

Considering an application

National Law
Section 41

The regulatory authority must consider whether the applicant is a fit and proper person to be involved in the provision of an education and care service. See the requirements set out above at ***Considering an application for fitness and propriety***. The provider approval will not be granted to an executor, personal legal representative or guardian; unless they are fit and proper.

Determining an application

National Law
Section 41

The regulatory authority may grant the provider approval, grant the approval subject to conditions, or refuse to grant the provider approval. Approval may be granted for a period of not more than six months, and may be extended or further extended for periods of not more than six months at the regulatory authority's discretion.

If granted, it is only in relation to the services that were operated by the approved provider where the applicant is the executor, personal legal representative or guardian.

Appeals

National Law
Section 190

A decision to refuse to grant a provider approval is a reviewable decision under the National Law (see ***Reviews***, below).

After approval has been granted

National Law
Sections 20, 30

The regulatory authority must give the approved provider a copy of the provider approval.

A service approval is not suspended during any period that a person is approved to manage or control the education and care service in the event that the approved provider dies or becomes incapacitated.

ACECQA will update the register of providers to reflect any amendments to a provider approval as necessary.

1.6 VOLUNTARY SUSPENSION OF PROVIDER APPROVAL

National Law & Regulations

Section 37
Regulation 19

WA

An approved provider can apply to the regulatory authority to voluntary suspend – put 'on hold' their provider approval – for up to 12 months.

During that time the person must not operate an education and care service.

The approved provider must apply for voluntary suspension in writing.

The National Regulations specify information that must be included in an application to suspend provider approval (see *Application checklists – Table VII*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Incomplete applications

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* within *Application for provider approval* above.

Notification to parents

An approved provider must notify parents of children enrolled at their services of their intention to apply for voluntary suspension of a provider approval at least 14 calendar days before making the application.

Timeframes for assessing an application

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in *Application for provider approval*.

National Law

Section 42

Considering an application

The regulatory authority can only suspend a provider approval after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.

National Law

Section 37

Determining an application

If the regulatory authority grants an application for voluntary suspension of a provider approval, it may agree on the date the suspension takes effect with the approved provider.

The regulatory authority must give written notice of its decision and, if granted, advise the period of suspension.

National Law

Section 37

After approval has been suspended

The effect of suspension is that all service approvals held by the provider are suspended for the same period, unless the service approval is transferred, or a person is approved to manage or control an education and care service in the event the provider dies or becomes incapacitated.

The suspension remains in force for the period specified in the written notice of decision.

The approved provider may apply to have the suspension revoked before the end of the suspension period. If the regulatory authority grants the application to revoke the suspension, they may agree to a date for the suspension to cease with the approved provider.

1.7 SURRENDER OF PROVIDER APPROVAL

National Law

Section 38

An approved provider can surrender their provider approval by giving written notice to the regulatory authority. Once surrendered, the person is not taken to be an approved provider and must not operate a service.

Generally, if an approved provider changes its legal status, for example, where a sole trader becomes a body corporate, they will need to apply for a new provider approval.

The notice to the regulatory authority must specify the date the surrender is intended to take effect. This date must be after the notice is given to the regulatory authority and at least 14 calendar days after parents of children enrolled at any services are notified.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Notification to parents

An approved provider must notify parents of children enrolled at any of their services of their intention to surrender their provider approval. Parents must be notified at least 14 calendar days before the date of surrender is to take effect.

After surrender of provider approval

If a provider approval is surrendered, the provider approval and any service approval held by the provider are cancelled on the date specified in the notice.

1.8 EXERCISE OF POWERS BY ANOTHER REGULATORY AUTHORITY

National Law

Section 42

The regulatory authority of another jurisdiction may exercise all its powers and functions in relation to a provider approval, if the approved provider operates an education and care service in its jurisdiction.

The regulatory authority may only amend, suspend or cancel a provider approval after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the decision made.

Cancellation or suspension of a provider approval in one state or territory applies to all states and territories.

1.9 OFFENCE RELATED TO PROVIDER APPROVAL

National Law

Section 103

A person must not provide an education and care service unless the person is an approved provider of that service.

1.10 ADDITIONAL INFORMATION

The following list outlines the organisations responsible for working with children/ vulnerable people check screenings in each state and territory other than Tasmania and for working with vulnerable people registration in Tasmania.

State and territory screening units		
Australian Capital Territory	ACT Chief Minister, Treasury and Economic Development Directorate	accesscanberra.act.gov.au
New South Wales	New South Wales Office of the Children's Guardian	kidsguardian.nsw.gov.au
Northern Territory	Northern Territory Government	nt.gov.au/emergency/community-safety
Queensland	Queensland Blue Card Services	bluecard.qld.gov.au
South Australia	South Australia Screening Unit of the Department for Communities and Social Inclusion (DCSI)	screening.dcsi.sa.gov.au
Tasmania	Tasmania Department of Justice	www.justice.tas.gov.au/working_with_children
Victoria	Victoria Justice and Regulation	workingwithchildren.vic.gov.au
Western Australia	Western Australia Department of Communities	workingwithchildren.wa.gov.au

2. SERVICE APPROVAL

National Law

Section 103

A person must have service approval to operate an education and care service under the National Law and Regulations. Regulatory authorities are responsible for assessing and determining applications for service approval.

This section sets out how applications are made and processed.

2.1 WHAT IS AN EDUCATION AND CARE SERVICE?

National Law & Regulations

Section 5
Regulation 5

An education and care service is any service providing or intended to provide education and care on a regular basis to children under 13 years of age.

Services that are excluded by the National Law and Regulations and are not in scope of the National Quality Framework are listed below.

Services out of 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
Disability services defined under state or territory law, and early childhood intervention services for children with additional needs
Education and care in a child's home
Except in WA, education and care in a residence, other than as part of a family day care service
Primarily ad hoc or casual education and care (commonly referred to as occasional care)
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
Services that on 30 June 2018 were funded under the Budget Based Funded program and were not approved under family assistance law
Services that on 30 June 2018 were funded under the Indigenous Advancement Strategy but were not approved under family assistance law nor regulated under the National Quality Framework
Playschools licensed in the Australian Capital Territory
Stand-alone services in Queensland
Playcentres in South Australia and New South Wales
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.

Education and care services can include services that educate and care for children under 13 years of age and also provide services for children over 13 years of age.

A transport service

Children are sometimes transported as part of participating in education and care.

Whether this transport is part of the education and care service will depend on the circumstances. For example, where children are transported on an excursion as part of the service, the National Law and Regulations would apply.

Where children leave the premises under transport that is not part of the education and care service, the approved provider must ensure children leave the premises in accordance with regulation 99.

Approved providers should also consider other laws and rules that might apply to transport services in their state or territory, such as road safety, driver training and any working with children check requirements.

2.2 APPLICATION FOR SERVICE APPROVAL

National Law

Sections 43, 287

An approved provider may apply to the regulatory authority for a service approval, provided they operate (or will operate) the service and are responsible for the management of staff members and the nominated supervisor for the service.

A person who has applied for a provider approval may also apply for a service approval. However, the service approval can only be granted if the provider approval is granted.

More than one entity may hold a provider or service approval. Each entity is jointly and severally responsible for complying with the National Law and Regulations. Regulatory authorities will assess the risk associated with joint applicants when determining applications for approvals.

How does an approved provider apply?

National Law & Regulations

Sections 44, 161
Regulations 24–26

WA

An application must be made in writing to the regulatory authority where the service is to be located and must include payment of the fee (see *Fees*).

The National Regulations specify information that must be included in an application for service approval (see *Application checklists* – *Tables VIII, IX*).

Consent to be a nominated supervisor

The approved provider must nominate one or more individuals to be nominated supervisors for the service.

The application for service approval must include written consent from each person nominated acknowledging that they consent to performing the role of nominated supervisor for the service. The only exception is if an approved provider is an individual and nominates themselves to be a nominated supervisor, in which case they do not need to provide written consent. Written consent is required in all other cases.

A service must have at least one nominated supervisor. There is no maximum number of nominated supervisors that may be appointed at one time for a service.

See *Operational Requirements – Staffing Arrangements* for more information on persons in day-to-day charge and nominated supervisors.

Applications for service approval including an associated children's service

National Law

Sections 44, 102

If an approved provider wants to operate a service covered by the National Law on the same premises as a service regulated under a different state or territory law (an associated children's service), they can apply for service approval for both services under the National Law. For example, a provider may deliver a long day care service (approved education and care service) and an occasional care service (an associated children's service) from the same premises.

Separate approvals are not needed but the associated children's service must comply with the relevant state or territory children's services law. See the *Glossary* for relevant state and territory children's services laws.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

National Law

Sections 50A, 103A

Applications for service approval including request for approval of a family day care venue

An approved provider may operate a family day care service at a venue only in exceptional circumstances and if approved by the regulatory authority.

An approved provider may apply to have a place approved as a family day care venue by the regulatory authority as part of an application for a new service approval. If the approved provider already holds a service approval, they may apply by seeking an amendment of the service approval (section 54(8A)).

Examples of exceptional circumstances that a regulatory authority may consider in approving a venue include:

- where the proposed venue is located in a rural or remote area, and the location or characteristics of residences are not suited to family day care
- other locations where potential residences may be unsuitable
- for a temporary period (generally up to 12 months), where a residence is unavailable due to essential major repairs or the effects of natural disaster
- where care is provided for a small group of vulnerable or disadvantaged children and a suitable residence is not available. What is considered vulnerable and disadvantaged would depend on the circumstances of each case.

In addition to considering whether exceptional circumstances exist, regulatory authorities must have regard to the suitability of a proposed venue when assessing a new service approval application, and may have regard to suitability when assessing an amendment of a service approval. Approved providers support this process by providing an assessment of the proposed venue in their application. See *Assessments of family day care residences and venues*.

It is an offence for an approved provider to provide education and care to children from a place that is not an approved family day care venue or residence. This offence attracts a penalty of $20,000 in the case of an individual, or $100,000 in any other case.

WA

Approved providers in Western Australia that already operate a service from a venue have until 1 April 2019 to submit a complete application to the regulatory authority for approval of the existing venue. This can be done as an application for an amendment of the service approval. The regulatory authority will make a decision on the application within six months of receiving the application (section 326).

An existing venue (that was approved by a provider before 1 October 2018) will cease to be approved if it is not approved by the regulatory authority, or the approved provider does not apply for venue approval by 1 April 2019.

A declared approved family day care venue continues to be an approved venue after 1 October 2018 (section 327).

Incomplete applications

National Law
Section 265

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* within *Application for provider approval* above.

Timeframe for assessing an application

National Law
Sections 45, 48

A decision must be made within 90 calendar days of the regulatory authority receiving a complete application. This period may be extended with the applicant's agreement. There is no limit on how long this may be if the applicant agrees.

If more information is requested, the time taken to provide it is not included in the 90-day period.

If a decision is not made within 90 calendar days (including any extension), it is taken to be refused.

National Law
Section 50

The regulatory authority must give the applicant written notice of its decision, including the reasons, within seven (7) calendar days after it makes the decision.

Calculating time

For more information refer to *Calculating time* in *Application for provider approval*.

Considering an application

Conducting enquiries and investigations

National Law
Section 46

When considering an application for service approval, the regulatory authority may:

- undertake inquiries and investigations, including in relation to the previous licensing, accreditation or registration of the service under a former education and care service, children's services or education law
- inspect the policies and procedures for the service
- inspect the service premises and enter the service premises at any reasonable time.

Regulatory authorities will generally inspect a proposed service premises as part of the decision-making process wherever possible for an application for a centre-based service approval.

Where an inspection is not possible, the regulatory authority can use other methods such as inspection of certified plans or topographical evidence, video or photographic evidence. The regulatory authority may also delegate a visit by a third party, as permitted under section 262 (see *Monitoring, Compliance and Enforcement*).

National Law & Regulations

Section 47
Regulation 27

Matters the regulatory authority must consider

The regulatory authority must consider the below matters when determining an application for service approval.

Matters the regulatory authority must consider for a service approval
The National Quality Framework
Except for a family day care residence, the suitability of the service premises and its site and location for operating an education and care service
The adequacy of the policies and procedures for the service (see *Conducting enquiries and investigations* above)
Whether the applicant is an approved provider
Whether the nominated supervisor for the service has given their written consent
Any suspension of or conditions on the applicant's provider approval.

The regulatory authority may also consider any other matters that are relevant to the application.

Other matters the regulatory authority may consider include:

- whether the applicant's financial capacity, management ability or any other relevant matters affect their capacity to operate the service
- the applicant's history of compliance with the National Law, including in relation to any other service they operate.

For applications that include an associated children's service, the regulatory authority must consider the criteria for grant of a children's service licence under the relevant children's services law, not including the criteria for assessing the applicant's fitness and propriety.

The regulatory authority may do the following:

- Check the status (i.e. approved, suspended, cancelled) of services in other jurisdictions associated with the approved provider for information that may be relevant to their ability to operate a service in accordance with the National Law
- Request proposed budgets for the service, including wages, resources, utility costs, insurances, maintenance of service and professional development. However, it is not the regulatory authority's responsibility to provide advice to applicants about operational budgets for a service
- Request the approved provider to submit all their policies, or a sample for review. The required policies and procedures are set out in regulation 168. Additional policies and procedures required for family day care services are set out in regulation 169. If there are concerns about the adequacy of the policies, the regulatory authority may seek to review further policies and procedures for the service.

Regulatory authorities are not responsible for advising approved providers about the content of their policies and procedures. However, the regulatory authority may direct the provider to some best practice resources, such as Staying Healthy: Preventing infectious diseases in early childhood education and care services published by the National Health and Medical Research Council (www.nhmrc.gov.au) and publications by organisations such as the Cancer Council (www.cancer.org.au), KidSafe (www.kidsafe.com.au), Red Nose (www.rednose.com.au) or a child protection agency (see *Additional information*).

Requiring more information to make decision on application

National Law
Section 45

The regulatory authority may ask the applicant for any information reasonably required to assess their application.

It can also ask for more information if it is not satisfied the proposed education and care service premises will be suitable because its design makes supervision difficult. In this case, the regulatory authority may ask how they intend to mitigate design issues and ensure adequate supervision at all times.

Conditions on service approval

National Law & Regulations
Section 51
Regulations 29–32A

A condition is a requirement that the person holding the approval must comply with to avoid committing an offence under the National Law.

A service approval is granted subject to conditions that the approved provider must comply with, set out in the table below.

It may also be granted subject to other conditions imposed by the regulatory authority. For example, if there are concerns about the provider's ability to provide an environment safe for infants at the service, a condition may be imposed preventing the provider from providing education and care to children under 12 months of age.

A condition applies to the provider unless the condition expressly provides otherwise.

A condition of service approval does not apply to an associated children's service, unless the regulatory authority specifies otherwise. The regulatory authority may apply a condition of service approval solely to an associated children's service only if it has first consulted with the relevant children's services regulator.

Conditions may be imposed at the time the service approval is granted, or at a later time (see *Amendment of service approval*). See *Monitoring, Compliance and Enforcement – Conditions* for more information about conditions on a service approval.

Mandatory maximum number of family day care educators

National Regulations
Regulations 32A, 384

A condition on each family day care service approval requires there to be a limit on the number of family day care educators that may be engaged by or registered with a family day care service. The regulatory authority must set the maximum number of educators who may be engaged or registered with that service.

The regulatory authority will consider each service on a case-by-case basis, taking into consideration:

- current educator numbers
- NQS rating
- provider compliance history
- length of time the provider and the service has been in operation
- support and supervision arrangements for educators.

The regulatory authority may consult with the provider when determining appropriate maximum educator numbers for the service.

Conditions on a service approval

Condition	Centre-based service	Family day care service
The service is operated in a way that ensures the safety, health and wellbeing of children educated and cared for by the service, and meets children's educational and developmental needs.	✔	✔
The service commences ongoing operation within six months after the approval is granted, unless the regulatory authority agrees to an extension.	✔	✔
The approved provider has: • a current insurance policy providing adequate cover for the service against public liability, with a minimum cover of $10 million, or • an insurance policy or indemnity against public liability provided for the service by a state or territory government.	✔	✔
The prescribed number of persons are appointed as family day care co-ordinators to monitor and support the family day care educators engaged or registered with the service.		✔
Each family day care educator is adequately monitored and supported by a family day care co-ordinator.		✔
Each family day care educator holds public liability insurance with a minimum cover of $10 million.		✔
The service's quality improvement plan is kept at the service premises (the principal office for family day care services).	✔	✔
The service's quality improvement plan is made available for inspection by the regulatory authority or an authorised officer.	✔	✔
The service's quality improvement plan is made available on request to parents of children enrolled, or seeking enrolment, at the service.	✔	✔
The service continues to be entitled to occupy the education and care service premises.	✔	
The number of children educated and cared for by the service at any one time does not exceed the maximum number of children specified by the service approval.	✔	
The number of family day care educators providing education and care as part of the service does not exceed the maximum number of family day care educators determined by the regulatory authority in the service approval.		✔
Each family day care residence, and any approved family day care venue of the service, are located in the jurisdiction that granted the service approval.		✔

Management companies

National Law

Section 43

Occasionally, an approved provider will engage a management company to help them operate their service. Management companies vary in the range of services they offer, from payroll, bookkeeping and short notice staffing solutions to a wide range of day to day management services.

The approved provider retains legal responsibility under the National Law for the service even if it engages a management company. Approved providers cannot delegate or outsource their statutory obligations, or liability, regardless of what contractual arrangement the approved provider has with the management company.

The approved provider may only apply for service approval if it (and not the management company) is or will be the operator of the service, and is or will be responsible for the management of the staff members and nominated supervisor.

Requiring more information to make decision on application

National Law

Sections 51, 55

Regulatory authorities can seek more information from the approved provider to determine a service approval application (section 51). For example, the regulatory authority may request details of the management company's name, structure and experience in operating approved education and care services.

Where a management company is or will be involved in running the service, the regulatory authority may make enquiries with the approved provider, by interview or otherwise, to ensure that the approved provider:

- will be responsible for management of staff members and the nominated supervisor
- is fully aware of their responsibilities under the National Law, and understands that they cannot 'contract out' those obligations
- has a contingency plan in place should the management company fail to meet expectations or the contract is terminated
- ensure that services provided by the management company which directly impact the day to day operating of the education and care service are provided in a way that is compliant with the National Law, and does not pose a risk to children or the ability of the provider to meet its obligations under the National Law.

The regulatory authority may impose a condition on a service approval (section 51(5)). For example, a condition to require the approved provider to notify the regulatory authority of a change in the management company, or a significant change in the scope of services supplied by the management company, or that the approved provider ensures that officers engaged through the management company are fit and proper persons.

Similarly, where the regulatory authority becomes aware of a management company after granting a service approval, the approval may be amended and a condition imposed where appropriate (section 55(2)).

Determining an application

National Law
Section 52

If the regulatory authority grants a service approval, it must provide a copy to the approved provider including the information below.

The service approval must be displayed so that it is visible from the main entrance of the approved service.

Information on a service approval
The name of the service
The location of the service for centre-based services, or the location of the principal office and any approved family day care venues
Any conditions on the service approval
The date service approval was granted
The name of the approved provider
Except for family day care services, the maximum number of children who can be educated and cared by the service at any one time
Details of any service waiver or temporary waiver that applies to the service.

The National Law does not specify how much time the regulatory authority has to give the approved provider a copy of the service approval. This means it must be done as soon as possible after deciding to grant the approval (Schedule 1, clause 31).

National Law
Section 48

If an application for service approval includes an associated children's service that does not meet state or territory-based licensing requirements for children's services, the regulatory authority may grant a service approval only for the education and care service. The regulatory authority cannot grant a service approval that is only for an associated children's service.

Refusing to grant service approval

National Law & Regulations
Section 49
Regulation 28

The regulatory authority cannot grant a service approval if the applicant does not have provider approval, or if the regulatory authority is satisfied the operation of the service would constitute an unacceptable risk to the safety, health or wellbeing of children.

The regulatory authority may refuse to grant a service approval if it is:

- not satisfied that the grounds for granting approval are met
- not satisfied the applicant can operate the service in a way that meets the National Law and Regulations, including the National Quality Standard
- not satisfied the applicant is entitled to occupy the proposed service premises (for centre-based services)
- not satisfied the applicant is capable of assessing family day care venues or residences or monitoring family day care educators (for family day care)

- not satisfied the provider can maintain the premises or equipment or provide staff as required by the National Law. This may be due to the provider's financial capacity, management ability or another reason.

Family Day Care

In determining capacity to operate a family day care service, there is a range of approaches that regulatory authorities may use, including:

- assessing the adequacy of an applicant's policies and procedures
- holding information sessions for providers who wish to operate family day care services
- conducting interviews with prospective family day care service providers to determine their understanding of policies, the National Quality Standard and other requirements of the National Law and Regulations. The questions asked should be questions that a person operating a service should reasonably be able to understand and answer.

If the regulatory authority is not satisfied of the applicant's capacity to operate a family day care service, it may refuse to grant the service approval, or grant approval subject to conditions (see ***Conditions on service approval***).

All decision-making should be carried out in accordance with the principles of administrative decision-making (see ***Good Regulatory Practice***).

Giving notice of the determination

A decision must be made within 90 calendar days. The regulatory authority must give the applicant written notice of its decision, and the supporting reasons, within seven (7) calendar days of making the decision (see ***Timeframe for assessing an application***, above).

National Law

Section 190

Appeals

A decision to refuse to grant a service approval, or to grant service approval subject to conditions, is a reviewable decision under the National Law (see ***Reviews***).

After an application has been determined

Publication on the register of approved services

National Law & Regulations

Sections 267, 270
Regulation 230

Regulatory authorities must keep a register of approved education and care services operating in their jurisdiction including the information set out below.

Information on the register of approved services
The name of the service
The name of the approved provider for the service
Except in the case of a family day care service, the address of each education and care service premises
In the case of an approved family day care service, the address of the principal office of the service
The rating levels for each service
The contact details for the service
In relation to a centre-based service, the hours of operation of the service
Any conditions to which the service approval is subject
In relation to a centre-based service, the approved number of places
The date the approved provider was granted service approval
The service approval number
The provider approval number.

The regulatory authority and ACECQA may publish the rating levels of the service, the name of the service, the address of the education and care service (except for family day care services) and, in the case of a family day care service, the address of the principal office.

This published information must not identify or lead to the identification of an individual, other than:

- an approved provider
- a person who is being prosecuted for an offence under the National Law.

The address of the principal office of a family day care service should not be published if it is at a private residence. In such cases, the register will not include an address for the service. ACECQA will publish the register of approved services, and regulatory authorities will meet their obligation to publish by linking to the ACECQA website at www.acecqa.gov.au.

Duration and effect of service approval

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

A service approval is ongoing unless cancelled or suspended by the regulatory authority, or surrendered or voluntarily suspended by the approved provider. A service approval can also be limited by a condition applied by the regulatory authority.

2.3 AMENDING SERVICE APPROVAL ON APPLICATION

National Law & Regulations

Section 54
Regulation 34

WA

An approved provider may apply to the regulatory authority for an amendment of a service approval.

An application must be made in writing and include payment of the fee (see ***Fees***). An application must include:

- the name of the service
- the service approval number
- the name and contact details for the contact person for the application
- the details of the amendment applied for, and sufficient information or documentation to support the application.

If the application includes a request for an approval of a family day care venue, the application must also include:

- the location and street address of the venue
- a statement that the applicant has the right to occupy and use the place as a venue and any document evidencing this (e.g. a lease of the premises)
- an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children is protected.

The regulatory authority may ask the approved provider for further information reasonably required to assess the application.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

National Regulations

Regulations 174–175

Approved providers are not required to submit a service approval amendment to change the location of the family day care principal office. However, they are required to notify the regulatory authority at least 14 days before the change. Regulatory authorities should update the service approval when they receive a notification (see ***Operational Requirements – Governance and leadership*** and ***Applications and Approvals – Amendment of service approval without application***).

The approved provider may seek to amend the service approval when requesting approval of a place as a family day care venue. The regulatory authority may approve the application if it considers there are exceptional circumstances and the approved provider has included an assessment of the proposed venue in the application. See ***Applications for service approval including request for approval of a family day care venue*** and ***Assessments of family day care residences and venues***.

Incomplete applications

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* in the *Application for service approval* section, above.

Timeframe for assessing an application

A decision must be made within 60 calendar days of the regulatory authority receiving a complete application.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in the *Application for provider approval section*.

Considering the application

The National Law and Regulations do not specify the type or level of information needed to assess an application for amendment of service approval, other than requiring an application to include 'sufficient information'. 'Sufficient information' means enough information for the regulatory authority to make a decision on the application.

Determining the application

Once the regulatory authority has received a complete application, it must decide to:

- amend the provider approval in the way that was applied for; or
- amend the provider approval in another way, with the applicant's written approval; or
- refuse the amendment of the provider approval.

An amendment may include a change to a condition of the provider approval or introduce a new condition.

Appeals

A decision to refuse to amend a service approval is a reviewable decision under the National Law (see *Reviews*).

National Law

Section 190

After approval has been amended

National Law
Section 57

If the regulatory authority amends the service approval, it must give a copy to the approved provider.

2.4 AMENDMENT OF SERVICE APPROVAL WITHOUT APPLICATION

National Law
Section 55

The regulatory authority may amend a service approval at any time without an application from the approved provider. Amendment of a service approval may include varying a condition or imposing a new condition on a service approval.

Regulatory authorities may amend a service approval to reflect a change to the location of the principal office of a family day care service. See ***Operational Requirements – Governance and leadership*** for information about providers' obligations to notify the regulatory authority.

After approval has been amended

National Law
Section 57

The regulatory authority must give the approved provider written notice of the amendment. Amendment takes effect 14 calendar days after the approved provider is notified, or at the end of another period specified by the regulatory authority.

At the request of a relevant children's services regulator, the regulatory authority must amend a service approval that relates to an associated children's service, provided the request accords with the relevant children's services law.

If the regulatory authority amends the service approval, it must give a copy to the approved provider.

Appeals

National Law
Section 190

A decision to amend a service approval is a reviewable decision under the National Law (see ***Reviews***).

2.5 OFFENCES RELATED TO SERVICE APPROVAL

Operating a service without service approval

National Law
Section 103

It is an offence under the National Law for a person to provide an education and care service without a service approval. A family day care educator providing education and care as part of an approved service is not committing an offence under this section.

Advertising a service without service approval

National Law
Section 104

It is an offence for a person to publish (or cause to be published) an advertisement for an education and care service unless the service is approved or an application for service approval has been submitted to the regulatory authority but not yet decided.

A family day care educator can advertise if they make clear they are part of an approved service. Any advertisement should indicate which approved service they are promoting and include contact details for that service.

Activities that are part of a planning process, such as gauging interest in the feasibility of a service, do not constitute advertising a non-approved service.

2.6 TRANSFER OF SERVICE APPROVAL

National Law & Regulations

Sections 58–61
Regulations 36–37

An approved provider (the transferring approved provider) may transfer a service approval to another approved provider (the receiving approved provider).

Notification of decision to transfer

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

The regulatory authority may agree to a shorter notification period if it considers there are exceptional circumstances (see below).

The notice must be in writing, include the required information and payment of the fee (see *Application checklists – Table X* and *Fees*).

Regulatory authority consent

A service approval can only be transferred with the regulatory authority's consent. The regulatory authority is taken to have consented if it is notified of the transfer and, 28 calendar days before the transfer is to take effect, has not advised the approved providers that it intends to intervene.

The regulatory authority may reassess waivers when notified of the transfer of service approval.

Exceptional circumstances

Regulatory authorities may agree 'exceptional circumstances' exist to justify a shorter notification period of less than 42 calendar days where, for example, the approved provider is ill and no longer able to operate the service, and it is in the best interests of the children at the service to ensure continuity by transferring the service to a new approved provider.

SA NSW TAS WA

Where a service in SA, NSW, TAS or WA is transferred under a transitional arrangement, the notification of transfer must include information regarding the requirements that will need to be met by the service.

Where a service is in NSW and has a waiver, the notification must include how the service will fulfil obligations of the waiver, i.e. whether they will be keeping on an Early Childhood Teacher nominee for a staffing waiver.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Decision to intervene in transfer of service approval

National Law & Regulations

Section 62
Regulation 38

The regulatory authority may intervene in a transfer if it is concerned about any matter it considers relevant including:

- the receiving approved provider's capacity to operate the service, considering their financial capacity, fitness and propriety and management ability
- the receiving approved provider's history of compliance with the National Law and Regulations, including in relation to any other education and care service they operate.

If the regulatory authority decides to intervene both the transferring and receiving approved provider must be notified in writing at least 28 calendar days before the transfer is intended to take effect. This does not apply in cases where a notification of service transfer is not lodged in accordance with section 59 of the Law. The notice must include the information set out below.

Information that must be included in notification to intervene in transfer of service approval
The name of the education and care service
The service approval number
The transferring approved provider's name
The receiving approved provider's name
The matters about which the regulatory authority is concerned.

National Law

Sections 63–64

If the regulatory authority intervenes, a transfer cannot proceed unless the regulatory authority gives written consent.

The regulatory authority may request more information from the transferring or receiving approved providers to inform its decision to consent or refuse to consent to the transfer. The regulatory authority may also make inquiries about the receiving approved provider.

Decision following intervention in transfer

National Law

Sections 65–66

The regulatory authority may impose conditions on its consent to transfer, including specifying the date the transfer will take effect. The service approval must be transferred in accordance with any conditions imposed.

If the regulatory authority intervenes in a transfer of a service approval, it must notify the transferring and receiving approved providers of its decision at least seven (7) calendar days before the transfer is intended to take effect.

The notice must specify the regulatory authority's decision according to the options set out below.

Transfer of service approval – notice of outcome
Consent to the transfer, including the date on which the transfer will take effect and any conditions on the consent to transfer (notice may also include any new conditions placed on the receiving provider's provider approval or service approval), **or**
Refusal to consent to the transfer (service cannot be transferred), including the reasons for refusal, **or**
Suspension of consideration of the transfer until more information is received, and that the transfer may not proceed until the regulatory authority gives its written consent, **or**
Decision not yet made on the transfer but will decide within 28 calendar days, and that the transfer may not proceed until the regulatory authority gives its written consent.

National Law
Section 67

A transfer of service approval is void if it is made:

- without the regulatory authority's consent
- in a way that does not satisfy conditions imposed on the regulatory authority's consent
- to a person other than the receiving approved provider who notified the regulatory authority of the transfer.

A cancelled service approval cannot be transferred. A service approval that is going to be cancelled may be able to be transferred (see *Monitoring, Compliance and Enforcement*).

Notification following transfer of service approval

National Law
Section 68

The transferring and receiving approved providers must notify the regulatory authority in writing within two (2) calendar days after the transfer takes effect, specifying the date of the transfer. Transfer of a service approval includes transfer of any associated children's service included on the service approval.

On receiving notice that the service has been transferred, the regulatory authority must amend the service approval and give the receiving approved provider an updated copy. The amendment to the service approval is taken to have effect on the date of transfer.

The receiving approved provider must notify parents of children enrolled at the service of the transfer at least two (2) calendar days before transfer takes effect.

Transfer of suspended service approval

National Law
Section 76

The regulatory authority may consent to the transfer of a suspended service approval. In this case, the suspension ceases when the transfer takes effect, unless the regulatory authority has imposed a condition on the transfer stating otherwise.

Application to transfer service approval when provider approval is cancelled

National Law
Section 34

An approved provider can apply to the regulatory authority for consent to transfer a service approval if their provider approval will be cancelled (see *Monitoring, Compliance and Enforcement*).

The application to transfer must be made within 14 calendar days after the date of the decision to cancel the provider approval. In this case, the service approval is suspended until the regulatory authority has determined the application for consent to transfer.

If the regulatory authority consents to the transfer, suspension of the service approval ceases on the date the transfer takes effect, unless conditions of transfer specify a later date.

If the regulatory authority decides not to consent to the transfer, the service approval is cancelled from the date of its decision.

Application to transfer cancelled service approval

National Law

Sections 81–82

An approved provider can apply to the regulatory authority for consent to transfer a service approval that is to be cancelled, unless the cancellation relates only to an associated children's service.

The application must be made within 14 calendar days after the regulatory authority decides to cancel the service approval.

If the approved provider applies for consent to transfer, the service approval is suspended, rather than cancelled, until the regulatory authority determines the application.

If the regulatory authority consents to the transfer, its decision to cancel the service approval is revoked. The suspension of the service approval ceases when the transfer takes effect, unless the regulatory authority imposes a condition on their consent to transfer, specifying a later date.

If the regulatory authority refuses to consent to the transfer, the service approval is cancelled, effective from the date of its decision.

The National Law does not specify how an approved provider must apply for consent to transfer service approval if their approval will be cancelled. To ensure it has all the necessary information to decide whether to consent to the transfer, the regulatory authority can request an application be made in the same form as an application to transfer service approval in ordinary circumstances (See ***Notification of decision to transfer***, above).

2.7 SUSPENSION OF SERVICE APPROVAL

National Law & Regulations

Sections 30, 70–75, 84–85
Regulations 39–40

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

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
  - 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 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 require the approved provider to notify parents of enrolled children of the suspension in writing.

A regulatory authority may also suspend a service approval without prior notification if 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 (see *Transfer of service approval*, above).

2.8 VOLUNTARY SUSPENSION OF SERVICE APPROVAL

National Law

Section 85

An approved provider may apply for voluntary suspension of a service approval and put the service approval 'on hold' for up to 12 months.

During that time, the person must not operate the service.

An approved provider may apply if, for example, they no longer wish to operate the service but have not negotiated transfer of the service to another approved provider, or if they need to temporarily relocate a service to different premises during refurbishment.

See *Monitoring, Compliance and Enforcement* for information on non-voluntary suspension of a service approval.

National Law & Regulations

Section 85
Regulation 40

How does the approved provider apply?

An application for voluntary suspension must be in writing and include payment of the prescribed fee.

The National Regulations specify information that must be included in an application to suspend service approval (see *Application checklists – Table XI*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Incomplete applications

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to ***Incomplete applications*** within the ***Application for service approval*** section, above.

Notification to parents

An approved provider must notify parents of children enrolled at their services of their intention to apply for voluntary suspension of service approval at least 14 calendar days before making the application.

Timeframes for assessing an application

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to ***Calculating time*** in the ***Application for provider approval*** section.

National Law

Sections 85, 101

Considering the application

The regulatory authority should consider whether the suspension is reasonable in the circumstances.

The regulatory authority can only suspend a service approval of a family day care service after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the service approval. Failure to consult other regulatory authorities does not affect the validity of the decision.

National Law

Section 85

Determining an application

If the regulatory authority grants an application for voluntary suspension of service approval, it may agree to the date the suspension takes effect with the approved provider.

After approval has been suspended

The suspension of the service approval remains in force for the period specified in the written notice of decision. The regulatory authority can lift a period of voluntary suspension at the approved provider's request.

2.9 SURRENDER OF SERVICE APPROVAL

The surrender of service approval means giving up service approval. Once surrendered, the person cannot operate the education and care service.

National Law

Section 86

How does the approved provider surrender approval?

An approved provider can surrender their service approval by giving written notice to the regulatory authority.

The notice to the regulatory authority must specify a date on which the surrender is intended to take effect. The date of effect must be after the notice is given to the regulatory authority and at least 14 calendar days after parents of children enrolled at any services are notified.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Notification to parents

An approved provider must notify parents of children enrolled at the service of their intention to surrender the service's approval. Parents must be notified at least 14 calendar days before the date of surrender is to take effect.

FEES

National Law

Section 261

Regulatory authorities have the power to collect, waive, reduce, defer and refund fees (including late payment fees) and enter into agreements in relation to fees.

Fees associated with applications to ACECQA are not covered in this chapter.

Visit the ACECQA website at www.acecqa.gov.au for a full list of prescribed fees under the National Regulations.

National Regulations

Regulation 232
Schedule 2

Application fees

The National Regulations prescribe fees for certain applications to the regulatory authority.

There is no fee to amend or voluntarily suspend a provider approval or service approval.

National Law & Regulations

Section 53
Regulations 33, 232
Schedule 2

Annual fee

An approved provider must pay the prescribed annual fee for each service approval they hold.

Fees must be paid to the relevant regulatory authority on or before 1 July each year.

National Law

Section 233

Late payment fee

The regulatory authority may charge a late payment fee if an annual fee is not paid by 1 July. The late fee is 15 per cent of the relevant annual fee per 30 days (or part thereof) that the payment is overdue.

If the annual fee is not paid, the regulatory authority may consider taking compliance action (see *Monitoring, Compliance and Enforcement*). Failure to pay the annual fee is grounds for suspension of provider approval and service approval (sections 25 and 70).

Repeated instances of non-payment may indicate poor financial management, and the regulatory authority may decide to reassess the provider's fitness and propriety to provide an education and care service (see *Applications and Approvals*).

Waiving or varying a fee

National Law & Regulations

Section 261
Regulation 234

The regulatory authority may waive, reduce, defer or refund a fee payable or that has been paid if there are exceptional circumstances.

The regulatory authority may also offer flexible payment options to providers who are unable to pay their fees due to exceptional circumstances.

Decisions to waive or vary a fee should be made on a case-by-case basis, depending on the circumstances. For example, if a service has been affected by a natural disaster that has significantly impacted the provider's financial position. The regulatory authority may seek documentary evidence to support the provider's claims of exceptional circumstances.

Indexation

National Regulations

Regulations 235–6

Fees are indexed each year according to published indexation figures, and are available on the ACECQA website at www.acecqa.gov.au before the beginning of each financial year.

GST

Government regulatory fees are exempt from GST.

WAIVERS AND OTHER APPLICATIONS

3. WAIVERS

Waivers play an important role in helping providers maintain their level of service to families while dealing with special circumstances or unexpected events.

An approved provider may apply to a regulatory authority for a waiver of an element of the National Quality Standard and/or the National Regulations. Approved providers can apply for a service waiver where an issue is likely to be ongoing, or a temporary waiver, where the issue can be addressed within 12 months.

3.1 APPLICATION FOR SERVICE WAIVER

National Law

Sections 41, 87, 93

A service waiver allows a service to be taken to comply with requirement/s of the National Regulations and element/s of the National Quality Standard.

Requirements that can be waived by the regulatory authority under the National Regulations, are set out in the table below.

Requirements that may be covered by a service waiver	
Reg	**Requirement**
72A	Location of principal office of family day care service
Physical environment	
NQS	The standards and elements set out in Quality Areas 3 and 4*
104	Fencing
107	Indoor space (Centre-based only)
108	Outdoor space (Centre-based only)
110	Ventilation and natural light
117	Glass (Family Day Care only).
Staffing	
120	Educators who are under 18 to be supervised (Centre-based only)
123	Educator to child ratios—centre-based services (Centre-based only)
124	Number of children who can be educated and cared for (Family Day Care only)
126	Educator to child ratios—centre-based services (Centre-based only)
127	Family day care educator qualifications (Family Day Care only)
128	Family day care co-ordinator qualifications (Family Day Care only)
130	Requirement for early childhood teacher—centre-based services—fewer than 25 approved places (Centre-based only)
131	Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children
132	Requirement for early childhood teacher—centre-based services—25 to 59 children
133	Requirement for early childhood teacher—centre-based services—60 to 80 children
134	Requirement for early childhood teacher—centre-based services—more than 80 children (Centre-based only)
Division 2 of Part 4.3	(Centre-based only) 111 Administrative space 112 Nappy change facilities 113 Outdoor space—natural environment 114 Outdoor space—shade 115 Premises designed to facilitate supervision
Ch.7	Any jurisdiction-specific, transitional or saving provisions that apply in place of the regulations outlined above.

* See schedule 1 of the National Regulations for standards and elements in Quality Area 3: Physical Environment and Quality Area 4: Staffing Arrangements that may be waived.

National Law

Section 88

How does an approved provider apply?

An application for a service waiver must be in writing and include payment of the prescribed fee (see *Fees*).

An approved provider may apply for a service waiver and a service approval at the same time.

An approved provider can only apply for a waiver of the regulations and elements set out in the above table. The application may be refused and the application fee refunded if the application seeks to waive other regulations or elements.

National Regulations

Regulation 42

The National Regulations specify information that must be included in an application for a service waiver (see *Application checklists – Table XIII*).

The application must detail any attempts made to comply with the requirement and include the measures being taken, or to be taken, to protect the wellbeing of children at the service.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

The National Law allows an approved provider to apply for a service waiver from staffing requirements. However, if the issue may be resolved within 12 months, a temporary waiver may be more appropriate.

Incomplete applications

National Law

Section 265

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* in the *Application for provider approval* section, above.

Timeframe for assessing an application

National Law

Section 91

The regulatory authority must notify the applicant of its decision within 60 calendar days after the application is made. The timeframe for determining an application cannot be extended.

If the approved provider applied for a service waiver and a service approval simultaneously, the regulatory authority may notify the applicant of the outcome of both applications at the same time.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in the *Application for provider approval* section.

Considering an application

National Law

Sections 89–90

When considering an application for a service waiver, the regulatory authority may consider whether the service is able to meet the objectives of the element and/or regulation by alternative means, and any other information included in the application.

Assessment of waiver applications

All applications for service or temporary waivers are assessed on a case-by-case basis. A regulatory authority may request more information or may inspect the service premises or office to assist in deciding to grant or refuse a waiver. If more information is requested, the time taken to provide it is not included in the period for determining the application.

If the regulatory authority grants a waiver, it must issue or reissue the service approval specifying the element and/or the regulation to which the service waiver applies.

In assessing a waiver application a regulatory authority should consider:

General

- the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the proposed waiver would be in place
- whether the service can meet the objectives of the regulations by alternative means
- the benefits to families, children and communities in having the service operate
- the service's Quality Improvement Plan
- the number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirement(s)
- the cost of any adjustments needed for the service to comply with the regulations for which a waiver is being sought
- the compliance history of the approved provider and/or the service
- unusual or unforeseen circumstances, such as natural disasters
- whether the issue is ongoing (i.e. longer than 12 months) and requires a service waiver, rather than a temporary waiver, or circumstances have changed and a temporary waiver is required instead of a service waiver.

Staffing Waivers

- staff details, including rosters and qualifications
- evidence of recruitment e.g. advertising and the outcomes of a recruitment attempt
- evidence of progress towards relevant qualifications
- strategies in place to attract, upskill and retain staff
- what the service is doing to meet the immediate shortfall.

Physical Environment Waivers (including indoor and outdoor spaces)

- access to indoor and outdoor spaces, or facilities e.g. toilets
- building and floor plans by a certified building practitioner

- photos of relevant spaces, e.g. simulated outdoor space
- details of renovations
- impact on programming, educational outcomes and experience of children
- at the discretion of the regulatory authority, an authorised officer may visit the service premises to view the relevant spaces and gather additional information.

National Regulations

Regulation 72A

Waiver of requirement to have FDC principal office in the same jurisdiction as FDC service approval

- family day care services are in Local Government Areas in adjacent jurisdictions (e.g. Albury/Wodonga)
- strategies in place to ensure educators will be adequately supported and monitored.

Waiver Conditions

A waiver may be granted subject to conditions. For example, a condition on a waiver may limit it to applying for a specific period of time, i.e. one day a week.

A regulatory authority may grant a waiver subject to conditions for a variety of reasons, including where it considers that limiting the scope of the waiver is appropriate to protect the wellbeing of children educated and cared for by the service.

Conditions on a waiver may be removed, added to or varied at any time. For instance, if a provider fails to take measures to protect the wellbeing of children, as set out in the application, a condition may be imposed which would affect the validity of the waiver. The waiver only applies where steps are taken, in accordance with application, to protect wellbeing of children at service.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver. Conditions on a waiver are recorded on the service approval certificate. These conditions are in addition to any conditions that apply to the service approval itself.

Determining an application

National Law

Section 91

The regulatory authority may decide to grant or refuse an application for a service waiver.

If the regulatory authority receives an application for a service waiver which should have been an application for a temporary waiver, it can be processed as if it was an application for a temporary waiver. The approved provider is not required to resubmit an application (see ***Application for temporary waiver***, below).

Applications to waive multiple regulations

At the discretion of the regulatory authority, an approved provider may include multiple regulations/elements in a single waiver application. If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver.

National Law

Section 91

After a service waiver has been granted

The regulatory authority must give the approved provider a copy of their service approval that lists the element and/or regulation to which the waiver applies and any conditions placed on the waiver.

Revoking a service waiver

National Law & Regulations

Section 92
Regulation 43

A service waiver is ongoing and remains in force until revoked. There is no maximum period for which a service waiver can apply.

While a service waiver is ongoing, it is not 'permanent', as the regulatory authority may revoke a service waiver at its discretion. If a service waiver is revoked, the waiver ceases to apply:

- 60 calendar days after the regulatory authority notifies the approved provider of their decision, or
- at the end of a period determined by the regulatory authority and agreed by the approved provider.

An approved provider may apply to the regulatory authority to have a service waiver revoked. In this case, the waiver ceases to apply:

- 14 calendar days after the regulatory authority notifies the approved provider that the application for revocation is approved, or
- at the end of a period determined by the regulatory authority and agreed by the approved provider.

If a service waiver is granted and the regulatory authority later becomes aware that the grounds on which it was granted no longer apply, or if a condition placed on the service approval has not been complied with, it may revoke the waiver.

If the regulatory authority revokes a waiver and the approved provider fails to comply with a requirement of the National Law and Regulations, it may take compliance action.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

3.2 APPLICATION FOR TEMPORARY WAIVER

National Law

Sections 94, 100

An approved provider may apply to the regulatory authority for a temporary waiver.

A temporary waiver means a service is not required to comply with a specified requirement or requirements of the National Regulations and element/s of the National Quality Standard.

If the regulatory authority becomes aware of a service not being able to meet staffing or physical environment requirements, despite attempts to comply, it may inform the approved provider that they may apply for a temporary waiver, if it is satisfied the approved provider has reasonable justification for not being able to comply.

National Regulations

Regulation 44

What requirements can be the subject of an application for a temporary waiver?

Requirements that can be temporarily waived by the regulatory authority under the National Regulations are set out in the table below.

Requirements that may be covered by a temporary waiver	
Reg	**Requirement**
72A	Location of principal office of family day care service
Physical environment	
NQS	Quality Areas 3 and 4*
104	Fencing
107	Indoor space (Centre-based only)
108	Outdoor space (Centre-based only)
110	Ventilation and natural light
117	Glass (Family Day Care only).
Staffing	
120	Educators who are under 18 to be supervised (Centre-based only)
123	Educator to child ratios—centre-based services
124	Number of children who can be educated and cared for (Family Day Care only)
126	General educator qualifications – centre-based services
127	Family day care educator qualifications (Family Day Care only)
128	Family day care co-ordinator qualifications (Family Day Care only)
130	Requirement for early childhood teacher—centre-based services—fewer than 25 approved places (Centre-based services only)
131	Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children
132	Requirement for early childhood teacher—centre-based services—25 to 59 children
133	Requirement for early childhood teacher—centre-based services—60 to 80 children
136	First aid qualifications
Division 2 Part 4.3	Additional requirements for centre-based services 111 Administrative space 112 Nappy change facilities 113 Outdoor space—natural environment 114 Outdoor space—shade 115 Premises designed to facilitate supervision
Ch.7	Any jurisdiction-specific, transitional or saving provisions that apply in place of the regulations outlined above.

* See schedule 1 of the National Regulations for standards and elements in Quality Area 3: Physical Environment and Quality Area 4: Staffing Arrangements which may be waived.

How does an approved provider apply?

National Law
Section 95

An application for a temporary waiver must be in writing and include payment of the prescribed fee (see *Fees*).

An approved provider can only apply for a waiver of the prescribed regulations and elements set out in the above table. If the regulatory authority receives an application for a waiver of a regulation or element that is not prescribed, the application may be refused and the application fee refunded.

National Law & Regulations
Section 95
Regulation 45

The National Regulations specify information that must be included in an application for a temporary waiver (see *Application checklists – Table XIII*).

The National Regulations do not specify the type of evidence that must be included to support a waiver application. Therefore, the regulatory authority has discretion to accept a range of evidence.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at www.acecqa.gov.au.

Incomplete applications

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* within the *Application for provider approval* section, above.

Timeframe for assessing an application

National Law
Section 98

The regulatory authority must notify the applicant of their decision within 60 calendar days of receiving a complete application. There is no provision to extend the timeframe for determining an application for a temporary waiver.

Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

When calculating the timeframe, the day the application is received is excluded. If the timeframe is expressed in the legislation in terms of a number of days, the last day of that timeframe is also excluded. 'Day' means calendar day. For example, a regulatory authority must make a decision on a provider approval application within 60 days after the application is received (see section 15). If the regulatory authority receives the application on 1 March, the 60-day timeframe commences on 2 March and runs until the end of 1 May. 1 March is excluded from the calculation, and 30 April, the 60th day, is also excluded.

If the last day of the timeframe falls on a non-business day, the next business day will be the last day. Using the example above, if 1 May is a Saturday, Sunday or public holiday, the regulatory authority's decision will be due the first working day after 1 May.

If more information is needed, the time period for responding to the regulatory authority request is excluded from the 60-day limit within which the regulatory authority must decide the application.

Considering an application

National Law

Sections 96–97

The regulatory authority must consider whether any special circumstances disclosed in the application reasonably justify the grant of a temporary waiver.

The regulatory authority may ask for more information or may inspect the service premises or office for the purpose of assessing the application. If more information is requested, the time taken to provide it is not included in the period for determining the application.

Assessment of waiver applications

All applications for service or temporary waivers are assessed on a case-by-case basis with reference to the requirements of the National Law and Regulations. If the regulatory authority grants a waiver, it must issue or reissue the service approval specifying the element and/or the regulation to which the service waiver applies.

In assessing a waiver application a regulatory authority should consider:

General

- the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the proposed waiver would be in place
- whether the service can meet the objectives of the regulations by alternative means
- the benefits to families, children and communities in having the service operate
- the service's Quality Improvement Plan
- the number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirement(s)
- the cost of any adjustments needed for the service to comply with the regulations for which a waiver is being sought
- the compliance history of the approved provider and/or the service
- unusual or unforeseen circumstances, such as natural disasters
- whether the issue is ongoing (i.e. longer than 12 months) and requires a service waiver, rather than a temporary waiver, or circumstances have changed and a temporary waiver is required instead of a service waiver.

Staffing Waivers

- staff details, including rosters and qualifications
- evidence of recruitment e.g. advertising and the outcomes of a recruitment attempt
- evidence of progress towards relevant qualifications
- strategies in place to attract, upskill and retain staff
- what the service is doing to meet the immediate shortfall.

Physical Environment Waivers (including indoor and outdoor spaces)

- access to indoor and outdoor space, or facilities e.g. toilets
- building and floor plans by a certified building practitioner
- photos of relevant spaces e.g. simulated outdoor space
- details of renovations
- impact on programming, educational outcomes and experience of children

At the discretion of the regulatory authority, an authorised officer may visit the service premises to view the relevant spaces and gather additional information.

Determining an application

National Law

Section 98

Granting or refusing a temporary waiver

If granted, the regulatory authority must specify the period for which the temporary waiver will apply, which can be up to 12 months. The regulatory authority must issue or reissue the service approval, specifying the element and/or regulation to which the temporary waiver applies, the period of the waiver, and any conditions placed on the waiver.

Conditions on temporary waivers

If a temporary waiver is granted, the regulatory authority may place conditions on the waiver including limiting the use of the waiver. The regulatory authority may also remove, add to or vary any conditions placed on the temporary waiver at any time.

Applications to waive multiple regulations

At the discretion of the regulatory authority, an approved provider may include multiple regulations/elements in a single waiver application. If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver.

If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.

Revoking a temporary waiver

National Law

Section 99

The regulatory authority may revoke a temporary waiver at its discretion.

An application for a temporary waiver must include details of any attempts made to comply with the requirement and the measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service. The regulatory authority may consider revoking a temporary waiver after it has been granted, if made aware that the grounds on which it was granted no longer apply or that the service approval has not been complied with.

There is no notice period for revoking a temporary waiver.

If the regulatory authority revokes a waiver and the approved provider fails to comply with a requirement of the National Law and Regulations, it may consider whether it is appropriate to take compliance action.

An approved provider may contact the regulatory authority seeking to have a temporary waiver revoked if it is no longer required. The National Law does not prescribe the process for revoking a temporary waiver at a provider's request.

3.3 COMBINING A WAIVER WITH CONDITIONS ON SERVICE APPROVAL

National Law

Section 51

The regulatory authority can impose any conditions it considers appropriate on a service approval and on a waiver.

The regulatory authority may grant a temporary waiver and place conditions on the service approval at the same time.

Conditions may also be placed on the service approval at a later time.

This approach may be suitable where there:

- is a greater risk to children in granting the waiver, such as where the service would not be allowed to operate without meeting certain conditions or taking certain steps
- are concerns about whether the provider will maintain their efforts to meet the requirement and follow through on any agreed actions.

This approach may be preferred if it is important families using the service are aware of the grounds on which the waiver has been issued, as the details of any conditions on a service approval must be displayed at the entrance to the service premises.

See *Monitoring, Compliance and Enforcement – Conditions* for more information about using conditions on a service approval.

After a temporary waiver has been granted

National Law

Section 98

The regulatory authority must give the approved provider a copy of their service approval that lists the element and/or regulation to which the waiver applies, the period of the waiver and any conditions placed on the waiver.

Regulatory authorities should take a risk-based approach to monitoring compliance of services with a temporary waiver (see ***Monitoring, Compliance and Enforcement*** for more information about monitoring activities).

If a service is transferred to a new provider, any waivers that apply will remain in place. However, the regulatory authority might decide to monitor the service after it is transferred, to ensure the grounds on which the waiver was issued still exist.

The National Law does not explicitly give regulatory authorities the power to publish information about waivers. Regulatory authorities may, however, publish information about conditions on service approvals.

Expiry of a temporary waiver

National Law

Sections 98, 100

Once the period for which a temporary waiver is granted has passed, the waiver no longer applies and the service must comply with the National Law and Regulations, unless an extension has been granted.

To help ensure families can access current information about the service, the regulatory authority should reissue the service approval once a temporary waiver expires.

Once a temporary waiver expires, the regulatory authority might decide to monitor the service to ensure the requirement is being met (see ***Monitoring, Compliance and Enforcement*** for more information).

Application to extend a temporary waiver

National Law

Section 98

The approved provider may apply for an extension of a temporary waiver. The regulatory authority cannot extend a temporary waiver without an application from the approved provider. The application must be in writing and include payment of the prescribed fee (see ***Fees***).

The regulatory authority may extend a temporary waiver for up to 12 months. Approved providers may apply for further extensions to a temporary waiver however this will be assessed on a case-by-case basis.

An application for an extension of a temporary waiver must relate to the same regulations and/or elements and circumstances for which the initial waiver was granted. For instance, a provider might apply for an extension to a temporary waiver if building works take longer than expected, or if an educator needs some more time to complete their approved qualification. If the provider is seeking a waiver of different requirements, they must submit a new application.

When considering an application for extension of a temporary waiver, the regulatory authority will consider the same matters as for an initial application, paying particular attention to the attempts made and/or steps taken by the service to comply with the regulation and/or elements. If the regulatory authority extends the service waiver the service approval will be amended.

Table I

Information that must be included in an application for provider approval made by an individual (regulation 14)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

☐ The applicant's full name, and any former or other name the applicant may be known by

☐ The applicant's residential address and contact details

☐ The applicant's date and place of birth

☐ Proof of the applicant's identity

☐ A previous service statement made by the applicant (see *Glossary*)

☐ In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:

a. if held by the applicant, a copy of their current working with children card or check, or

b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.

For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.

For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.

☐ Except for applications to the Queensland regulatory authority:

a. a copy of the applicant's current working with vulnerable people check, or

b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.

☐ If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant

☐ A disciplinary proceedings statement made by the applicant

☐ A bankruptcy declaration made by the applicant.

Table II

Information that must be included in an application for provider approval made by a person other than an individual (for example, an association or corporation) (regulation 15)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

☐ The applicant's name and any trading or other name used by the applicant

☐ The applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office

☐ The name and contact details of the contact person for the purposes of the application

☐ Documentary evidence of the legal status of the applicant and its constitution (for example, the partnership agreement for a partnership)

☐ A financial declaration regarding the applicant

☐ For each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in Table 1 must be included in an application for provider approval made by an individual.

Table III

Information that must be included in an application for provider approval by an executor who is an individual (regulation 20)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

☐ The applicant's full name, and any former or other name the applicant may be known by

☐ The applicant's residential address and contact details

☐ The applicant's date and place of birth

In relation to the current (deceased) approved provider:

☐ a. their full name

☐ b. provider approval number

☐ c. the date of their death

☐ d. a copy of the death certificate or other evidence of their death

☐ The proposed duration of the provider approval (cannot exceed six months)

☐ Proof of the applicant's identity

☐ In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:

a. if held by the applicant, a copy of their current working with children card or check, or

b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.

For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.

For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.

☐ Except for applications to the Queensland regulatory authority:

a. a copy of the applicant's current working with vulnerable people check, or

b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.

☐ If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant

☐ A disciplinary proceedings statement made by the applicant

☐ A bankruptcy declaration made by the applicant.

Table IV

Information which must be included in an application for provider approval by an executor who is not an individual (e.g. an association or corporation) (regulation 21)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

☐ The applicant's name and any other trading or other name they use

☐ The applicant's street and postal address, or if there is more than one address, the street and postal address of their principal office

☐ The name and contact details for the purpose of the application

In relation to the deceased approved provider:

☐ a. their full name

☐ b. provider approval number

☐ c. the date of their death

☐ d. a copy of the death certificate or other evidence of their death

☐ The proposed duration of the provider approval (cannot exceed six months) documentary evidence of the legal status of the applicants and its constitution (for example, the partnership agreement for a partnership)

☐ A financial declaration regarding the applicant

☐ For each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in Table 1 must be included in an application for provider approval made by an individual.

Table V

Information which must be included in an application for provider approval by a legal personal representative or guardian who is an individual (regulation 22)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

☐ The applicant's full name, and any former or other name the applicant may be known by

☐ The applicant's residential address and contact details

☐ The applicant's date and place of birth

☐ The current approved provider's full name and provider approval number

☐ The proposed duration of the provider approval (cannot exceed six months)

☐ In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:

a. if held by the applicant, a copy of their current working with children card or check, or

b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.

For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.

For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.

☐ Except for applications to the Queensland regulatory authority:

a. a copy of the applicant's current working with vulnerable people check, or

b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.

☐ If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant

☐ A disciplinary proceedings statement made by the applicant

☐ A bankruptcy declaration made by the applicant.

Table VI

Information which must be included in an application for provider approval by a legal personal representative or guardian who is not an individual (for example, a corporation or association) (regulation 23)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ The applicant's name and any other trading or other name they use
- ☐ The applicant's street and postal address, or if there is more than one address, the street and postal address of their principal office
- ☐ The name and contact details for the purpose of the application
- ☐ The current approved provider's full name and provider approval number
- ☐ Documentary evidence of the legal status of the applicant and its constitution (for example, the partnership agreement for a partnership)
- ☐ A financial declaration regarding the applicant
- ☐ The prescribed information set out at Table V above for each individual who will be a person with management or control.

Table VII

Information which must be included in an application to suspend provider approval (regulation 19)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ The approved provider's full name
- ☐ Their provider approval number
- ☐ The name and contact details of the contact person for the application
- ☐ The reasons for the suspension
- ☐ The date on which the suspension is proposed to take effect, and the duration of the suspension
- ☐ What is intended to happen to each service operated by the approved provider during the proposed suspension
- ☐ A statement indicating that the approved provider has notified parents of children enrolled at their services of their intention to apply for a voluntary suspension.

Table VIII

Information that must be included in an application for service approval – centre-based service (regulations 24, 25)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ The applicant's full name and provider approval number (or the applicants contact details if the applicant has applied for a provider approval but the application has not yet been determined)
- ☐ The name of the proposed education and care service
- ☐ The proposed date on which the education and care service will start operating
- ☐ If known, the contact details for the proposed service, including an after-hours telephone number
- ☐ The proposed ages of children to be educated and cared for by the service
- ☐ The proposed maximum number of children
- ☐ The proposed hours and days of operations
- ☐ A description of the nature of the service
- ☐ The details of any associated children's service for which approval is sought
- ☐ A statement that the applicant has prepared the required policies and procedures as required by regulation 168, see *Governance and Leadership*
- ☐ In relation to the person who will be the nominated supervisor for the service:
  a. their full name and contact details, including an after-hours telephone number
  b. their written consent to being the nominated supervisor for the service
- ☐ The location and street address of the proposed service premises.

Table IX

Information that must be included in an application for service approval – centre-based service (regulations 24, 25, 25A)

☐ Plans prepared by a building practitioner of the proposed service premises that show:*

a. the location of all buildings, structures, outdoor play areas and shaded areas

b. the location of all entries and exits

c. the location of all fences and gates, specifying the type of fence or gate used or to be used

d. the location of toilet and washing facilities, nappy changing areas and any food preparation areas

e. the boundaries of the premises

f. landscape of (or landscaping plans for) outdoor spaces that will be used by the service, specifying the natural environments that are (or will be) provided

g. a floor plan indicating unencumbered indoor and outdoor spaces suitable for children

h. the location of any associated children's service

i. calculations, carried out by a building practitioner, relating to unencumbered indoor and outdoor space (as set out in regulations 107–108)

j. the elevation plans of the premises

☐ If a swimming pool or other water hazard is situated on the proposed service premises, a copy of the service's water safety policy

☐ One of the following:

a. a soil assessment for the site of the proposed service premises

b. if relevant, a statement specifying the date of a previous a soil assessment

c. a statement from the applicant that, to the best of their knowledge, the site history does not indicate the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children

☐ For OSHC, if the approved provider is seeking to locate the early childhood education and care service on a school site, the regulatory authority may determine that a soil assessment is not required

☐ If a planning permit is required under the state or territory planning and development law, a copy of the planning permit for the proposed service premises

☐ A statement that the applicant has the right to occupy and use the premises, and any document evidencing this, for example, a lease of the premises

☐ Unless the service premises is a government or registered school, one of the following:*

a. a copy of an occupancy permit; certificate of final inspection; building certificate; certificate of classification; or building surveyor's statement for the final construction and fit-out of the service premises

b. a statement from a building practitioner that the service premises complies with the building requirements under state or territory building law or planning development law.

* *Regulatory authorities may waive this requirement if the approved provider is seeking: – to relocate the education and care service to alternative premises for not more than 12 months, or – to locate the education and care service on a school site.*

Table X

Information that must be included in an application for service approval – family day care service (regulation 26)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ The applicant's full name and provider approval number (or the applicants contact details if the applicant has applied for a provider approval but the application has not yet been determined)
- ☐ The name of the proposed service
- ☐ The proposed date the service will start operating
- ☐ If known, the contact details for the proposed principal office of the service, including an after-hours telephone number
- ☐ The proposed hours and days of operation, including whether the service proposed to engage or register family day care educators who will provide overnight or weekend care
- ☐ The proposed location and street address of the principal office of the service
- ☐ The proposed number of family day care educators to be engaged by or register with the service within six months of operating
- ☐ The states and territories and proposed local government areas where family day care educators expected to be engaged or registered with the service will provide education and care
- ☐ The proposed number of family day care co-ordinators expected to be engaged by the service within six months of operating
- ☐ A statement that the applicant has prepared the required policies and procedures (as required by regulation 168, see Operational Requirements)
- ☐ A copy of the proposed policies and procedures for (required by regulation 169):
  a. assessment and approval, and reassessment of approved family day care venues and residences, including the requirements in regulation 116
  b. engagement or registration of family day care educators
  c. keeping a register of family day care educators
  d. monitoring, support and supervision of family day care educators, including how the service will manage educators at remote locations
  e. assessment of family day care educators, family day care educator assistants and persons residing at family day care residences, including the requirements in regulation 163
  f. visitors to family day care residences and venues while education and care is provided to children
  g. provision of information, assistance and training to family day care educators
  h. engagement or registration of family day care educator assistants
- ☐ If the service will permit a family day care residence or venue with a swimming pool or a water hazard, a copy of a proposed water safety policy for the service (Note: swimming pools are prohibited in Tasmania for all education and care services)
- ☐ In relation to the person who will be a nominated supervisor for the service: their full name and contact details, including an after-hours telephone number, and their written consent to being a nominated supervisor for the service

Table X (continued)

- ☐ A statement that the applicant has the right to occupy and use the proposed premises as a principal office and any document evidencing this (e.g. a lease of the premises)
- ☐ A statement that each family day care residence and venue will be located in this jurisdiction
- ☐ If the application includes a request for a venue approval, include:
  a. the location and street address
  b. a statement that the applicant has the right to occupy and use the place as a family day care venue and any document evidencing this and
  c. an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children being educated and cared for by the service are protected.

Table XI

Information that must be included in notification of transfer of service approval (regulations 36, 37)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ Name of the education and care service
- ☐ Service approval number
- ☐ Transferring approved provider's name, contact details and provider approval number
- ☐ Receiving approved provider's name, contact details and provider approval number
- ☐ Date the transfer is intended to take effect
- ☐ Any proposed changes in relation to the information required to be included in an application for service approval (see Table VIII for centre-based services, and Table IX for family day care services).

Table XII

Information that must be included in an application for voluntary suspension of service approval (regulation 40)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ Name of the service
- ☐ Service approval number
- ☐ Name and contact details of the contact person for the application
- ☐ Reasons for the suspension
- ☐ Date on which the suspension is proposed to take effect and the duration
- ☐ A statement indicating that the approved provider notified parents of children enrolled at the service (and any associated children's service) of their intention to apply for a suspension at least 14 days before making the application.

Table XIII

Information that must be included in an application for a service waiver (regulation 42)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ Name of the education and care service
- ☐ Service approval number
- ☐ Name and contact details for the contact person for the application
- ☐ A statement that specifies:
  a. the elements of the NQS and/or the regulations for which the service waiver is sought, and
  b. the way in which the service does not, or will not, comply with the specified elements and/or regulations
- ☐ Reasons the service is unable to comply, and details and evidence of any attempts made to comply with the specified elements and/or regulations, or any other reasons why the service seeks the waiver
- ☐ Measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service while the waiver is in force.

Table XIV

Information that must in included in an application for a temporary waiver (regulation 45)

(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)

- ☐ Name of the education and care service
- ☐ Service approval number
- ☐ Name and contact details for the contact person for the application
- ☐ A statement that specifies:
  a. the elements of the NQS and/or the regulations for which the service waiver is sought, and
  b. the way in which the service does not, or will not, comply with the specified elements and/or regulations
- ☐ Reasons the service is unable to comply, and details and evidence of any attempts made to comply with the specified elements and/or regulations
- ☐ Period for which the temporary waiver is sought (up to 12 months)
- ☐ Details of steps being taken, or that will be taken, to comply with the elements and/or regulations
- ☐ Measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service while the waiver is in force.

3.4 APPLICATION TO USE INDOOR SPACE AS OUTDOOR SPACE

National Regulations

Regulation 108

The approved provider of a centre-based service or a family day care venue, which educates and cares for children over preschool age, may apply to the regulatory authority to include an area of unencumbered indoor space in calculating the outdoor space at the service.

Approval (if granted) must be in writing.

An application may be made with the initial application for service approval, or at a later time. Regulatory authorities consider applications on a case-by-case basis.

Considering an application

When making a decision on an application, regulatory authorities will balance the objectives of the legislation to prioritise children's safety, health and developmental outcomes, with the interests of providers to offer services, and for families to have access to those services.

When reviewing the application, the regulatory authority may consider the:

- number and ages of children and the time spent at the service
- physical elements of the space
- proportion of indoor space to be included in the outdoor space.

These factors are not criteria that must be satisfied for an application to be approved.

Regulatory authorities must consider each application on its merits.

Number and ages of children and the time spent at the service

Regulatory authorities may consider the ages of the children at the service and what proportion of children are over preschool age. Indoor space can only be calculated as outdoor space when children over preschool age are being educated and cared for at the service.

The amount of time children spend at the service will also be considered.

Using indoor space in calculating outdoor space is more likely to be appropriate at an outside school hours care service where children are only at the service for a couple of hours each morning and/or afternoon, than at a vacation care service, where children attend from 8am to 5pm each day.

Physical elements of the space

Regulatory authorities may consider how the indoor space can be used. For example, can the indoor space be safely used for activities which would ordinarily be done outside, such as throwing a ball, skipping or running? Regulatory authorities may look at flooring, whether any glass areas are or can be protected, and whether the space is sufficiently lit and ventilated for physical activity.

Where the space is intended to be used for these types of activities, such as gymnasiums or halls, or where they can be safely used for these types of activities, they may be suitable to be included in calculating outdoor space.

Proportion of indoor space to be included in calculating outdoor space

The greater the proportion of indoor space that will be included in calculating outdoor space, the more important it will be for the regulatory authority to be satisfied that the space can be used for activities which would typically be undertaken outside.

If an application is refused

If an application is refused, the approved provider may apply for a service or temporary waiver (see *Waivers* for more information).

3.5 APPLICATION TO USE A VERANDAH AS INDOOR SPACE

National Regulations

Regulation 107

There must be at least 3.25 square metres of unencumbered indoor space for each child being educated and cared for at a centre-based or family day care venue.

An approved provider can apply to the regulatory authority to use a verandah as indoor space.

The application may be made with the initial application for service approval, or at a later time.

Considering an application

The regulatory authority will determine applications on a case-by-case basis.

In some climates and in some buildings, verandah space may be a preferable space for children to carry out indoor play activities. Regulatory authorities will balance the health, safety and wellbeing of children with the intent of the legislation to allow suitable verandahs to be included in indoor space calculations.

Services in Queensland

QLD

Approval in Queensland is subject to evidence from a building practitioner which demonstrates that the verandah meets the requirements under the relevant building code to be classed as indoor space. A building practitioner may impose requirements on a provider to enable such evidence to be provided (such as requiring the installation of waterproof blinds) and to ensure the space can be considered 'indoors'.

Services in Tasmania

TAS

The Early Childhood Centre and School Age Care Facilities Code restricts the Tasmanian regulatory authority from approving verandahs as indoor space, due to the climate.

Services in all other states and territories

All other regulatory authorities may consider the following factors in approving a verandah as indoor space:

- the square metres of usable and unencumbered space
- taking into account the physical elements of the space, such as adequate flooring, roofing and the shape of the space, and whether there are significant periods of the year in which the space will be unsuitable
- taking into account year round weather conditions, community expectations of suitability and measures available to manage climate, such as air conditioning, heating and weatherproofing.

Regulatory authorities may refuse applications if children are at risk of overcrowding because the verandah is unsuitable for indoor play activities for a significant period of time.

These factors are not criteria that must be satisfied for an application to be approved.

Regulatory authorities must consider each application on its merits.

Minimum space requirements

There are no minimum space requirements for verandahs to be approved as indoor space.

Building requirements

QLD

All regulatory authorities (excluding Queensland) do not need to consider building approvals when assessing applications for verandahs to be included in indoor space calculations.

Light and ventilation

The requirements for natural light, ventilation and temperature that apply to indoor spaces do not apply to verandahs.

Supervision

Adequate supervision is a consideration for any part of the service premises where children are educated and cared for. Supervision does not generally form part of the considerations for assessing whether verandahs are counted towards indoor or outdoor space. Regulatory authorities may consider supervision in cases where the approved provider alters, or intends to alter, the service premises as part of making a verandah suitable as an indoor space (see *Operational Requirements – Physical Environment*).

3. NATIONAL QUALITY STANDARD AND ASSESSMENT AND RATING

Guide to the National Quality Standard
Assessment and rating process

ICONS LEGEND

National Law and Regulations

Sections of the Education and Care Services National Law (National Law) or regulations from the Education and Care Services National Regulations (National Regulations).

Offence

Offences against the National Law that attract a penalty, for example a fine.

Sight

Authorised officers will sight documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

Centre-based service

An education and care service other than a family day care service which includes most long day care, preschool and outside school hours care services that are delivered at a centre.

Family day care service

An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences.

Observe

Authorised officers will observe what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions).

State icons

Information that is specific to a state or territory.

Birth to three

Children birth to three years of age.

School age children

Includes children attending school in the year before grade 1, and above.

Discuss

Authorised officers will discuss why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members.

NATIONAL QUALITY STANDARD AND ASSESSMENT AND RATING

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INTRODUCTION

The National Quality Standard (NQS) sets a national benchmark for the quality of education and care services and includes seven quality areas that are important to outcomes for children:

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	Governance and leadership

In each quality area, there are two or three standards. These standards are high-level outcome statements. Under each standard are elements that describe the outcomes that contribute to the standard being achieved. Each standard and element is represented by concepts that support education and care services to navigate and reflect on the NQS.

The quality standards are also underpinned by regulatory standards. The NQS is a schedule within the Education and Care Services National Regulations.

See the ***Guide to the National Quality Standard*** for more information about the NQS and ***Operational Requirements*** for the underpinning regulatory requirements.

The rating system

Services are assessed and rated by their regulatory authority against the NQS, and given a rating for each of the seven quality areas and an overall rating based on these results.

The process of assessing and rating a service is a combined approach of quality assurance and regulatory compliance.

Quality ratings

The ratings are:

- Excellent rating, awarded by ACECQA
- Exceeding National Quality Standard
- Meeting National Quality Standard
- Working Towards National Quality Standard
- Significant Improvement Required

The quality ratings must be displayed at the service. These ratings are also published on the national registers on the ACECQA website (www.acecqa.gov.au).

See more information about how ratings are determined and guidance on Exceeding NQS in the *Assessment and Rating* section.

Quality improvement

Ongoing self-assessment against the NQS drives continuous improvement and is essential to providing quality outcomes for children.

Each service must have a Quality Improvement Plan in place (QIP). The QIP identifies areas for improvement and includes a statement of philosophy for the service.

See *Assessment and Rating* for more information about self-assessment and quality improvement planning.

Assessment and rating process

Authorised officers from the regulatory authority will:

- review service information (compliance history, rating and assessment history)
- review a service's QIP
- visit the service premises to assess and rate the service.

See *Assessment and Rating* for more information.

When visiting the service, the authorised officer will collect evidence in the following ways:

- **Observe** – what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions)

- **Discuss** – why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members

- **Sight** – documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

Each service is unique and the ways in which the elements and standards are met will be determined by the service context, including the service environment; the needs, interests and abilities of the children attending the service; and the needs of families and the wider community.

NATIONAL QUALITY STANDARD

	Concept	Descriptor
QA1		**Educational program and practice**
1.1	Program	The educational program enhances each child's learning and development.
1.1.1	Approved learning framework	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.
1.1.2	Child-centred	Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.
1.1.3	Program learning opportunities	All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.
1.2	Practice	Educators facilitate and extend each child's learning and development.
1.2.1	Intentional teaching	Educators are deliberate, purposeful, and thoughtful in their decisions and actions.
1.2.2	Responsive teaching and scaffolding	Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.
1.2.3	Child directed learning	Each child's agency is promoted, enabling them to make choices and decisions that influence events and their world.
1.3	Assessment and planning	Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.
1.3.1	Assessment and planning cycle	Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing learning, documentation, planning, implementation and reflection.
1.3.2	Critical reflection	Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.
1.3.3	Information for families	Families are informed about the program and their child's progress.
QA2		**Children's health and safety**
2.1	Health	Each child's health and physical activity is supported and promoted.
2.1.1	Wellbeing and comfort	Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.
2.1.2	Health practices and procedures	Effective illness and injury management and hygiene practices are promoted and implemented.
2.1.3	Healthy lifestyle	Healthy eating and physical activity are promoted and appropriate for each child.
2.2	Safety	Each child is protected.
2.2.1	Supervision	At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.
2.2.2	Incident and emergency management	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
2.2.3	Child protection	Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.
QA3		**Physical environment**
3.1	Design	The design of the facilities is appropriate for the operation of a service.
3.1.1	Fit for purpose	Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.
3.1.2	Upkeep	Premises, furniture and equipment are safe, clean and well maintained.
3.2	Use	The service environment is inclusive, promotes competence and supports exploration and play-based learning.
3.2.1	Inclusive environment	Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.
3.2.2	Resources support play-based learning	Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play-based learning.
3.2.3	Environmentally responsible	The service cares for the environment and supports children to become environmentally responsible.

	Concept	Descriptor
QA4		**Staffing arrangements**
4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.1.1	Organisation of educators	The organisation of educators across the service supports children's learning and development.
4.1.2	Continuity of staff	Every effort is made for children to experience continuity of educators at the service.
4.2	Professionalism	Management, educators and staff are collaborative, respectful and ethical.
4.2.1	Professional collaboration	Management, educators and staff work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.
4.2.2	Professional standards	Professional standards guide practice, interactions and relationships.
QA5		**Relationships with children**
5.1	Relationships between educators and children	Respectful and equitable relationships are maintained with each child.
5.1.1	Positive educator to child interactions	Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.
5.1.2	Dignity and rights of the child	The dignity and rights of every child are maintained.
5.2	Relationships between children	Each child is supported to build and maintain sensitive and responsive relationships.
5.2.1	Collaborative learning	Children are supported to collaborate, learn from and help each other.
5.2.2	Self-regulation	Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.
QA6		**Collaborative partnerships with families and communities**
6.1	Supportive relationships with families	Respectful relationships with families are developed and maintained and families are supported in their parenting role.
6.1.1	Engagement with the service	Families are supported from enrolment to be involved in the service and contribute to service decisions.
6.1.2	Parent views are respected	The expertise, culture, values and beliefs of families are respected and families share in decision-making about their child's learning and wellbeing.
6.1.3	Families are supported	Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.
6.2	Collaborative partnerships	Collaborative partnerships enhance children's inclusion, learning and wellbeing.
6.2.1	Transitions	Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.
6.2.2	Access and participation	Effective partnerships support children's access, inclusion and participation in the program.
6.2.3	Community engagement	The service builds relationships and engages with its community.
QA7		**Governance and Leadership**
7.1	Governance	Governance supports the operation of a quality service.
7.1.1	Service philosophy and purpose	A statement of philosophy guides all aspects of the service's operations.
7.1.2	Management systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.1.3	Roles and responsibilities	Roles and responsibilities are clearly defined, and understood, and support effective decision-making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.
7.2.1	Continuous improvement	There is an effective self-assessment and quality improvement process in place.
7.2.2	Educational leadership	The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.
7.2.3	Development of professionals	Educators, co-ordinators and staff members' performance is regularly evaluated and individual plans are in place to support learning and development.

GUIDE TO THE NATIONAL QUALITY STANDARD

This chapter provides an overview of the National Quality Standard and includes examples of practice, programs, environments and policies at the meeting the National Quality Standard level as well as questions to prompt education and care providers and services to reflect on their quality practice. Examples of what an authorised officer might observe, sight and discuss are outlined for each of the 40 National Quality Standard elements.

Exceeding Themes (see *Exceeding NQS Theme Guidance*)

This chapter also provides guidance to assist services and assessors to consider whether a service is Exceeding National Quality Standard. The higher level of quality that is expected at the Exceeding NQS rating level is described by three Exceeding themes. In determining if a service meets the benchmark for Exceeding National Quality Standard, authorised officers will consider whether the three Exceeding themes are demonstrated. Exceeding National Quality Standard requires a service to go above and beyond what is expected at the Meeting National Quality Standard level for that standard. This chapter provides an overview of the themes and general indicators as well as specific indicators for each of the 15 National Quality Standard standards.

A list of publications for further reading can be found on the ACECQA website at www.acecqa.gov.au.

QUALITY AREA 1
EDUCATIONAL PROGRAM AND PRACTICE

Overview

Quality Area 1 of the National Quality Standard focuses on ensuring that the educational program and practice of educators are child-centred, stimulating and maximise opportunities for enhancing and extending each child's learning and development. It recognises that a quality program that builds on children's individual knowledge, strengths, ideas, culture, abilities and interests is likely to have long term benefits for children and for the broader society.

In all settings, the approved provider, nominated supervisor and educational leader are responsible for ensuring that programs for all children are based on an approved learning framework and delivered in accordance with that framework.

The National Quality Standard is linked to two national approved learning frameworks that recognise children learn from birth. These are:

- *Belonging, Being and Becoming: The Early Years Learning Framework for Australia* ('Early Years Learning Framework')
- *My Time, Our Place: Framework for School Age Care in Australia* ('Framework for School Age Care').

The approved learning frameworks guide:

- the development of programs that promote children's learning and development
- the pedagogical practices of educators
- a planned and reflective approach to assessment and planning for each child.

A quality educational program views children as capable and competent learners who have agency and learn best through a play-based program. The learning frameworks also acknowledge the importance of intentionally including opportunities for children to progress towards the learning outcomes (for more information about learning outcomes, see *Element 1.1.1*.

Play provides a context for learning through which children organise and make sense of their social worlds as they engage actively with people, objects and representations (*Early Years Learning Framework*, p. 6).

Play-based learning:

- provides opportunities for children to learn as they discover, create, improvise, test theories and imagine
- enables expressions of personality and uniqueness
- promotes positive learning dispositions, such as curiosity and creativity
- enables children to make connections between prior experiences and new learning
- assists children to develop relationships and concepts

- supports a sense of wellbeing and promotes a valuing of diversity (*Early Years Learning Framework*, p. 9).

In school age care services, the educational program reflects an understanding of middle childhood. The program supports learning through play and leisure when educators act with intentionality to nurture the development of life skills and ensure that the program complements children's experiences, opportunities and relationships at school, at home and in the community.

In all services, educators draw on their pedagogy, knowledge of individual children, the approved learning frameworks, the National Quality Standard and the underpinning law and regulations when designing contextual programs and considering practices they will use. With their knowledge of the children and families using the service, and the community in which they are located, educators make informed decisions about how to meet the standards.

Educators take a planned and reflective approach to implementing the educational program by using an assessment and planning cycle and engaging with critical reflection to improve the program and practice. Educators share the program with families and ensure families are informed of their child's learning and development progress.

Services facilitate children's learning and development through play by providing:

- educators with whom children can form attachments
- educators who use a range of intentional practices and interactions to encourage children's problem solving and thinking skills
- welcoming and inclusive learning environments that are flexible, responsive, and foster children's agency and engagement with the natural and built worlds
- access to a range of resources that children can use in a variety of ways to enrich and extend their play
- uninterrupted and prolonged periods of time to follow their interests.

Standards, elements and concepts

Quality Area 1 has three standards that focus on the educational program, educational practice, and assessment and planning for each child's learning and development. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because:

- an educational program that is based on an approved learning framework, is child-centred and maximises learning opportunities strongly contributes to children's development as competent and engaged learners
- intentional teaching in early childhood settings (and intentionality in school age settings) is a recognised approach to facilitate each child's learning and development
- responsive teaching values, scaffolds and extends each child's strengths, skills, knowledge, interests and ideas, and child directed learning promotes children's agency
- critical reflection informs the assessment and planning cycle and

drives improvement in program and practice, resulting in continuous enhancements to children's learning

- families who are informed about the program and their child's progress are better equipped to engage with the service and collaboratively make decisions that strengthen their child's learning, development and wellbeing.

Standard/ Elements	Concept	Descriptor
QA1		**Educational program and practice**
1.1	Program	The educational program enhances each child's learning and development.
1.1.1	Approved learning framework	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.
1.1.2	Child-centred	Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.
1.1.3	Program learning opportunities	All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.
1.2	Practice	Educators facilitate and extend each child's learning and development.
1.2.1	Intentional teaching	Educators are deliberate, purposeful, and thoughtful in their decisions and actions.
1.2.2	Responsive teaching and scaffolding	Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.
1.2.3	Child directed learning	Each child's agency is promoted, enabling them to make choices and decisions that influence events and their world.
1.3	Assessment and planning	Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.
1.3.1	Assessment and planning cycle	Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing learning, documentation, planning, implementation and reflection.
1.3.2	Critical reflection	Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.
1.3.3	Information for families	Families are informed about the program and their child's progress.

STANDARD 1.1
PROGRAM

THE EDUCATIONAL PROGRAM ENHANCES EACH CHILD'S LEARNING AND DEVELOPMENT.

How Standard 1.1 contributes to quality education and care

Quality educational programs use an approved learning framework to guide curriculum decision-making and facilitate a shared understanding of children's learning and development. This enables everyone involved in the service to share their perspectives, understanding of, and support for quality education and care practices.

With support from the approved provider and nominated supervisor, the educational leader collaborates with educators in designing an educational program that enables educators to work with children and families to achieve optimal learning and developmental outcomes for children.

With guidance from the educational leader, educators:

- use an approved learning framework to underpin their everyday practice. The framework guides interactions with children and families and provides the basis for educators' pedagogical decision-making, including the experiences that are planned for children and the teaching and learning that occurs
- develop the educational program based on their knowledge of each child so that the interactions, experiences, routines and events that each child engages in are relevant to them, respectful of their background and recognise and build on their current strengths, abilities and interests
- ensure that the interactions, experiences, routines and events included in the educational program maximise opportunities for children's learning.

Questions to guide reflection on practice for Standard 1.1 (for all services)

Educational program

- How do we develop our understanding of the approved learning framework that we use in our service to foster learning outcomes for all children?
- How do we support all children to progress towards the learning outcomes?
- How do we learn about each child's knowledge, strengths, ideas, culture, abilities and interests?
- How do we make decisions about children's daily experiences and routines, and who is involved in making these decisions?

- How do we use the learning outcomes to guide our goals and subsequent planning for individual children and groups of children?
- How do we plan and implement educational programs that are relevant and engaging for children?
- How do we ensure that experiences and routines are child-centred rather than adult-directed or clock-driven?
- How do we support every child's participation in the program?
- What experiences do we provide for children to work independently and collaboratively?
- How do we use conversations and interactions with children to make routine times enjoyable and meaningful learning opportunities?

birth to three

- How do we develop a shared understanding of the learning outcomes and their importance to families?
- How do we ensure that children develop strong attachments and a sense of belonging in our service?
- How do we apply our knowledge of learning and development, and the content of the learning framework to this age group?

school age children

- How do we incorporate learning outcomes into leisure opportunities and the everyday experiences we provide?
- How do we provide problem-solving, inquiry and challenge based learning experiences for children to support their prior learning?
- How do we provide a differentiated curriculum that supports children's varying capabilities, learning styles and interests?

family day care

- How do we incorporate the learning outcomes into everyday activities that children experience in the residence?
- What other activities or experiences can be incorporated into our program to ensure a range of learning opportunities for all children?

ELEMENT 1.1.1
APPROVED LEARNING FRAMEWORK

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.

National Law & Regulations

National Law and National Regulations underpinning Element 1.1.1

Section 51(1)(b) Conditions on service approval (educational and developmental needs of children)

Section 168 Offence relating to required programs

Regulation 73 Educational program

What Element 1.1.1 aims to achieve

An approved learning framework guides the development of the curriculum at an education and care service and supports curriculum decision-making as an ongoing cycle of observation, analysing learning, documentation, planning, implementation and reflection. Curriculum decision-making is guided by the principles, practices and learning outcomes of the approved learning framework. This involves educators drawing on their pedagogy and their in-depth knowledge and understanding of each child.

The educational leader and educators use an approved learning framework and the service philosophy to consider the service's approach to learning, development and wellbeing, and the way in which these guide everyday practice and development of the education program.

Approved learning frameworks

The *Early Years Learning Framework* and the *Framework for School Age Care* (and other jurisdiction-approved learning frameworks) include principles, practices and learning outcomes that guide educational leaders and educators in their curriculum decision-making, and assist them in planning, delivering and evaluating quality programs in early and middle childhood settings.

A learning outcome is a skill, knowledge or disposition that educators can actively promote in collaboration with children and families. The *Early Years Learning Framework* and the *Framework for School Age Care* (*Early Years Learning Framework*, p. 8; *Framework for School Age Care*, p. 6) promote five learning outcomes that are designed to capture the integrated and complex learning and development of all children. These are:

1. Children have a strong sense of identity
2. Children are connected with and contribute to their world

3. Children have a strong sense of wellbeing
4. Children are confident and involved learners
5. Children are effective communicators

The learning outcomes are broad and observable. They acknowledge that children learn in a variety of ways and vary in their strengths, (*Early Years Learning Framework*, p. 19; *Framework for School Age Care*, p. 18) capabilities and pace of learning. The frameworks include examples of how children's progress towards the outcomes may be evident as well as suggestions for how educators could support and facilitate children's learning.

The ***Early Years Learning Framework*** aims to extend and enrich children's learning from birth through the transition to school. The ***Educators' Guide to the Early Years Learning Framework*** supports the educational leader and educators to deliver programs that enhance learning and developmental outcomes for each child.

The ***Framework for School Age Care*** is strongly linked to the ***Early Years Learning Framework*** and extends the principles, practices and outcomes to children and young people who attend school age care services. The framework is based on the notion that educators collaborate with children to provide play and leisure opportunities that are meaningful to children, and support their wellbeing, learning and development. The ***Educators' Guide to the Framework for School Age Care*** supports the educational leader and educators to deliver such programs.

Another approved learning framework is the ***Victorian Early Years Learning and Development Framework***.

Curriculum decision-making

Based on knowledge gained from observing children and contributions from their families, educators (together with the educational leader) use the learning framework's principles, practices and outcomes to plan for each child's learning and development. Children's learning is ongoing and each child will progress towards outcomes in different and equally meaningful ways (*Early Years Learning Framework*, p. 19).

As children participate in everyday life, they develop knowledge and interests and construct their own identities and understandings of the world (*Early Years Learning Framework*, p. 7; *Framework for School Age Care*, p. 5). Educators make curriculum decisions that uphold all children's rights including the right to have their identities, knowledge, strengths, ideas, culture, abilities and interests acknowledged and valued in the context of their families and communities (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 11). Educators in school age settings recognise that children's learning, while participating in play and leisure opportunities, complements their learning at home and at school.

Assessment guide for meeting Element 1.1.1 (for all services)

Curriculum decision-making

observe

***Assessors may* observe:**

- children displaying behaviours and engaging in activities consistent with the evidence for outcomes described in the approved learning frameworks— for example, children:
  - » expressing a wide range of emotions, thoughts and views constructively
  - » exploring aspects of identity through role play
  - » expressing opinions in matters that affect them
  - » being empowered to make choices and solve problems to meet their needs
  - » working collaboratively with others
  - » moving around and through their environments confidently and safely
  - » being curious and enthusiastic participants in their learning
  - » using play to investigate, imagine and explore ideas
  - » conveying and constructing messages with purpose and confidence (*Early Years Learning Framework*, pp. 21–40; *Framework for School Age Care*, pp. 23–38).
- educators providing experiences for children that actively promote or initiate the investigation of ideas, complex concepts and thinking, reasoning and hypothesising by, for example:
  - » talking explicitly about phonological concepts, such as rhyme, letters and sounds when sharing texts with children
  - » engaging children in discussions about symbol systems, such as letters, numbers, time, money and musical notation
  - » supporting children to contribute constructively to mathematical and scientific discussions and arguments
  - » engaging children in exploration of creative arts such as musical rhythms or beats, or lines or shapes in visual arts
  - » using everyday events as a basis for children's exploration and learning about nature and science
  - » supporting children to take on roles that use literacy and numeracy in their play (*Early Years Learning Framework*, pp. 35–43; *Framework for School Age Care*, p. 3).
- educators consolidating and extending children's communication by, for example:
  - » engaging children in singing songs and playing with words and sounds
  - » supporting children to convey and construct messages with purpose and confidence, building on home/family and community languages

- developing children's language and thinking by:
  - building vocabulary, having language-rich communication exchanges between educators and children
  - promoting expressive aspects of children's language
- providing opportunities for children to express ideas and make meaning using a range of media (*Early Years Learning Framework*, pp. 40–42; *Framework for School Age Care*, pp. 38–40).

- educators supporting children to be independent communicators who initiate English and home-language conversations, and who listen, respond and engage in conversation
- educators providing a literacy-enriched environment that includes displaying print in home languages and in English

birth to three

- educators:
  - supporting and promoting early attempts of children to initiate interactions and conversations
  - acknowledging and responding sensitively to cues and signals from children
  - initiating one-to-one interactions with children during daily routines
- children:
  - reaching out and communicating for comfort, assistance and companionship
  - being playful and responding positively to others
  - being given opportunities to learn and practice new skills

school age children

- the educational leader and educators:
  - acknowledging and planning opportunities for children to relax through play and leisure
  - incorporating children's diverse experiences, perspectives, expectations, knowledge and skills in the program
  - implementing a cross curricula approach to develop children's critical thinking and collaborative skills
  - empowering children to take a leading role in planning and delivering the program.

discuss

***Assessors may* discuss:**

- how educators make curriculum decisions
- how learning outcomes are promoted through the program and children's experiences
- how the service communicates learning outcomes for children with their families
- how the service's ***philosophy statement*** guides pedagogy and teaching decisions

school age children

- strategies:
  - » used by the service to ensure that all children have a sense of belonging in the service, including regular and occasional attendees
  - » used to ensure that the requirements and interests of children attending on an irregular basis are reflected in the program planning and delivery

school age children

- how activities outside the home are incorporated to provide a range of experiences to support children in achieving the outcomes of the approved learning frameworks.

sight ***Assessors may* sight:**

- documentation that has been gathered in a variety of ways about children's progress towards the learning outcomes and planning that establishes further learning goals
- documented programs that include planned experiences and/or strategies to support individual children's goals
- documented programs demonstrating that an assessment of the learning outcomes has led to goals being identified for the group of children that are designed to intentionally support aspects of learning

family day care

- documentation that:
  - » supports the development of programs in a variety of ways based on age of children, pattern of attendance and the grouping(s) of children
  - » demonstrates that an evaluation of the learning outcomes has led to goals being identified for the group of children that intentionally support aspects of learning.

ELEMENT 1.1.2
CHILD-CENTRED

EACH CHILD'S CURRENT KNOWLEDGE, STRENGTHS, IDEAS, CULTURE, ABILITIES AND INTERESTS ARE THE FOUNDATION OF THE PROGRAM

National Law & Regulations

National Law and National Regulations underpinning Element 1.1.2

Section 168 Offence relating to required programs

What Element 1.1.2 aims to achieve

Educators seek information from families and use a variety of methods to gather information about each child's knowledge, strengths, ideas, culture, abilities and interests as the foundation of a child-centred educational program. The diversity of family experiences means that children experience 'belonging, being and becoming' in many different ways. Children's unique and diverse experiences, perspectives, expectations, knowledge and skills contribute to their learning (*Early Years Learning Framework*, p. 9; *Framework for School Age Care*, p. 7).

As children participate in everyday life, they develop interests and build their identities and understanding of the world (*Early Years Learning Framework*, p. 7; *Framework for School Age Care*, p. 5). Learning about these unique aspects of each child and identifying their individual strengths and capabilities assists educators to make informed decisions about how to further support children's learning. With support from the educational leader, educators plan and engage with children in a range of experiences where children are active participants and decision makers. This supports the achievement of child-centred learning outcomes and promotes children's learning and development.

Assessment guide for meeting Element 1.1.2 (for all services)

Child-centred program

observe

***Assessors may* observe:**

- educators:
  - » observing, listening and talking with children for sustained periods of time and paying close attention to what they are saying, thinking and doing
  - » demonstrating flexibility in program delivery to incorporate children's ideas, culture and interests to ensure that experiences are relevant and engaging
  - » integrating children's emerging ideas to support their participation in the program
  - » demonstrating that they know each child's individual learning style, temperament and interests

- children:
  - » initiating and contributing to play experiences that emerge from their own ideas and interests
  - » repeating, revisiting and adding to projects or experiences that they have initiated
  - » developing strong foundations in the culture and language of their family and in that of the broader community, without compromising their cultural identities
  - » indicating their deep involvement in experiences that are rich and meaningful to them through verbal and non-verbal responses, and sustained concentration
  - » exploring ideas and theories in play by using their imagination and creativity
  - » engaging in play during long periods of uninterrupted time.

discuss ***Assessors may* discuss:**

- educators' current understanding of individual children's knowledge, strengths, ideas, culture, abilities and interests, and how they have developed this understanding of each child
- how educators' curriculum decision-making builds on each child's knowledge, strengths, ideas, culture, abilities and interests
- how the educational leader and educators support decision-making, and review and discuss program planning
- how educators support children to actively participate in experiences and guide their own learning.

sight ***Assessors may* sight:**

- examples of how educators plan programs that are responsive to children's knowledge, strengths, ideas, culture, abilities and interests
- evidence that information about each child, their family, culture and community is collected and used to plan programs
- *if required by the regulatory authority*, evidence that information about each child, their family, culture and community is collected and used to plan programs that promote children's learning, development and wellbeing.

ELEMENT 1.1.3
PROGRAM LEARNING OPPORTUNITIES

ALL ASPECTS OF THE PROGRAM, INCLUDING ROUTINES, ARE ORGANISED IN WAYS THAT MAXIMISE OPPORTUNITIES FOR EACH CHILD'S LEARNING.

What Element 1.1.3 aims to achieve

All aspects of the educational program, including interactions, experiences, routines and events (both planned and unplanned) provide opportunities for children's learning and development (*Early Years Learning Framework*, p. 9; *Framework for School Age Care*, p. 6), and for educators to interact with children in meaningful ways that empower children's choices and decision-making.

Educators adopt a holistic approach to planning and facilitating learning throughout the program, including during transitions and routines. Educators are alert to learning opportunities to extend children's learning during planned and unplanned experiences. They support children to follow their interests and to engage in uninterrupted play.

Effective routines and transitions are designed to support children and are regarded as equally important as planned or spontaneous play experiences or group times. Routines, such as mealtimes or toileting, provide predictability to assist children to feel safe, secure and confident to explore and learn. Effective transitions reduce stress and support children's sense of belonging.

Assessment guide for meeting Element 1.1.3 (for all services)

Program learning opportunities

observe

***Assessors may* observe:**

- children:
  - » participating collaboratively in events and experiences and having opportunities to contribute to decisions
  - » having opportunities to revisit and discuss their learning during routines
  - » being given choices during routines and transition times
  - » directing and initiating learning experiences
  - » engaged in a range of play experiences throughout the day
  - » having opportunities to extend their interests, experiences and activities, such as being able to continue working on a construction or artwork

school age children

- » developing autonomy by taking increasing responsibility for self-help and basic health routines
- » supporting younger children to organise equipment, participate in learning experiences and understand behaviour expectations of the service

- educators:
  - » using all aspects of the program to undertake intentional teaching and support child directed learning
  - » making decisions based on best learning outcomes for children rather than convenient options suited to educators
  - » planning and implementing transitions and routines that support individual children's preferences and requirements
  - » minimising the times during which children are expected to do the same thing at the same time, or to wait for long periods without engaging in play or interactions

birth to three

- » using routines and play experiences to interact with children to build attachments
- » initiating one-to-one interactions with children during routine activities to ensure these provide opportunities for positive interactions and learning

school age children

- » collaborating with children about routines and procedures
- » encouraging children to guide younger children during routines

family day care

- » incorporating learning experiences into everyday activities that occur in the residence, such as meal preparation and packing up.

discuss — ***Assessors may* discuss:**

- how the service organises its program and routines to maximise opportunities for children's learning
- how children are involved in program decision-making, contributing to the learning environment, assisting in everyday routines and transitions including menu planning and food preparation

school age children

- strategies used by the service to encourage children to take a leading role in designing the program and organising the routines.

sight — ***Assessors may* sight:**

- policy documentation outlining routines and the written program, including examples of how educators plan programs that are maximising opportunities for learning.

EXCEEDING GUIDANCE FOR STANDARD 1.1
PROGRAM

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 1.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 1.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 1.1 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, the concepts and the component elements, and a commitment to high quality practice at all times.
- All educators:
  - work collaboratively with the educational leader to consistently make curriculum decisions, including the organisation of daily routines, that maximise learning and development outcomes for every child in relation to their identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators
  - work collaboratively with the educational leader to consistently develop and implement a purposeful and responsive educational program that reflects and builds on the knowledge, strengths, ideas, culture, abilities and interests of each child
  - confidently make curriculum decisions throughout the day, week or month to ensure each child's learning and development is maximised.
- All educators, the educational leader and co-ordinators are able to explain how their approach to curriculum decision-making connects to:
  - the approved learning framework/s and enhances learning and development for each child
  - the service philosophy and supports the service's broader vision for quality.

- The observed and discussed approach to curriculum decision-making:
  - consistently aligns with the service philosophy
  - consistently demonstrates a strong commitment to the principles and practices of the approved learning framework/s.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 1.1 Exceeds the NQS:

- The service's approach to curriculum decision-making:
  - reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - is informed by current recognised guidance.
- Any change to the service's approach to curriculum decision-making is understood by all and implemented appropriately.
- All educators, the educational leader and co-ordinators regularly reflect, individually and with each other on:
  - opportunities to strengthen the educational program
  - implementation of changes to the program to enhance children's learning and development outcomes, including through the organisation of daily routines
  - the evolving knowledge, strengths, ideas, cultures, abilities and interests of children at the service, and how these inform the educational program
  - social justice and equity implications of curriculum decisions to ensure that the program considers the circumstances and rights of every child at the service
  - opportunities to cultivate deep respect for, and knowledge of, the cultural diversity of the broader community in the educational program, including Aboriginal and Torres Strait Islander histories and cultures
  - the theoretical and philosophical influences on their curriculum decisions, including the theoretical perspectives identified in the approved learning framework/s
  - how they draw on theoretical and philosophical influences and how they have influenced practice over time.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 1.1 Exceeds the NQS:

- The service's approach to curriculum decision-making:
  - reflects the unique geographical, cultural and community context of the service;

- welcomes, respects and draws on the voices, priorities and strengths of the children and families at the service;
- reflects a strong commitment to meaningful, regular engagement with families and the community to promote strong connections between each child's various learning environments.

- All educators:
  - consistently and meaningfully engage with children's families and/or the community to:
    - draw on family and/or community understanding of each child's knowledge, strengths, ideas, culture, abilities, interests and learning and development in order to develop a child-centred educational program, for example Aboriginal and Torres Strait Islander children's ways of knowing and being;
    - regularly communicate about the educational program and children's evolving knowledge, strengths, ideas, abilities, interests and learning and development outcomes to support continuity of learning and development across children's various learning environments
  - actively seek out the voices, perspectives, and views of children throughout the day, and draw on this input to develop a child-centred educational program and enhance children's learning and development;
  - draw inspiration from the unique geographical, cultural and community context of the service to enhance children's learning and development.

STANDARD 1.2
PRACTICE

EDUCATORS FACILITATE AND EXTEND EACH CHILD'S LEARNING AND DEVELOPMENT.

How Standard 1.2 contributes to quality education and care

In their pedagogical practice, educators have a professional responsibility to build and nurture relationships with children and families, provide a play-based environment, and facilitate and extend children's learning and development. Educators are deliberate, purposeful and thoughtful in their decisions and actions (*Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 41). They value and respond to children's ideas, and extend children's learning through open-ended questions, meaningful interactions and encouraging feedback. They promote each child's agency to help them make choices and decisions that influence their world (*Early Years Learning Framework*, p. 45; *Framework for School Age Care*, p. 8).

Educators' professional judgments and curriculum decisions are central to their active role in facilitating children's learning, development and wellbeing. In making professional judgments, educators utilise their:

- professional knowledge, skills and experience
- knowledge of the children, families and communities attending their service
- awareness of how their own beliefs and values impact on children's wellbeing and learning
- awareness of their own biases and how these might impact on inclusive practice (*Early Years Learning Framework*, p. 11; *Framework for School Age Care*, p. 7).

Educators also draw on their creativity, imagination and insight to help them improvise and adjust their practice to suit the time, place and context of children's learning.

Intentional and responsive educators actively engage in children's learning and share decision-making with them. They use everyday interactions with children during play, routines and ongoing projects to stimulate children's thinking and to enrich their learning.

Questions to guide reflection on practice for Standard 1.2 (for all services)

Educational practice

- How do we demonstrate intention in our practice and how does this impact on outcomes for children?

- How do we reflect on the range of intentional strategies suggested in the approved learning framework/s to support children's development and learning (for example, modelling and demonstrating, open questioning, speculating, explaining, engaging in shared thinking and problem solving – see *Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 14)?
- How responsive are we to children's ideas, thinking and interests?
- How do we demonstrate that we value children's ideas, thinking and interests?
- How do we extend the program and experiences being offered to each child and/or groups of children?
- How can we improve the ways in which we engage children in making decisions about their own learning?
- How do we arrange activities, routines and the physical environment to support children to make choices about what they would like to do and how they will do it?
- Do we provide children with the opportunity to make choices in circumstances where we promote their agency?

school age children

- How do planned or intentional aspects of the program support spontaneous play and leisure experiences initiated by children?

ELEMENT 1.2.1
INTENTIONAL TEACHING

EDUCATORS ARE DELIBERATE, PURPOSEFUL, AND THOUGHTFUL IN THEIR DECISIONS AND ACTIONS.

What Element 1.2.1 aims to achieve

Intentional teaching in the early childhood context (and intentionality in the middle childhood context) is being deliberate, purposeful and thoughtful in decisions and actions (*Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 41).

In the middle childhood context, intentionality includes actively promoting children's learning through challenging experiences and interactions that foster high-level critical thinking skills. Intentionality includes engaging with children in meaningful ways that support and extend their thinking and learning (*Framework for School Age Care*, p. 14).

Intentional teaching utilises professional knowledge and strategies that reflect contemporary theories and research concerning children's play, leisure and learning (*Framework for School Age Care*, p. 14). Intentional educators are able to explain what they are doing and why they are doing it.

Intentional educators:

- recognise that learning occurs in social contexts and that interactions and communication are vitally important for learning
- use strategies (such as modelling and demonstrating, open-ended questioning, speculating, explaining and engaging in sustained shared conversations) to extend children's thinking and learning
- move flexibly in and out of different roles and draw on different strategies as the context of children's play changes
- use their professional knowledge to plan programs that support children's knowledge building (adapted from the *Early Years Learning Framework*, p. 15; and the *Framework for School Age Care*, p. 14).

Assessment guide for meeting Element 1.2.1 (for all services)

Intentional teaching practice

observe

***Assessors may* observe:**

- educators:
  - » providing time, space and learning experiences that facilitate thoughtful and challenging conversations with children
  - » engaging with children by listening, showing interest and asking open-ended questions to encourage thinking and conversation
  - » using a range of communication strategies that involve explanations, speculation and problem solving

- » collaborating with children to develop further knowledge and skills
- » using teaching strategies that complement the goals they have for children's learning
- » providing instructional/intentional support to children during play, routines and transitions
- » who are fully present and mindful of opportunities to provide children time and space to 'be'.

discuss

***Assessors may* discuss:**

- the plans and strategies educators use to promote learning across all aspects of the program
- how intentional teaching strategies are used to extend children's play, including spontaneous experiences
- any changes in practices that have been implemented to support a child requiring additional assistance, and how those changes have been adapted and sustained over time to benefit the learning of other children and build respect for diversity
- how educators:
  - » decide when to use particular intentional teaching strategies, including the intentional positioning of resources or structuring of the learning environment

school age children

- » make conscious decisions in a leisure based program to promote learning and wellbeing.

sight

***Assessors may* sight:**

- the written program
- team meeting minutes when intentional teaching strategies have been discussed
- documented examples of reflective practice
- planning documentation that identifies resources to support ongoing learning
- documentation that monitors children's learning, wellbeing and engagement.

ELEMENT 1.2.2
RESPONSIVE TEACHING AND SCAFFOLDING

EDUCATORS RESPOND TO CHILDREN'S IDEAS AND PLAY AND EXTEND CHILDREN'S LEARNING THROUGH OPEN-ENDED QUESTIONS, INTERACTIONS AND FEEDBACK.

What Element 1.2.2 aims to achieve

Children's learning is extended when educators make decisions and implement actions that respond to children's ideas and play to enhance their learning. Responsive teaching and scaffolding involves:

- following up on children's ideas and interests with open-ended questions and providing positive feedback
- encouraging children to further explore their interests and stimulate their thinking
- considering how children are grouped for play
- implementing experiences that support peer scaffolding or extending children's learning through engagement with other children
- using spontaneous 'teachable moments' and incidental opportunities to enhance children's play and scaffold their learning (adapted from the *Early Years Learning Framework*, p. 15; and the *Framework for School Age Care*, pp. 14–15).

Responsive teaching is achieved by valuing and building on children's current and evolving strengths, skills and knowledge to ensure their wellbeing, motivation and engagement in learning. Children learn best when the experiences they have are meaningful to them and are focused on the here and now. Because children constantly learn new skills and gain new insights into their world, educators continuously assess, evaluate and implement responsive teaching strategies.

Educators reflect on the inclusiveness of their practices, including whether these are responsive to individual children and whether they acknowledge all children's contributions to the group. This updates their knowledge of individual children and helps them to plan new and follow-up experiences that are relevant to each child. All of these experiences are implemented within a social context where peer interactions are encouraged and supported, building a sense of belonging for all children.

Assessment guide for meeting Element 1.2.2 (for all services)

The assessment will be undertaken primarily through observation and discussion with educators.

Responsive teaching and scaffolding practice

observe

***Assessors may* observe:**

- educators:
  - » intentionally scaffolding children's understanding and learning
  - » making use of spontaneous 'teachable moments' to extend children's learning
  - » responding to children's learning dispositions by commenting on them and providing encouragement and additional ideas
  - » responding to children's ideas and using their interests as a basis for further learning and exploration
  - » creating opportunities for peer scaffolding
  - » noticing children applying their learning in new ways or between different contexts and talking about this with them in ways that build their understanding
  - » modelling mathematical and scientific language and concepts
  - » using language associated with the creative arts
  - » talking explicitly about phonological concepts, such as rhyme, letters and sounds when sharing texts with children
  - » joining in children's play when invited, taking on a range of roles and co-constructing materials, such as signs that extend the play and enhance literacy and/or numeracy learning (adapted from the *Early Years Learning Framework*, pp. 15, 34–41; and the *Framework for School Age Care*, pp. 15, 36).
- children:
  - » being curious and enthusiastic participants in their learning
  - » using their own ideas to develop their play.

discuss

Assessors may* discuss *how educators:

- recognise and value children's involvement in learning
- provide learning environments that are flexible and open-ended
- plan learning environments with appropriate levels of challenge, where children are encouraged to explore, experiment and take appropriate risks in their learning
- support children's investigations and projects
- communicate with children about their learning and ideas and how they build on these.

sight

Assessors may* sight *the written program, including examples of:

- documented reflective practice
- documentation and monitoring of children's learning, development, wellbeing and engagement
- project or inquiry work where children are given the opportunity to take the lead in an investigation, or collaborate with peers, teachers, family members and other members of the community.

ELEMENT 1.2.3
CHILD DIRECTED LEARNING

EACH CHILD'S AGENCY IS PROMOTED, ENABLING THEM TO MAKE CHOICES AND DECISIONS THAT INFLUENCE EVENTS AND THEIR WORLD.

What Element 1.2.3 aims to achieve

When educators promote child directed learning, they foster children's agency, build on the key concepts of belonging, being and becoming, and support children to develop a strong sense of identity. Promoting children's agency recognises that children have a right to make choices and decisions, and are capable of initiating their own learning.

When children have opportunities to make choices, to attempt tasks, to make decisions for themselves, and to take on increasing responsibilities, they are able to recognise their influence and significance in the world and develop skills in assessing risk.

Educators who listen to and respect children's ideas recognise children's capabilities and help them develop the sense that their ideas and opinions matter. They support children to explore their world, to ask questions, to express ideas and to learn from their mistakes. Educators support children to develop decision-making skills to make appropriate choices for their own wellbeing and to realise that the choices they make may impact on others. When children are given choices and control, they begin to understand the connection between actions and consequences, and learn to assess what risks are appropriate and how they may be managed.

Educators promote child-directed learning by encouraging children to make decisions about, plan for and help set up their own play experiences or projects.

Assessment guide for meeting Element 1.2.3 (for all services)

The assessment will be undertaken primarily through observation and discussion with educators.

Child-directed learning

observe

***Assessors may* observe:**

- educators:
  - » arranging play experiences, routines and the physical environment so that children have a range of opportunities to make choices about what they will do and how they will do it
  - » encouraging children to make choices and decisions
  - » acknowledging children as capable and competent, and encouraging them to act autonomously
  - » providing children with strategies to make informed choices about their behaviours

- incorporating children's ideas and suggestions in planning and implementing experiences
- providing encouragement and displaying enthusiasm for children's attempts to gain new skills and knowledge
- embracing and supporting play experiences initiated by children, motivating children to persist and extend their learning
- noticing and listening carefully to children's concerns and discussing diverse perspectives on issues of inclusion and exclusion, and unfair behaviour
- encouraging children to direct their own play and leisure experiences with their peers

- children:
  - making choices and decisions about matters that affect them (for example, whether they wish to play inside or outside, whether they want to play with other children or play independently, whether they are ready to eat, whether they are thirsty, and whether they need to sleep)
  - openly expressing their feelings and ideas in their interactions with others
  - initiating play
  - beginning to display understanding and willingness to negotiate and share with others
  - showing leadership, making decisions and following directions given by other children
  - leading their learning, designing experiences and freely making choices about participating in experiences
  - actively participating in decisions that affect them, including their learning and leisure
  - being supported to assess and manage risk (adapted from the *Early Years Learning Framework*, p. 21; and the *Framework for School Age Care*, p. 20).

discuss

***Assessors may* discuss:**

- how educators:
  - support opportunities for children's decision-making that are appropriate for the child's age
  - provide opportunities for children to influence what happens to them and to exercise choice
  - support children to explore different identities and points of view through play and everyday experiences
  - reflect on what decisions children can make and the extent of those decisions (adapted from the *Early Years Learning Framework*, p. 23; and the *Framework for School Age Care*, p. 22)
- how children's interests are pursued and celebrated
- what responsibilities children have and how this contributes to their sense of agency

- whether educators have high expectations for all children (across ages, genders, abilities, and cultural, linguistic or family backgrounds).

sight

***Assessors may* sight:**

- the service's philosophy statement that recognises children's rights and describes their role in decision-making
- documented reflections that demonstrate changes in practice to support children's agency
- work developed by children with minimal educator input
- use of open-ended resources and materials that allow children to express themselves (rather than using templates, stencils or resources that limit children's capacity to create, interpret, experiment and explore).

EXCEEDING GUIDANCE FOR STANDARD 1.2
PRACTICE

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 1.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 1.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 1.2 Exceeds the NQS:

- Educators, the educational leader and co-ordinators demonstrate a deep understanding of the requirements of the standard, the concepts and the component elements, and a commitment to high quality practice at all times.
- All educators:
  - » are consistently deliberate, purposeful and thoughtful in all of their decisions and actions that impact on children's learning and development
  - » consistently and respectfully respond to each child's ideas and play to facilitate and extend each child's participation, learning and development
  - » consistently take every opportunity to extend each child's learning through open-ended questions, interactions, feedback and the provision of resources
  - » consistently consider and promote the agency of each child, and support each child to make a range of choices and decisions to influence events and their world
  - » confidently make curriculum decisions throughout the day, week or month to ensure each child's participation, learning and development is facilitated and extended.
- All educators and the educational leader are able to explain how their educational practice connects to:
  - » the approved learning framework/s and facilitates and extends each child's learning and development
  - » the service philosophy and supports the service's broader vision for quality.

- The observed and discussed approach to facilitating and extending children's learning and development:
  - » consistently aligns with the service philosophy
  - » consistently demonstrates a strong commitment to the principles and practices of the approved learning framework/s.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 1.2 Exceeds the NQS:

- The service's educational practice approach to facilitating and extending children's learning and development:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance.
- Any change to the service's approach to facilitating and extending children's learning and development is understood by all and implemented appropriately.
- All educators and the educational leader regularly reflect, individually and with each other on:
  - » their educational practice approach to facilitating and extending children's learning and development
  - » alternate practice approaches to facilitating and extending children's learning and development
  - » implementation of changes to strengthen their practice over time
  - » social justice and equity implications of their educational practice to ensure that practice considers the circumstances and rights of every child at the service
  - » opportunities to cultivate deep respect for, and knowledge of, the cultural diversity of the broader community in educational practice, including Aboriginal and Torres Strait Islander histories and cultures
  - » theoretical and philosophical influences on their practice, including the theoretical perspectives identified in the approved learning framework/s
  - » how they draw on theoretical and philosophical influences and how they have influenced practice over time.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 1.2 Exceeds the NQS:

- The service's educational practice approach to facilitating and extending children's learning and development:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, respects and draws on the voices, priorities and strengths of the children and families at the service.

- All educators:
  - » consistently and meaningfully engage with children's families and/or the community to draw on family and/or community understanding of each child's knowledge, strengths, ideas, culture, abilities, interests and learning and development in order to facilitate and extend children's learning and development
  - » actively seek out the voices, perspectives, and views of children throughout the day, and draw on this input to facilitate and extend children's learning and development
  - » draw inspiration from the unique geographical, cultural and community context of the service to facilitate and extend on children's learning and development.

STANDARD 1.3
ASSESSMENT AND PLANNING

EDUCATORS AND CO-ORDINATORS TAKE A PLANNED AND REFLECTIVE APPROACH TO IMPLEMENTING THE PROGRAM FOR EACH CHILD.

How Standard 1.3 contributes to quality education and care

Thoughtful and professional approaches to assessment and planning for each child and the group of children have the potential to enhance their learning, development and wellbeing.

The approved learning framework and the service's philosophy statement (see ***Element 7.1.1***) guide educators in developing an educational program and practice that supports their beliefs and values about children's learning.

Educators collect information on each child, analyse what that information tells them about how to support the child's learning further, document, plan experiences to incorporate into the program, implement the program and then reflect on what has been learned.

Planning ensures that the educational program and practice responds to children's strengths, abilities and interests, and scaffolds and extends their learning. It ensures that educators' practice is intentional and supports children to progress towards the learning outcomes.

Critical reflection encourages educators to engage in analytical and diagnostic thinking to honestly and critically reflect in detail on all aspects of the program, their professional practice, and children's learning and development.

Educators work in partnership with families in collecting information and planning for each child's learning and development, and seek to keep families informed about the program and their child's progress. Children's views and opinions also inform this process.

Questions to guide reflection on practice for Standard 1.3 (for all services)

A planned and reflective approach to program implementation

- How do we ensure that the way we document and plan for children's learning aligns with current approaches?
- How can we work collaboratively with each family to share information about children's learning, development and participation in the program?
- How do we recognise and support continuity of learning at the service, and how does information gathered from each child's home, school or other support service inform planning for continuity of learning?
- What do we do to critically reflect on and evaluate the program, how is this documented and how are our evaluations used to make informed curriculum decisions to improve outcomes for children?
- How do we use critical reflection when discussing programs with colleagues?
- How do we critically reflect on all aspects of pedagogical practice so that quality improvements occur?

ELEMENT 1.3.1
ASSESSMENT AND PLANNING CYCLE

EACH CHILD'S LEARNING AND DEVELOPMENT IS ASSESSED OR EVALUATED AS PART OF AN ONGOING CYCLE OF OBSERVATION, ANALYSING LEARNING, DOCUMENTATION, PLANNING, IMPLEMENTATION AND REFLECTION.

National Law & Regulations

National Law and National Regulations underpinning Element 1.3.1

Regulation 74 Documenting of child assessments or evaluations for delivery of educational program

Jurisdiction-specific provisions

NSW – Regulation 274A Programs for children over preschool age

NT – Regulation 289A Programs for children over preschool age

Qld – Regulation 298A Programs for children over preschool age

What Element 1.3.1 aims to achieve

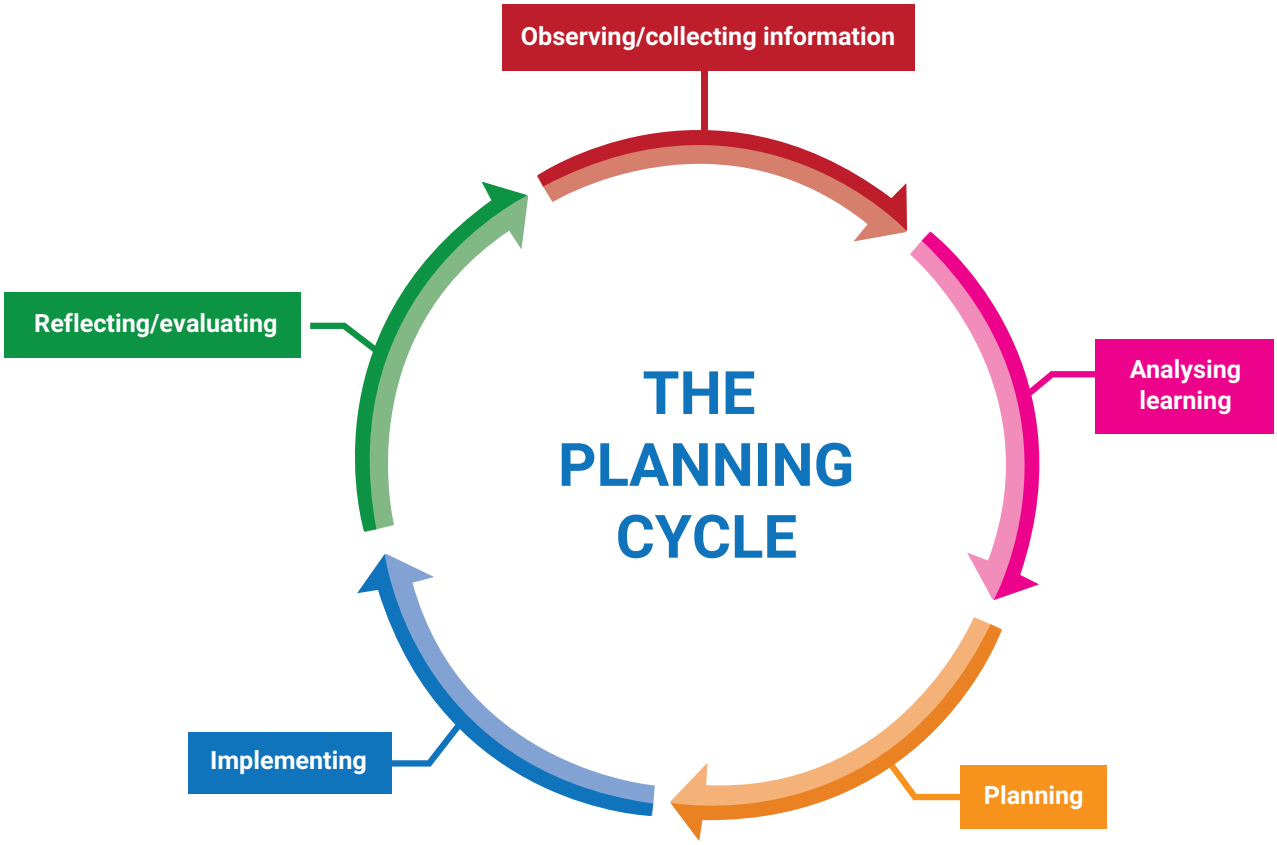
Planning and implementation

The assessment and planning cycle is the ongoing process used by educators (with support from the educational leader and in partnership with families and other professionals) to design programs that enhance and extend each child's learning and development. The planning cycle process includes: observation, analysing learning, documentation, planning, implementation and reflection.

In the early childhood context, analysing learning refers to assessment of children's learning. This involves a process of gathering and analysing information as evidence of what children know, can do and understand (*Early Years Learning Framework*, p. 15). For school age children, evaluation of wellbeing and learning refers to the process of scanning, monitoring, gathering and analysing information about how children feel and what children know, can do and understand (*Framework for School Age Care*, p.16).

Educators:

- understand the context of the service and how the service's statement of philosophy guides their decision-making
- collect information in a variety of ways about each child's knowledge, strengths, ideas, culture, abilities and interests (gained from families as well as through observations and other data) that demonstrate the individuality of the child



- analyse each child's learning and development in relation to the learning outcomes of the approved learning frameworks (see *Element 1.1.1*), to identify progress which can be shared with families and others and to assist in identifying goal(s) for further learning and development
- plan the program including:
  - » strategies and experiences for individual children (based on their goals)
  - » experiences to support achievement of group goals
  - » experiences to extend emerging strengths, abilities and interests
  - » experiences that follow up on input from families
  - » experiences related to relevant community events
- implement the planned experiences, and at the same time identify and utilise 'teachable moments' to respond to and support children's newly emerging strengths, abilities and interests
- reflect on individual children's learning and participation and the program as a whole, to support further planning for learning.

Some jurisdictions have different documentation requirements for educational programs for children over preschool age. See *Regulations 74, 274A, 289A* and *298A*.

Observation, analysis, reflection

Reflection occurs at every step of the planning cycle as educators think about their practice and decisions, and children's engagement with the program.

Educators reflect to:

- ensure that sufficient information has been collected about the child in order to provide an accurate record of their participation in the program, and what they know, can do and understand
- determine the extent to which each child is progressing towards the learning outcomes and identifying what might be impeding their progress
- identify children who may benefit from additional support to achieve particular learning outcomes, how the service can provide that support, or how the service can assist families to access specialist help
- plan for each child's future learning as well as for the group of children
- review the effectiveness of learning experiences, environments and approaches used to support children's learning
- ensure their pedagogical practices are appropriate for the service context, the philosophy of the service and the children with whom they are working (adapted from the *Early Years Learning Framework*, p. 17; and the *Framework for School Age Care*, p. 16).

Documentation

Documentation of children's experiences and their responses to the environment makes learning visible to children, educators and families and promotes shared learning and collaboration. It promotes relationships between children, educators and families and demonstrates professionalism. It also enables the assessment and planning cycle to be visible to educators and families.

Assessment guide for meeting Element 1.3.1 (for all services)

Assessment and planning cycle

observe

Assessors may* observe *educators:

- observing and recording information about what children know, can do and understand in ways that do not interrupt children's participation in their learning
- implementing the educational program based on program planning documentation

school age children

- educators being intentional in the strategies they use to plan leisure-based experiences to support children's learning, development and wellbeing.

discuss

***Assessors may* discuss:**

- the effectiveness of the methods used to document information about children's knowledge, strengths, ideas, culture, abilities, interests, relationships, learning and participation over a period of time
- how educators encourage families to contribute information about their child
- how educational leaders support educators to understand all steps of the planning cycle when planning and implementing programs for each child and the group of children
- what strategies are used to record the voices of children in planning and seeking their feedback
- how educators analyse the information that is gathered about each child to make assessments of each child's progress towards specific learning outcomes

school age children

- *if required by the regulatory authority*, how educators analyse the information that is gathered about each child to make evaluations of each child's progress towards specific learning outcomes. For more information, see ACECQA's information sheet on *Documenting Programs for School Age Services*.

sight

***Assessors may* sight:**

- information gathered about each child that shows that educators understand each child and their learning and development including their learning styles, and any identified support for that child
- the information collected is:
  - » in a form that can be accessed by children and shared easily with families
  - » appropriate to the age of the child and the time the child attends the service
- examples of children's representation of their learning and other work is documented and displayed in sensitive and respectful ways
- evidence that:
  - » families have been encouraged to contribute information about their child (see *Element 1.3.3*)
  - » children's ideas, interests and points of view are sought and respected during planning and implementing the program
  - » educators have reflected on each child's planned and unplanned/spontaneous experiences
  - » educators have reflected on the program and their practices, and identified any changes or improvements required (see *Element 1.3.2*)
- examples of families and children having opportunities to comment on or provide feedback about the program

- documented analysis of each child's learning and development, using the learning outcomes as points of reference, that assists in planning for each child information about what has occurred during the program so that families know the learning opportunities and experiences that have been offered to their children
- documented evidence of each child's developmental needs, interests, experiences and participation in the program

school age children

- *if required by the regulatory authority*:
  - » documentation about each child's participation in the program that is collected by the child and by educators in a format that is interesting for the child and their family and that can be shared with them
  - » documented evaluation of each child's wellbeing, learning and development, including how children feel and what children know, can do and understand, and further goals established with input from children
  - » documented programs that include planned experiences and/or strategies to support individual children's goals
- examples of children having opportunities to contribute to program planning and evaluation.

ELEMENT 1.3.2
CRITICAL REFLECTION

CRITICAL REFLECTION ON CHILDREN'S LEARNING AND DEVELOPMENT, BOTH AS INDIVIDUALS AND IN GROUPS, DRIVES PROGRAM PLANNING AND IMPLEMENTATION.

What Element 1.3.2 aims to achieve

Reflective practice is a form of ongoing learning that involves educators thinking about all aspects of the program, the principles that guide them, the practices they use and the learning outcomes for children. It drives educators' program planning and implementation. Educational leaders support educators to become increasingly thoughtful about their work, to analyse their actions objectively and motivate them to reflect and explore new ideas and approaches as part of daily practice.

Reflective practice is an ongoing, dynamic process that supports educators to think honestly and critically about all aspects of professional practice, including whether all children and families are included. Reflective practice guides educators to gather information from different perspectives to gain insights that will support, inform and enrich their decision-making about each child's learning.

Critical reflection involves closely examining all aspects of events and experiences from different perspectives, with a focus on implications for equity, inclusion and diversity. It takes reflective practice to a deeper level and includes educators analysing or diagnosing what happened and why. For example:

- why educators may have responded in the way they did
- how educators felt
- why educators made certain decisions
- what may have influenced educators' actions
- which theoretical perspectives educators draw on in their decision-making (whether deliberately or subconsciously).

Critical reflection helps educators to build on their knowledge and skills, identifying practice that can be continued as well as what might need to be improved or changed. It also helps educators to identify ways to improve opportunities for children's participation, learning and development.

Educational leaders support educators to consider questions such as:

- How do we currently examine our practices and decision-making, and identify improvements as well as successes?
- Have we considered which children may be advantaged and whether any child is disadvantaged?
- How do we use the approved learning framework/s to help us reflect?
- How are we creating opportunities for conversations, debates, and collaborative inquiries as a team, ensuring that all voices are heard and responded to with respect?

- What questions do I have about my work? What am I challenged by? What am I curious about? What am I confronted by?
- What strategies do I use to demonstrate that I value diversity and work to ensure all children have opportunities to fully participate in the program? (adapted from the *Early Years Learning Framework*, p. 13; and the *Framework for School Age Care*, pp. 11–12).

Assessment guide for meeting Element 1.3.2 (for all services)

Critical reflection

observe

Assessors may* observe *educators:

- working with children to document and reflect on their experiences and learning
- using a variety of methods, such as jottings, children's comments and conversations, photographs and examples of children's work, to assist their reflection on children's experiences, thinking and learning
- focusing on adapting the program to include all children, rather than adapting a child's routine or requirements to fit the program
- reflecting-in-action by changing or altering experiences which are not engaging children
- speaking briefly to one another during the day about aspects of practice that they have changed or need to change
- making brief notes when appropriate so that they can recall an aspect of practice that may be challenging them, or that they may have questions about.

discuss

***Assessors may* discuss:**

- how reflective practice, including critical reflection, is used as an ongoing process in the service
- how the educational leader supports educators to engage in reflective practice that is in line with current recognised approaches
- how educators use critical reflection to make changes to their program and practice
- the opportunities available for educators to reflect on the events of each day, including thinking about what happened and why, the successes and what can be extended or changed
- how educators reflect on whether the program is an inclusive learning environment and supports each child to participate fully or if there are barriers to participation
- how children's comments about their experiences of the program are recorded and considered as part of the reflection process

- whether information gathered provides insights about curriculum decision-making that supports and extends children's learning, development and wellbeing
- how the educational leader promotes a culture of professional enquiry, where practices and outcomes are reviewed and new ideas are generated.

sight ***Assessors may* sight:**

- documentation that shows evidence of critical reflection, such as reflection journals or diaries
- documentation that reflects on all aspects of the program and may include jottings about:
  - the effectiveness of arrivals/departures,
  - interactions, responsiveness and relationships with particular children
  - transitions and routines
  - planned experiences and spontaneous child directed learning
  - incidental and planned group times
  - the environment and experiences provided
  - intentional teaching strategies
  - communication with colleagues and families
  - any other aspects of practice to prompt further thinking and discussion
  - the effectiveness of resources and equipment used
  - experiences and learning outcomes achieved
  - review of curriculum content and pedagogy
- if the service has a Strategic Inclusion Plan, how the service reflects on adaptations made to reduce barriers to participation.

ELEMENT 1.3.3
INFORMATION FOR FAMILIES

FAMILIES ARE INFORMED ABOUT THE PROGRAM AND THEIR CHILD'S PROGRESS.

National Law & Regulations

National Law and National Regulations underpinning Element 1.3.3

Regulation 75 Information about the educational program to be kept available

Regulation 76 Information about educational program to be given to parents

Jurisdiction-specific provisions

NSW – Regulation 274A Programs for children over preschool age

NT – Regulation 289A Programs for children over preschool age

Qld – Regulation 298A Programs for children over preschool age

What Element 1.3.3 aims to achieve

Quality education and care services engage with families to provide information about the wellbeing, learning and development of their child. Educational leaders support educators to recognise the benefits of quality education and care to both families and the service and to understand that learning outcomes are best achieved when educators work in partnerships with families. Services develop a communication plan in consultation with families to ensure that information for families is accessible, meaningful and useful.

Educators verbally inform families of their child's participation and progress whenever possible, and share documentation about children's learning and development in ways that are accessible, understandable and meaningful for families. This enables families to understand their child's strengths, abilities and knowledge from the perspective of the service. Educators also share 'point-in-time' summaries about each child's progress towards the learning outcomes and engage families in the assessment process by seeking their input and feedback. Educators encourage families to share in decision-making about their child's further learning, development and wellbeing.

The educational program is displayed in a way that is accessible, understandable and meaningful for families to read so that they can view what has been planned for their child.

Information is also provided that documents children's participation and their progress against the approved framework's learning outcomes, as well as how educators have supported and guided them. Educational leaders support educators to share information sensitively, taking into account the child and family's right to confidentiality.

Assessment guide for meeting Element 1.3.3 (for all services)

Information for families about their child's progress

observe

Assessors may* observe *educators:

- having conversations with families about their child
- verbally sharing positive observations with families about their child
- showing meaningful documentation to families about their child
- exchanging information with families about the educational program.

discuss

***Assessors may* discuss:**

- how educators:
  - » seek input from families about their preferences for the way they receive information about their child's progress
  - » document observations or information of a sensitive nature
  - » support continuity of learning and transitions for each child
- how information is made available and accessible to families, particularly families with diverse needs
- whether educators seek feedback from families about how they access documentation about their child and whether it is useful, understandable and meaningful to them
- educators' understanding of the need to respect children and their families' right to confidentiality
- how arrangements are made to exchange information about the child with families at mutually convenient meeting times
- educators' understanding of the importance of communicating with families about their child's progress

school age children

- how barriers are addressed to involve families in their child's learning
- how the service works with families and the school to support a consistent learning approach for children.

sight

***Assessors may* sight:**

- documentation (such as a communication plan) that demonstrates that families have been consulted about how they would like to receive information about their child's progress
- a range of strategies being implemented to share information with families in meaningful and useful ways
- documented expectations about the ways educators share information with families such as through:

  - » conversations
  - » emails
  - » phone calls
  - » communication books
  - » offering meetings at mutually convenient times
- documented expectations about how educators record information from families
- transition statements for children transitioning to school
- the educational program, including planning and reflections for families about the experiences and learning that have occurred
- the educational program displayed in an accessible location for families to view and understand
- documented information about each child's developmental needs, interests, experiences, participation and progress (see ***Element 1.3.1***) that is shared with families

school age children

- *if required by the regulatory authority*, documented evaluation of each child's wellbeing, learning and development (see ***Element 1.3.1***) that is shared with families.

EXCEEDING GUIDANCE FOR STANDARD 1.3
ASSESSMENT AND PLANNING

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 1.3 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 1.3 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 1.3 Exceeds the NQS:

- Educators, the educational leader and co-ordinators:
  - » demonstrate a deep understanding of the requirements of the standard, the concepts and the component elements, and a commitment to high quality practice at all times
  - » consistently engage in planned and spontaneous critical reflection on children's learning and development, as individuals and in groups
  - » consistently draw on their insights to make changes to the design and implementation of the program
  - » work collaboratively to assess or evaluate each child's learning and development as part of an ongoing assessment and planning cycle that drives development of an education program that enhances and extends each child's learning and development
  - » are able to explain how their approach to assessment and planning connects to:
    - the approved learning framework/s and enhances and extends each child's learning and development
    - the service philosophy and supports the service's broader vision for quality.
  - » consistently engage meaningfully with children's families to inform them about the educational program and their child's participation, learning and development.
- The observed and discussed approach to assessment and planning:
  - » consistently aligns with the service philosophy
  - » consistently demonstrates a strong commitment to the principles and practices of the approved learning frameworks/s
  - » is consistently reflected in the service's program documentation and required assessment or evaluation documentation
  - » consistently reflects meaningful engagement and communication with families.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 1.3 Exceeds the NQS:

- The service's approach to assessment and planning :
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance.
- Any change to the service's approach to assessment and planning is understood by all and implemented appropriately.
- All educators, the educational leader and co-ordinators regularly reflect, individually and with each other on:
  - » their approach to assessment and planning to consider whether it supports the best outcomes for children and families
  - » engagement with families and whether communication of the education program and children's participation, learning and development is accessible and understandable
  - » alternate assessment and planning processes, and make changes where opportunities for improvement are identified
  - » social justice and equity implications of their assessment and planning to ensure that practice considers the circumstances and rights of every child at the service
  - » theoretical and philosophical influences on their assessment and planning, including the theoretical perspectives identified in the approved learning framework/s
  - » how they draw on theoretical and philosophical influences and how they have influenced practice over time.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 1.3 Exceeds the NQS:

- The service's approach to assessment and planning:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, respects and draws on the voices, priorities and strengths of the children and families at the service.
- All educators:
  - » consistently seek out the voices, perspectives, and views of children throughout the day, and draw on this input in ongoing assessment and planning
  - » consistently support children to participate in assessing and planning their own learning and development.

- All educators, the educational leader and co-ordinators:
  - » consistently engage with families and the community to ensure that children's learning and development outside of the service is incorporated into the assessment and planning cycle
  - » consistently engage with families about their child's progress in ways that are tailored to individual families' circumstances and ways of connecting, for example engaging with families using respectful and culturally safe practices.

QUALITY AREA 2
CHILDREN'S HEALTH AND SAFETY

Overview

Quality Area 2 of the National Quality Standard reinforces children's right to experience quality education and care in an environment that provides for their health and safety. Educators support this when they promote each child's wellbeing and healthy lifestyle, and support each child's growing competence, confidence and independence.

Learning about healthy lifestyles, including nutrition, personal hygiene (such as handwashing, dental hygiene and ear care), physical fitness, emotions and social relationships, is integral to children's wellbeing and self-confidence. When children develop resilience, their ability to take increasing responsibility for their self-help and basic health routines promotes a sense of independence and confidence. As children become more independent, they can take greater responsibility for their own health, hygiene and personal care and they become aware of their own and others' safety and wellbeing (*Early Years Learning Framework*, p. 30; *Framework for School Age Care*, p. 29). This is particularly relevant for school age children attending education and care services.

The approved provider, nominated supervisors, co-ordinators and educators have responsibility for supporting the health, protection, safety and wellbeing of all children. In exercising their responsibilities, they must take reasonable care to protect children from foreseeable risk of harm, injury and infection.

Standards, elements and concepts

Quality Area 2 has two standards that focus on children's health and safety. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because:

- children's health, comfort and wellbeing strongly impact on their learning, confidence and self-growth
- all children have a right to safety and protection from harm
- adequate supervision and effective management of incidents and emergencies are paramount at all times to support children's safety and engagement in the educational program.

Standard/ Elements	Concept	Descriptor
QA2		**Children's health and safety**
2.1	Health	Each child's health and physical activity is supported and promoted.
2.1.1	Wellbeing and comfort	Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.
2.1.2	Health practices and procedures	Effective illness and injury management and hygiene practices are promoted and implemented.
2.1.3	Healthy lifestyle	Healthy eating and physical activity are promoted and appropriate for each child.
2.2	Safety	Each child is protected.
2.2.1	Supervision	At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.
2.2.2	Incident and emergency management	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
2.2.3	Child protection	Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.

STANDARD 2.1
HEALTH

EACH CHILD'S HEALTH AND PHYSICAL ACTIVITY IS SUPPORTED AND PROMOTED.

How Standard 2.1 contributes to quality education and care

Children's health and physical wellbeing contributes to their ability to concentrate, cooperate and learn (*Early Years Learning Framework*, p. 30; *Framework for School Age Care*, p. 29). Being active, healthy, well rested and free of illness assists children to participate happily and successfully in the learning environment. It is also important that children are supported to take increasing responsibility for their own health and physical wellbeing (*Early Years Learning Framework*, p. 32; *Framework for School Age Care*, p. 31).

Children's health requirements can change over time as they grow and develop. Working together with families and, where relevant, health care professionals, the service should have effective processes to support all aspects of children's health. This can include:

- being aware of and meeting each child's physical health and comfort requirements
- encouraging physical activity
- supporting children's wellbeing by providing opportunities for children's sleep, rest and relaxation
- implementing effective hygiene practices to control the spread of infectious diseases
- managing injuries and illnesses
- meeting children's nutritional needs
- teaching children that healthy lifestyles underpin everyday routines and experiences.

Questions to guide reflection on practice for Standard 2.1 (for all services)

Wellbeing and comfort

- How do we find out about individual children's routines, and ensure that all relevant staff members are informed about these?

birth to three

- How do we seek information from families about their children's routine experiences, such as sleeping and toileting patterns, and support the same approaches within the service?
- How do we encourage and support mothers who wish to breastfeed in the service?
- How do we arrange routine times to ensure that children are able to follow their individual needs or preferences, including arrangements for children who do not need or wish to sleep or rest when other children do?

school age children

- How do we seek information from children and families about children's wellbeing, physical comfort or personal needs, and support children sensitively within the service?

Health practices and procedures

- How do we keep informed of, and implement, current practices and guidelines from recognised authorities in relation to:
  - child and adult immunisation
  - allergies and anaphylaxis
  - food safety and hygiene practices
  - administration of medication
  - rest and safe sleep requirements
  - sun safe practices
- How do we find out about individual children's health requirements, and ensure that all relevant staff members are informed about these?
- How do we maintain acceptable levels of hygiene while minimising the use of toxic products?
- How do we ensure that families are informed about and follow the service's policy and guidelines for the exclusion of ill children?
- What arrangements do we have in place to regularly review and update our child health related policies and procedures?
- How do we communicate with families if there is an outbreak of an infectious disease?

family day care

- How do family day care educators and co-ordinators discuss and manage risks associated with working in isolation, when managing children's illnesses and injuries?

school age children

- What arrangements do we need to make for older children to independently administer their own medication?

Healthy lifestyle

- How do we ensure that all educators are familiar with current guidelines about healthy eating, physical activity, rest and safe sleeping?
- How do we ensure that all educators understand and implement correct procedures relating to food handling, transportation and storage?
- How do we plan food and beverages to meet the preferences of each child as well as their dietary and nutrition requirements, including during excursions or other special activities?
- How do we incorporate discussions and activities about healthy eating, physical activity and allergies into children's everyday experiences so that each child is encouraged to make healthy food and beverage choices?
- How do we plan the program to ensure that there is a balance between planned and spontaneous active play as well as a balance between passive and active experiences?
- How do we set up the environment and resources to encourage and support children to engage in movement and physical play?
- How do we plan the program to include opportunities for active play during periods of inclement weather?
- How do we encourage children to solve problems in relation to physical challenges in the environment?

school age children

- How do we encourage play and recreational experiences that are child-initiated, child-directed, and appropriate for the age and capabilities of school-aged children?

ELEMENT 2.1.1
WELLBEING AND COMFORT

EACH CHILD'S WELLBEING AND COMFORT IS PROVIDED FOR, INCLUDING APPROPRIATE OPPORTUNITIES TO MEET EACH CHILD'S NEED FOR SLEEP, REST AND RELAXATION.

National Law & Regulations

National Law and National Regulations underpinning Element 2.1.1

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Section 166 Offence to use inappropriate discipline

Regulation 81 Sleep and rest

What Element 2.1.1 aims to achieve

Wellbeing and comfort incorporate both physical and psychological aspects and are central to children's learning and development. Without a strong sense of wellbeing it is difficult for children to develop a sense of belonging, to trust others and feel confident in being themselves and to participate in experiences that support their personal growth (*Early Years Learning Framework*, p. 30; *Framework for School Age Care*, p. 29).

Holistic approaches recognise the importance of physical, mental and spiritual wellbeing. Educators who provide a range of active and restful experiences throughout the day support children's individual requirements for health, nutrition, sleep, rest and relaxation.

Children's individual comfort and wellbeing requirements may vary for daily routines, such as rest, sleep, dressing, and toileting or nappy changing. Educators should recognise and incorporate into their practice:

- the sociocultural background of the child and the family
- the child's personal preferences
- the routines and activities that are in place at the child's home.

Assessment guide for meeting Element 2.1.1 (for all services)

Ensuring children's wellbeing and comfort

observe

***Assessors may* observe:**

- children:
  - » demonstrating a sense of belonging and comfort in their environment by recognising and communicating their bodily needs and seeking comfort and assistance from educators when required (*Early Years Learning Framework*, p. 32)

- being supplied with clean, appropriate spare clothes when they need them and knowing where they can access them independently
- who do not require sleep or rest being given choice and opportunities to engage in quiet play experiences

birth to three

- being supported sensitively and positively when they are learning to use the toilet

school age children

- being provided with and accessing comfortable spaces away from the main activity areas for relaxation and quiet activity

- children's needs for privacy during toileting and/or dressing and undressing times being respected and facilitated
- children's and families' individual clothing needs and preferences being met to promote children's comfort, safety and protection within the scope of the service's requirements for children's health and safety
- sleep and rest practices that are consistent with current views about children's health, safety and welfare and that meet children's individual needs
- physical spaces being made available for children to engage in rest and quiet experiences
- educators:
  - showing awareness of children's comfort and avoiding overcrowding when children are grouped for rest and sleep
  - providing a range of active and restful experiences throughout the program and supporting children's preferences for participation

birth to three

- relaxed, positive nappy-changing and toileting routines that are adapted to meet the individual child's routines

discuss

***Assessors may* discuss:**

- the service's sleep and rest policies, procedures and practices
- how the service:
  - addresses each child's clothing needs and preferences
  - provides opportunities for families to communicate changes in children's routines to educators

- how educators:
  - » work with families to support children's toileting routines
  - » find out about children's and families' individual clothing needs and preferences and how they reach agreement with families, considering the scope of the service's requirements for children's health and safety
  - » negotiate sleep and rest routines and practices with families for each child at the service

birth to three

school age children

- » negotiate arrangements for relaxation and 'downtime' with children
- privacy arrangements for children's toileting and personal hygiene requirements.

sight ***Assessors may* sight:**

- evidence demonstrating that the service's approach to addressing individual clothing needs and preferences is shared with families
- evidence demonstrating that the service's approach to sleep and rest is shared with families

birth to three

- evidence that babies who are asleep are checked at regular intervals
- evidence that families are provided with daily information about their child's nappy change/toileting patterns

school age children

- planning that reflects the input of children into rules and routines of the service that relate to the comfort of individuals and the group.

ELEMENT 2.1.2
HEALTH PRACTICES AND PROCEDURES

EFFECTIVE ILLNESS AND INJURY MANAGEMENT AND HYGIENE PRACTICES ARE PROMOTED AND IMPLEMENTED.

National Law & Regulations

National Law and National Regulations underpinning Element 2.1.2

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Regulation 77 Health, hygiene and safe food practices

Regulation 85 Incident, injury, trauma and illness policies and procedures

Regulation 86 Notification to parents of incident, injury, trauma and illness

Regulation 87 Incident, injury, trauma and illness record

Regulation 88 Infectious diseases

Regulation 89 First aid kits

Regulation 90 Medical conditions policy

Regulation 91 Medical conditions policy to be provided to parents

Regulation 92 Medication record

Regulation 93 Administration of medication

Regulation 94 Exception to authorisation requirement – anaphylaxis or asthma emergency

Regulation 95 Procedure for administration of medication

Regulation 96 Self-administration of medication

Additional state/territory and local government requirements

In addition to complying with the National Quality Framework, services must also comply with other relevant national, state/territory and local government requirements. For example, immunisation requirements that prevent enrolment of a child unless approved documentation is provided to indicate the child is fully immunised for their age, or has received an approved exemption from immunisation. For more information, contact your regulatory authority. Some services may require an Immunisation History Statement, which can be obtained from the *Australian Immunisation Register*.

What Element 2.1.2 aims to achieve

Illness management and hygiene practices

While it is not possible to prevent the spread of all infections and illnesses, effective illness management practices and maintaining high standards of hygiene significantly reduce the likelihood of children becoming ill. This involves reducing children's exposure to materials, surfaces and body fluids that may cause infection or illness.

For more information, see the National Health and Medical Research Council's (NHMRC) publication ***Staying Healthy: Preventing infectious diseases in early childhood education and care services,*** 2013.

In helping children to take growing responsibility for their own health and physical wellbeing, educators model and reinforce health and personal hygiene practices with children. Educators also promote continuity of children's personal health and hygiene by sharing ownership of routines and schedules with children, families and the community.

Injury management

Services need to consider the effectiveness of injury management processes, including risk identification and conducting risk benefit analysis and risk assessments to minimise risk. This involves considering the way educators:

- support children in risky play
- are organised to ensure effective supervision
- are proactive, responsive and flexible in using professional judgments to prevent injury from occurring.

When developing effective injury management procedures, services also need to consider a range of contingencies if an injury occurs. These include:

- administration of first aid
- contacting emergency services or medical professionals
- contact and communication with families including injury notification forms
- maintaining adequate supervision
- managing the emotional wellbeing of all children and educators
- serious incident and any other notification requirements
- reviewing and evaluating procedures after an incident as part of the quality improvement process.

Assessment guide for meeting Element 2.1.2 (for all services)

Hygiene practices

observe

***Assessors may* observe:**

- hygiene practices that reflect current research and advice from recognised health authorities
- safe and hygienic storage, handling, preparation and serving of all food and drinks consumed by children, including food brought from home
- nominated supervisors, educators, co-ordinators and family day care assistants:
  - » implementing the service's health and hygiene policy and procedures
  - » actively supporting children to learn hygiene practices (including hand washing, coughing, dental hygiene and ear care)
  - » maintaining a hygienic environment for children
- children consuming food and drinks in a hygienic manner

birth to three

- educators implementing appropriate hygiene practices in relation to hand washing, toileting, nappy changing and cleaning of equipment
- clean toileting and nappy-changing facilities
- fresh linen and other bedding being used for each child using a cot or a mattress
- bedding being stored hygienically (for example, in named cloth bags and not touching other children's bedding).

discuss

***Assessors may* discuss:**

- how the service accesses information from recognised authorities about current health, hygiene and safety guidelines and how this information is used to inform policies, procedures and practices
- how often children's bedding, dress-up clothes, cushion-covers and other washable materials are laundered
- how cleanliness of the service is consistently maintained

birth to three

- how a regular regime of washing children's toys and equipment is maintained.

sight

***Assessors may* sight:**

- policies and procedures relating to health and hygiene
- written procedures and schedules for maintaining a regular regime of washing children's toys and equipment
- evidence that families are provided with information and support that helps them to follow the service's hygiene procedures

- current nappy-changing and toileting procedures displayed in toilet and nappy-changing areas
- information about correct hand-washing procedures displayed in relevant areas of the service, such as bathrooms, nappy change areas and food preparation areas
- visual aids and hand-washing signs displayed where children wash their hands.

Illness and injury management

observe

***Assessors may* observe:**

- groupings of children arranged to minimise the risk of illness and injuries
- educators:
  - » observing and promptly responding to signs of illness and injury in children
  - » observing the symptoms of children's illnesses and injuries and systematically recording and sharing this information with families (and medical professionals where required)
  - » discussing health and safety issues with children
  - » involving children in developing guidelines to keep the service environment healthy and safe for all
  - » communicating with families about children's health requirements in culturally sensitive ways
  - » implementing appropriate practices when administering medication, including:
    - checking the written authorisation from the parent or guardian
    - checking that the medication does not exceed its use-by date and is supplied in its original packaging
    - checking that prescribed medication displays the child's name
    - storing medication appropriately
    - completing records to indicate when medication is administered

centre-based services

- having another person check the dosage and witness the administration of medication.

discuss

***Assessors may* discuss:**

- how the service's policies on dealing with infectious disease address child and staff immunisation, including exclusion periods
- how the service's guidelines for the exclusion of ill children and educators are implemented

- how families are advised of cases of infectious illnesses in the service, including information about the nature of the illness, incubation and infectious periods and the service's exclusion requirements for the illness
- how the service implements its procedure for notifying families of injuries that affect children while in education and care
- how the service responds to a serious accident or health-related emergency involving a child
- how the service communicates information about a child's individual health requirements to staff members
- how the service conveys concerns or questions about a child's health needs to their family
- how information about a child's individual health is kept confidential

school age children

- arrangements for negotiating individual procedures for the administration of medication with families and children
- how/if information about the child's individual health requirements is communicated with the school.

sight ***Assessors may* sight:**

- policies and procedures relating to incident, injury, trauma, illness and medical conditions
- the service's policy and procedures on dealing with infectious disease, including notifying families of cases of infectious illnesses in the service and exclusion of ill children, that is consistent with current information from a relevant recognised authority
- an up-to-date first aid kit or kits readily available wherever children are (including in the service and on excursions)
- current records of the status of children's immunisations, including a written process for obtaining information from families about their children's current immunisation status
- a written process for observing, responding to and recording signs of illness and injury in children and notifying families of illness or injuries that affect children while at the service
- information that has been provided to educators and families about child and adult immunisation recommendations
- enrolment records containing health information and authorisations for each child enrolled at the service
- individual medical management plans provided by the parents of children with a specific health care need, allergy or a diagnosed relevant medical condition, including but not limited to asthma, diabetes or risk of anaphylaxis

- a written process for and records of the administration of medication for children that includes:
  - » authorisation from a parent or guardian to administer the medication
  - » the name of the medication being administered
  - » details of the time and dosage of the medication administered
  - » the signature of the person who administered the medication

centre-based service

- » the signature of the person who witnessed the administration of medication

- records of:
  - » staff members' first aid qualifications
  - » staff rosters that demonstrate a first-aid-qualified staff member is on duty at all times (see ***Children's Health and Safety – medical conditions policy and managing medical conditions of enrolled children*** for more information).

ELEMENT 2.1.3
HEALTHY LIFESTYLE

HEALTHY EATING AND PHYSICAL ACTIVITY ARE PROMOTED AND APPROPRIATE FOR EACH CHILD.

National Law & Regulations

National Law and National Regulations underpinning Element 2.1.3

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Regulation 78 Food and beverages

Regulation 79 Service providing food and beverages

Regulation 80 Weekly menu

What Element 2.1.3 aims to achieve

Healthy eating and physical activity contribute to children's ability to socialise, concentrate, cooperate and learn. Learning about healthy lifestyles, including nutrition and physical fitness, is integral to wellbeing and self-confidence (*Early Years Learning Framework*, p. 30; *Framework for School Age Care*, p. 29).

Good nutrition is essential to healthy living and enables children to be active participants in play and leisure (*Framework for School Age Care*, p. 29). Education and care settings provide many opportunities for children to experience a range of nutritious food and to learn about healthy food choices from educators and other children.

Physical activity enhances brain development, coordination and social and motor skills and helps children to build confidence in their own abilities, develop their independence, and enjoy being active. The educational leader and educators foster physical and psychological development in children by encouraging physical activity that is challenging, extends thinking and offers opportunities to take manageable risks. Instead of trying to eliminate all risk from children's play, it is important to understand that risky play can be acceptable where the benefit to children's learning outweighs the risks. Risks can be managed through conducting risk assessments, and weighing the obligation to protect children from foreseeable risk of harm against the benefit of providing children with a stimulating play environment.

Assessment guide for meeting Element 2.1.3 (for all services)

Healthy eating

observe

***Assessors may* observe:**

- educators:
  - » engaging children in experiences, conversations and routines that promote relaxed and enjoyable mealtimes and promote healthy, balanced lifestyles (*Early Years Learning Framework*, p. 32; *Framework for School Age Care*, p. 31)
  - » using cooking experiences to further children's understandings of healthy food and nutrition
  - » following the service's procedures for the safe storage and heating of food and drink
  - » never using food to reward or punish children
  - » encouraging children to eat healthy food without requiring them to eat food they don't like or to eat more than they need, including supporting children to recognise when they are hungry or 'full'
  - » sitting with children and modelling, implementing and reinforcing healthy eating and nutrition practices with children during mealtimes
  - » consulting children about their routines and meal times

birth to three

- » responding to babies' verbal and non-verbal cues about their preferred food preferences and meal times

- children:
  - » showing an awareness of healthy lifestyles and good nutrition
  - » being provided with food that is consistent with the:
    - Australian Government guidelines *Get Up & Grow: Healthy Eating and Physical Activity for Early Childhood*, and/or
    - *Australian Dietary Guidelines*
  - » eating food that is consistent with advice provided by families about their child's dietary requirements, likes, dislikes, and any other requirements families have regarding their child's nutrition
  - » who have not eaten at the routine time or who are hungry being provided with food outside of routine meal and snack times
  - » being provided with food and drinks consistent with the menu
  - » having ready access to water and being regularly offered water throughout the day

school age children

- » being involved in choosing and preparing healthy meals

- adequate quantities of food available for children that are consistent with the *Australian Dietary Guidelines*, as well as sufficient food for children who may request more

birth to three

- babies being fed individually by educators according to each child's routine
- educators following the service's procedures for the safe storage and heating of food and drink, including breast milk
- a supportive environment for mothers to breastfeed
- children being supported by educators to feed themselves.

discuss

***Assessors may* discuss:**

- how the service:
  - » meets the needs of children with special dietary requirements
  - » consults with families and children to learn about children's individual requirements for food, their likes and dislikes in relation to food and any culturally appropriate food requirements

birth to three

- » supports families' choices regarding infant feeding, including breastfeeding and bottle feeding
- » supports families who choose to breastfeed their child while they are at the service

- where food is brought from home, how the service encourages families to provide food that is consistent with the Australian Government guidelines (*Get Up & Grow: Healthy Eating and Physical Activity for Early Childhood*, and/or *Australian Dietary Guidelines*), and is focused on developing respectful relationships and supporting families in their parenting role.

sight

Assessors may sight:

- the service's health and safety policy, including nutrition, food, drink and dietary requirements
- program planning including cooking experiences that promote healthy eating and knowledge of nutrition
- the service's policy on dealing with medical conditions such as anaphylaxis and allergies
- written procedures for the safe storage and heating of food and drink
- resources for families and children on healthy eating and referrals to further information
- written menus (where the service is responsible for providing food) on display, detailing the food provided for children that are consistent with the:
  - » Australian Government guidelines *Get Up & Grow: Healthy Eating and Physical Activity for Early Childhood*, and/or
  - » *Australian Dietary Guidelines*

- if the menu is changed, notification is displayed for families so that they are informed of their children's meals that day
- furniture and utensils that are age appropriate and encourage children to be positively involved in and enjoy mealtimes

birth to three

- evidence that families are provided with daily information about their child's intake and experiences with food and drink
- written procedures for the safe storage and heating of babies' bottles and breast milk.

Physical activity

observe

***Assessors may* observe:**

- educators:
  - » implementing physical games and activities as part of the program and encouraging each child's participation
  - » encouraging and supporting children to participate in new or unfamiliar physical activities according to each child's abilities and their level of comfort
  - » becoming involved and demonstrating enjoyment in children's physical activity
  - » encouraging children to identify and manage risks in their play, including providing opportunities for children to problem-solve
- children:
  - » being encouraged and supported to use increasingly complex sensory motor skills and movement patterns that:
    - combine gross and fine motor movement and balance
    - increase their spatial awareness
    - use their problem-solving skills (adapted from the *Early Years Learning Framework*, p. 32)
  - » having frequent opportunities to engage in active play
  - » showing enthusiasm for participating in physical play and negotiating play spaces to ensure the safety and wellbeing of themselves and others
  - » helping to plan and set up physical play activities and equipment
  - » initiating and leading physical play activities with peers
- children and educators talking about how their bodies work and the importance of physical activity to people's health and wellbeing
- educators planning and implementing opportunities for children to engage in dance, creative movement and drama and to respond to traditional and contemporary music and storytelling
- indoor and outdoor areas that are organised in ways to promote safe physical play and activity for children of different age groups and capabilities

birth to three

- provision of safe areas and encouragement for babies to practise rolling over, sitting, crawling, standing, walking and climbing
- support for children to develop co-ordinated movement through planned experiences, such as action songs, dancing and throwing and kicking balls.

discuss ***Assessors may* discuss *how the service:***

- maintains a balance between spontaneous and planned physical activity, and passive and active experiences, for all children
- manages risk while providing a stimulating learning and play environment for children
- considers children's voices in planning physical activities, including opportunities for physical play that support the abilities, diversity and backgrounds of each child attending the service
- provides appropriate resources to support children's interest and participation in physical activity.

sight ***Assessors may* sight:**

- how the planned program incorporates physical activity that meets each child's capabilities and extends their development, including how it balances quiet/passive play times with more energetic outdoor play
- evidence that information about the importance of physical activity to children's health and development is communicated to families.

EXCEEDING GUIDANCE FOR STANDARD 2.1
HEALTH

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 2.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 2.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 2.1 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard and its component elements, and a commitment to high quality practice at all times
- All educators:
  - » are consistently attuned to and respond to children's changing health and physical activity requirements throughout the day
  - » provide a range of opportunities to effectively address and respond to children's needs for sleep, rest and relaxation throughout the day, individually and in groups
  - » manage and support children's health and medical needs in line with established best practice at all times
  - » actively promote healthy eating, physical activity, and effective hygiene practices in the delivery of the daily program
  - » provide regular opportunities for explicit learning about health and wellbeing
  - » respond confidently to the daily events that impact on children's health and activity needs
- The observed and discussed approach to supporting and promoting children's health and physical activity consistently aligns with the design and delivery of the educational program and service philosophy and demonstrates a strong commitment to the priorities, principles and practices of the approved learning framework
- The service's approach to supporting and promoting children's health and physical activity reflects a commitment to the prevention of illness and injuries and this is evident in the service's approach to reporting and responding to health and illness-related incidents.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 2.1 Exceeds the NQS:

- Educators, the educational leader and co-ordinators:
  - » systematically and regularly reflect on opportunities to enhance each child's health outcomes and promote physical activity with children and families
  - » seek out and consider alternate ways of supporting each child's health and activity needs, and make changes where opportunities to further enhance children's outcomes are identified
  - » are able to explain how reflection on children's changing health and activity needs influences the design and delivery of the educational program
  - » reflect together on health and illness-related incidents, and support the service to make changes to practices, policies and procedures where opportunities are identified to strengthen the approach
  - » are aware of and able to discuss the influences on their approach to supporting and promoting children's health and activity requirements and outcomes, the recognised guidelines that underpin their practice approach, and how these build on the approved learning framework/s and the service's health policies and procedures
  - » consider and discuss social justice and equity implications of their practice decisions to ensure that practice takes into account the needs and rights of every child at the service
- The service's approach to supporting and promoting children's health and activity needs and outcomes reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection on past incidents
- The service's approach to supporting and promoting children's health and physical activity, including safe sleep and nutrition, is informed by current recognised guidelines and up-to-date information
- Any change to the service's approach to supporting and promoting children's health and activity needs are understood by all and implemented appropriately.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 2.1 Exceeds the NQS:

- Educators, the educational leader and co-ordinators:
  - » engage meaningfully and regularly with families to discuss children's changing health and physical activity requirements , including their interests, preferences and strengths, and incorporate these into the program
  - » work directly with children, families, and professionals as appropriate to develop targeted practices that are responsive to children's evolving health and activities needs
  - » incorporate children's changing health and activity needs, interests, preferences and strengths into the design and delivery of the educational program, including information gathered from families and the community and directly from children
  - » proactively promote children's health and physical activity with families and the community
  - » build partnerships with families and the broader community to further enhance children's health and activity outcomes, for example through collaborative initiatives with health professionals and other support services
- The service's approach to supporting and promoting children's health and physical activity suits and draws inspiration from the unique environmental, cultural and community context of the service.

STANDARD 2.2
SAFETY

EACH CHILD IS PROTECTED.

How Standard 2.2 contributes to quality education and care

Children have a fundamental right to be protected and kept safe when they attend an education and care service. Unsafe settings and situations can negatively impact on children's physical health and wellbeing, which in turn can negatively affect their experiences, learning and wellbeing in the present and throughout their lives.

Through a widening network of secure relationships, children develop confidence and feel respected and valued. A strong sense of wellbeing promotes children's confidence and optimism, which maximises their learning and development (*Early Years Learning Framework*, p. 30; *Framework for School Age Care*, p. 29).

Questions to guide reflection on practice for Standard 2.2 (for all services)

Protecting each child

- How do we identify potential supervision risks in the service?
- How do we plan to ensure that all areas used by children are effectively supervised, including when children are participating in high-risk activities or varying their activities?
- How do we plan to manage supervision of small groups of children who may need to be in a different space from the main group, such as children who sleep for longer periods than others at different times, children who take longer to finish mealtimes or children who want to engage in quiet, solo activities away from other groups of children?
- How do we identify, assess, manage and record hazards and potential risks for children, such as potentially dangerous products, plants, objects and animals at the service, and how often do we do this?
- How do we ensure children are alerted to safety issues and encouraged to develop the skills to assess and manage risks to their own safety?
- How do we ensure that all equipment and materials used in the service meet relevant safety standards, including bedding and sun protection resources and equipment?
- How do we conduct risk assessments for potential excursions and plan for children's safety during excursions?
- How do we identify which emergency procedures and specific action plans are required for our service and how often do we practise these? What recognised authorities are consulted in the development of these plans?

- How do we maintain an awareness of the people who have contact with children at the service and/or who collect children from the service?
- How do we keep up to date with current legislation in our state or territory in relation to child protection, and ensure that all staff understand how to report their concerns about child protection issues?

family day care

- How do we discuss and manage supervision risks associated with working in isolation?
- How do we discuss and manage transport arrangements, including supervision and safety considerations (for example, child safety in educators' vehicles and safe fitting of car seats)?

school age children

- How do we keep up to date with current information on travelling safely, such as bus travel and bike safety?

ELEMENT 2.2.1
SUPERVISION

AT ALL TIMES, REASONABLE PRECAUTIONS AND ADEQUATE SUPERVISION ENSURE CHILDREN ARE PROTECTED FROM HARM AND HAZARD.

National Law & Regulations

National Law and National Regulations underpinning Element 2.2.1

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Section 165 Offence to inadequately supervise children

Section 166 Offence to use inappropriate discipline

Section 167 Offence relating to protection of children from harm and hazards

Section 170 Offence relating to unauthorised persons on education and care service premises

Section 171 Offence relating to direction to exclude inappropriate persons from education and care premises

Regulation 82 Tobacco, drug and alcohol free environment

Regulation 83 Staff members and family day care educators not to be affected by alcohol or drugs

Regulation 99 Children leaving the education and care service premises

Regulation 100 Risk assessment must be conducted before excursion

Regulation 101 Conduct of risk assessment for excursion

Regulation 102 Authorisation for excursions

What Element 2.2.1 aims to achieve

Supervision is a key aspect of ensuring that children's safety is protected at all times in the service environment and while on excursion.

The educational leader and educators promote children's learning and development by creating safe physical and social environments that have a positive impact. Children have a right to be protected from potential hazards and dangers posed by products, plants, objects, animals and people in the immediate and wider environment. Educators need to be alert to and aware of the potential for accidents and injury throughout the service, not just within their immediate area.

By fostering children's capacity to understand and respect the social and natural environment, educators create learning environments that encourage children to explore, problem solve and create and construct in challenging and safe ways.

Assessment guide for meeting Element 2.2.1 (for all services)

Adequate supervision

observe

***Assessors may* observe:**

- children:
  - » being supervised in all areas of the service, by being in sight and/or hearing of an educator at all times, including during toileting, sleep, rest and transition routines
  - » being unable to access unsupervised or unsafe areas in the service
  - » only being taken outside the service premises by an educator, co-ordinator, nominated supervisor, parent or authorised nominee
- educators:
  - » supervising children closely when they are in a situation that presents a higher risk of injury—for example, during water play or woodwork experiences or on an excursion
  - » adjusting their levels of supervision depending on the area of the service and the skills, age mix, dynamics and size of the group of children they are supervising
  - » talking with children about safety issues and correct use of equipment and the environment and, where appropriate, involving children in setting safety rules
  - » discussing sun safety with children and implementing appropriate measures to protect children from overexposure to ultraviolet radiation such as sunburn

birth to three

- » closely monitoring and regularly observing sleeping children, and that all sleeping children are within hearing range

centre-based service

- » exchanging information about supervision with colleagues to ensure that there are no areas being accessed by children without supervision, while recognising children's need for privacy

- nominated supervisors, co-ordinators, educators and family day care educator assistants:
  - » supervising every person who enters and leaves the service premises in areas where children are present
  - » following the service's procedures for releasing children and ensuring they are released only to parents or authorised nominees
- safe sleep practices (according to Red Nose recommendations) being implemented and the service using cots, other bedding equipment and accessories that meet Australian standards
- equipment, furniture and activities arranged to ensure effective supervision while also allowing children to access private and quiet spaces.

discuss — ***Assessors may* discuss:**

- how nominated supervisors, co-ordinators and educators:
  - » inform new and/or relief educators of the service's supervision arrangements and what they are required to do in relation to supervising children
  - » promote engagement in children's play and experiences whilst maintaining supervision requirements
  - » ensure that supervision arrangements are flexible to allow supervision of individuals or small groups of children, such as when children are sleeping or indoor and outdoor experiences are concurrently offered to children
  - » balance supervision requirements with children's needs for privacy and independence
- if children are taken on excursions, how the service plans for and undertakes excursions

family day care

- how the service ensures that children are not left alone with visitors to the family day care residence or venue.

sight — ***Assessors may* sight:**

- evidence of planning for the supervision of children in outdoor and indoor areas, including supervision of nappy changing/toileting, and meal and sleep routines
- the service's policy and procedures on delivery and collection of children that ensures that children are released only to authorised nominees
- records of children's attendance, including arrivals and departures, with the signature of the person responsible for verifying the accuracy of the record and the identity of the person collecting the child
- a written process for monitoring who enters and leaves the service premises at all times
- evidence of detailed information provided to families regarding excursions, including the destination, mode of transport, educator-to-child ratios and the number of adults in attendance, and written authorisation for children to be taken outside the service premises, including for excursions or routine outings (except during emergency situations)

family day care

- evidence that a record is kept of all visitors to a family day care residence or venue that includes the signature of the visitor and the time of the visitor's arrival and departure.

Reasonable precautions

observe

***Assessors may* observe:**

- nominated supervisors, educators, co-ordinators and family day care educator assistants:
  - » implementing daily safety checks and monitoring the maintenance of buildings, equipment and the general environment
  - » implementing the service's policy and procedures regarding the use and storage of dangerous products
  - » removing identified hazards immediately or securing the area to prevent children from accessing the hazard
  - » implementing risk minimisation plans for children enrolled at the service who have a specific health care need, allergy or relevant medical condition

birth to three

- educators attending to children:
  - » at all times when they are eating or drinking
  - » closely when they are in situations that present a higher risk of injury—for example, on a nappy change table or in a high chair
- children:
  - » being unable to access potentially hazardous items, such as medications, detergents, cleaning products and garden chemicals, and that such items are clearly labelled at all times
  - » being unable to access power points, double adaptors and power boards and that other electrical equipment and electrical cords are secured
- adequate supervision of children consuming hot food and drink
- toys and equipment made available to children only in areas where they may be used safely
- a tobacco, drug and alcohol free environment
- simple warning signs where potentially dangerous products are stored
- poisonous or hazardous plants identified, explained to children and in some instances removed or not made accessible to children, or children are adequately supervised
- that, where drinks, food and cooking utensils/appliances are used as part of the program, they do not present an unacceptable risk to children
- secure, protective caps placed in all unused power points that are accessible to children
- climbing equipment, swings and large pieces of furniture having stable bases and/or are securely anchored
- climbing equipment, swings and other large pieces of equipment located over areas with soft fall surfaces that meet the requirements under the *Australian Standards for Playgrounds*

- animals that may pose a risk to children kept separate and apart from areas used by children, unless involved in a specific activity that is directly supervised by educators

birth to three

- safe sleep practices being implemented and the service using cots, other bedding equipment and accessories that meet Australian Standards
- hot drinks and hot food being made and consumed away from areas that are accessible to children.

discuss

***Assessors may* discuss:**

- how daily safety checks of buildings, equipment and the general environment are conducted and what action is taken as a result of the checks
- the service's approach to sun protection
- how safety is maintained when children are involved in food preparation/cooking activities
- how safety and hygiene are maintained when animals are part of the service
- where the service transports children:
  - » how the service maintains up to date with current information and laws on child restraints in vehicles
  - » that the vehicle is suitable and safe for all children
  - » how the service ensures car seats, restraints and booster seats are approved and fitted in accordance with Australian Standards and are in good working order

family day care

- if there is a firearm on the premises:
  - » occasions on which the firearm may be used
  - » where the firearm and ammunition are stored
  - » that the firearm is not in the presence of children at any time.

sight

***Assessors may* sight:**

- written procedures for conducting daily safety checks and identifying and undertaking the maintenance of buildings and equipment
- completed daily safety checks of buildings, equipment and the general environment
- records of pest/vermin inspections and/or eradications
- in relation to excursions:
  - » the service's policy and procedures on excursions
  - » evidence of planning for excursions that includes a written risk assessment undertaken prior to conducting an excursion and provided to families prior to conducting excursions, and that supervision implications were considered

- documented evidence of detailed information provided to families regarding excursions, including the destination, mode of transport, educator-to-child ratio and number of adults in attendance
- documented authorisation for children to be taken outside the service's premises or to alternative areas within the premises (for example an area of the building or school premises that is not approved space or that cannot be used during normal operating hours)

- the service's medical conditions policy
- the service's policy on dealing with water safety, including safety during water-based activities
- enrolment records that include authorisations and health information
- the service's policy and procedures on sun protection and evidence that information about the service's approach to sun protection is shared with families
- evidence that information about the service's approach to safe sleep is documented and shared with families

family day care

- if there is a firearm on the premises:
  - the firearms licence
  - the ammunition is stored in a locked container separate to the container that holds the firearm
  - the firearm is not accessible to children and located in a locked storage container as required by state and territory legislation.

ELEMENT 2.2.2
INCIDENT AND EMERGENCY MANAGEMENT

PLANS TO EFFECTIVELY MANAGE INCIDENTS AND EMERGENCIES ARE DEVELOPED IN CONSULTATION WITH RELEVANT AUTHORITIES, PRACTISED AND IMPLEMENTED.

National Law & Regulations

National Law and National Regulations underpinning Element 2.2.2

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Regulation 97 Emergency and evacuation procedures

Regulation 98 Telephone or other communication equipment

What Element 2.2.2 aims to achieve

Planning to manage incidents and emergencies assists services to:

- protect children, adults and staff
- maintain children's wellbeing and a safe environment
- meet the requirements of relevant workplace health and safety legislation.

Having a clear plan for the management and communication of incidents and emergencies assists educators to handle these calmly and effectively, reducing the risk of further harm or damage.

Assessment guide for meeting Element 2.2.2 (for all services)

Incident and emergency management

observe

***Assessors may* observe:**

- emergency procedures displayed prominently throughout the premises
- nominated supervisors, co-ordinators and educators having ready access to an operating telephone or other similar means of communication
- emergency telephone numbers displayed near telephones
- service staff having ready access to emergency equipment, such as fire extinguishers and fire blankets.

discuss ***Assessors may* discuss:**

- how the service communicates information to families about the service's emergency procedures and plans to manage incidents
- how the service ensures that service staff are informed about and understand the service's emergency procedures and plans
- procedures for managing incidents and emergencies in single-staff services
- how the service discusses and practises emergency drills with children
- the provision of training for nominated supervisors, educators, co-ordinators and family day care educator assistants in the use of emergency equipment.

sight ***Assessors may* sight:**

- procedures for managing incidents and emergencies and providing a child-safe environment
- records of emergency drills, and evaluations of these
- a current, portable record of children's emergency contacts that can be carried by educators in case of emergencies and/or evacuations
- written emergency and evacuation procedures that include instructions for what must be done in the event of an emergency and an emergency evacuation floor plan (for example, a plan for a bushfire in a bushfire-prone area)
- written plans to manage an emergency that may be likely to affect individuals at the service (for example, the management of an asthma attack, anaphylactic reaction or epileptic fit)
- written communication with families about the service's emergency procedures and plans to manage incidents
- evidence that emergency equipment is tested as recommended by recognised authorities.

ELEMENT 2.2.3
CHILD PROTECTION

MANAGEMENT, EDUCATORS AND STAFF ARE AWARE OF THEIR ROLES AND RESPONSIBILITIES TO IDENTIFY AND RESPOND TO EVERY CHILD AT RISK OF ABUSE OR NEGLECT.

National Law & Regulations

National Law and National Regulations underpinning Element 2.2.3

Section 51(1)(a) Conditions on service approval (safety, health and wellbeing of children)

Section 162A Persons in day-to-day charge and nominated supervisors to have child protection training

Regulation 84 Awareness of child protection law

Additional state/territory requirements

In addition to complying with the National Quality Framework, approved providers, educators and other staff may be required to report on incidents or suspected incidents involving children under other state and territory laws including *child protection legislation*.

Information about notifications can be found throughout the guide.
See also *Provider and service approvals*.

What Element 2.2.3 aims to achieve

Management, educators, family day care educator assistants and other staff members must be aware of current child protection policy and procedures, including their legal responsibilities, and be able to act when required to protect any child who is at risk of abuse or neglect.

Assessment guide for meeting Element 2.2.3 (for all services)

Awareness of role and responsibility to protect children

observe

Assessors may* observe *educators:

- listening and responding to families' comments about their day-to-day observations of their child and the events occurring in their lives
- remaining vigilant about observing and responding to signs or indicators of child abuse and/ or neglect.

discuss

***Assessors may* discuss:**

- how nominated supervisors, educators, co-ordinators family day care educator assistants and staff members develop their awareness of any obligation under child protection law
- how new or relieving educators, family day care educator assistants and other staff members are made aware of their responsibilities in relation to child protection and the particular protection needs of individual children in the service
- any support mechanisms in place for educators and other staff members who identify children at risk.

sight

***Assessors may* sight:**

- evidence:
  - » that current information about child protection procedures and expectations is provided to service staff
  - » that nominated supervisors, educators, co-ordinators and family day care educator assistants have attended training or professional development on child protection
  - » that information is provided to families about the service's practices in relation to child protection
  - » that nominated supervisors, educators and co-ordinators work collaboratively with other authorities and/or professionals to support children who have specific protection needs

family day care

- » that educators' families have been provided with information and/or training to support their understanding and response to suspected child protection issues

- a current list of local community resources that can provide information and support for children, families and service staff in relation to children at risk of abuse and/or neglect.

EXCEEDING GUIDANCE FOR STANDARD 2.2
SAFETY

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 2.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 2.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 2.2 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times
- All educators:
  - ensure that children are supervised effectively at all times;
  - are consistently attuned to the needs of all children to ensure each child's safety at all times
  - are aware of and act on their responsibilities for ensuring children's safety at all times, including in relation to child protection, and are able to articulate these responsibilities
  - proactively identify and manage risks and take precautions to protect children from harm and hazard
  - identify and respond confidently to changes in the service environment throughout the day, adjusting practice where necessary to ensure that children are safe and effectively supervised at all times
- Ongoing risk assessment and management is built into day-to-day operations across the service to ensure a consistently safe environment
- Effective plans to manage incidents and emergencies are developed and reviewed in consultation with relevant authorities and practised regularly
- The observed and discussed approach to supporting and promoting children's safety consistently aligns with the design and delivery of the educational program and service philosophy and demonstrates a strong commitment to the priorities, principles and practices of the approved learning framework.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 2.2 Exceeds the NQS:

- Educators, the educational leader and co-ordinators:
  - » systematically and regularly reflect, individually and as a team, on practices to support child safety, including risk assessment and emergency management procedures and practices, and make changes when opportunities to further enhance children's outcomes are identified
  - » are responsive and adjust supervision strategies as required
  - » are able to explain how an ongoing commitment to children's safety influences the design and delivery of the educational program
  - » reflect together on safety-related incidents, and support the service to make changes to practices, policies and procedures where opportunities are identified to strengthen the approach
  - » are aware of and able to discuss the influences on their practice to support and promote children's safety, including recognised guidelines, information sources, and other legislation that underpin their practice approach, and how these align with the approved learning framework/s and the service's policies and procedures
  - » consider and discuss social justice and equity implications of their practice decisions to support and promote each child's safety to ensure that practice takes into account the needs and rights of every child at the service
- The service's approach to risk assessment, emergency management and child protection reflects current recognised guidelines and up-to-date information from trusted sources
- The service's approach to supporting and promoting children's safety reflects robust debate, discussion, and genuine opportunities for input by all educators and is informed by critical reflection on past incidents
- Any change to the service's approach to supporting and promoting children's safety are understood by all.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 2.2 Exceeds the NQS:

- Educators:
  - » actively engage with families about their concerns and priorities for their children's safety
  - » actively raise awareness of issues impacting on child safety with families and the community, including in the context of child protection
  - » are familiar with and respond respectfully to the differing cultural contexts of families and the community that impact on perspectives about child safety and protection, while ensuring that practice decisions always reflect a best practice approach
- The service's approach to managing risks and supporting child safety:
  - » reflects the voices, priorities and strengths of the children and families at the service
  - » is informed by meaningful and ongoing partnerships with the broader community, for example local community and emergency services
  - » considers the geographical context of the service and is responsive to changes in the environment throughout the year.

QUALITY AREA 3
PHYSICAL ENVIRONMENT

Overview

Quality Area 3 of the National Quality Standard focuses on the physical environment. The physical environment is critical to:

- contributing to children's wellbeing, creativity and developing independence
- providing a diverse range of experiences that promote children's learning and development
- keeping children safe
- creating/organising spaces to reduce the risk of injury.

National Law & Regulations

Related National Law and National Regulations

The National Law and National Regulation provisions that are directly relevant to Quality Area 3 are listed under the corresponding element.

Other requirements in the National Law and National Regulations that are relevant to Quality Area 3 are:

- Part 3 of the National Law: Service approval
- Regulation 25 Additional information about proposed education and care service premises
- Regulations 41–45 Service waiver and temporary waiver.

Additional state/territory and local government requirements

In addition to complying with the National Quality Framework, services must also comply with other relevant national, state/territory and local government requirements. These include:

- the Building Code of Australia
- food safety standards (for kitchens and food preparation areas)
- relevant Australian Standards (for example, pool safety, playground equipment and soft fall).

Standards, elements and concepts

Quality Area 3 has two standards that focus on the design of service facilities and the use of the service's physical environment to support children's experiences. These standards are crucial to delivering quality learning outcomes for children under the National Quality Framework because:

- inclusive built and natural environments in indoor and outdoor spaces, when appropriately resourced, promote play-based learning
- well maintained, fit-for-purpose facilities keep children safe and support each child's access to facilities and participation in activities/experiences

- the physical environment significantly impacts on the quality of children's experiences and encourages children to become environmentally responsible.

Standard/ Elements	Concept	Descriptor
QA3		**Physical environment**
3.1	Design	The design of the facilities is appropriate for the operation of a service.
3.1.1	Fit for purpose	Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.
3.1.2	Upkeep	Premises, furniture and equipment are safe, clean and well maintained.
3.2	Use	The service environment is inclusive, promotes competence and supports exploration and play-based learning.
3.2.1	Inclusive environment	Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.
3.2.2	Resources support play-based learning	Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play-based learning.
3.2.3	Environmentally responsible	The service cares for the environment and supports children to become environmentally responsible.

STANDARD 3.1
DESIGN

THE DESIGN OF THE FACILITIES IS APPROPRIATE FOR THE OPERATION OF A SERVICE.

How Standard 3.1 contributes to quality education and care

The way in which the service environment is designed, equipped and arranged determines how children use space and resources. The environment also impacts on the behaviours and interactions of children and adults.

Indoor environments are characterised by open spaces that provide children with opportunities to be involved in self-chosen and negotiated experiences that can be quiet or active learning situations, solitary play experiences, or routines with small and large groups.

Quality indoor spaces:

- support the emerging interests of every child and enable them to demonstrate their innate creativity and curiosity
- reflect the cultures, interests, abilities and learning styles of every child
- recognise children as active learners and competent decision makers.

Outdoor environments are characterised by both active and quiet zones that comprise a balance of fixed and moveable equipment, open space to engage in physical activities, and spaces that promote investigation and respect for the natural environment.

Outdoor spaces that are dynamic and flexible:

- provide opportunities for unique play and learning
- complement and extend the indoor learning experiences
- offer children opportunities to be active, make mess and noise, and be wholly engaged in play.

To maximise children's engagement in positive experiences and support the access of every child, services should consider:

- the location of the service
- the amount of space and how it is arranged and used for different groups and ages of children
- access between indoor and outdoor environments
- the availability of furniture, equipment and resources, and arrangement of rooms
- how the placement of buildings, fixtures and fittings supports the access of all children and families
- internal and external noise levels
- visibility and design that supports effective supervision

- the air quality
- ventilation and access to natural light.

Well-designed facilities support children to access different areas, move between indoor and outdoor spaces, explore, experiment, create and express themselves, while allowing others in the space to do the same. When educators, with support from the educational leader, create physical and social learning environments that have a positive impact on children's learning, they are able to spend valuable time interacting with children. This enriches the lives and identities of children and families.

Questions to guide reflection on practice for Standard 3.1 (for all services)

Appropriate design and upkeep

- How does the environment support children's learning? What barriers do we need to overcome?
- What processes are in place to monitor the cleanliness and safety of the premises, furniture and equipment?
- How does the design of the environment promote and foster children's learning, development and wellbeing?
- How do we ensure that children are safe entering and leaving the service?
- How does the environment support the access of all children and families enrolled at the service and children who may enrol in the future?

school age children

- How do we ensure the environment is organised to meet supervision requirements, and also provide appropriate spaces and activities for children's need for privacy and autonomy?

family day care

- How are FDC educators supported and encouraged to maintain the upkeep of their residence's environment to ensure children's safety and wellbeing?

ELEMENT 3.1.1
FIT FOR PURPOSE

OUTDOOR AND INDOOR SPACES, BUILDINGS, FIXTURES AND FITTINGS ARE SUITABLE FOR THEIR PURPOSE, INCLUDING SUPPORTING THE ACCESS OF EVERY CHILD.

National Law & Regulations

National Law and National Regulations underpinning Element 3.1.1

Regulation 104 Fencing and security

Regulation 106 Laundry and hygiene facilities

Regulation 107 Space requirements—indoor space

Regulation 108 Space requirements—outdoor space

Regulation 109 Toilet and hygiene facilities

Regulation 110 Ventilation and natural light

Regulation 111 Administrative space

Regulation 112 Nappy change facilities

Regulation 114 Outdoor space—shade

Regulation 115 Premises designed to facilitate supervision

Regulation 116 Assessments of family day care residences and approved family day care venues

Regulation 117 Glass (additional requirement for family day care)

Jurisdiction specific provisions

NSW – Regulation 274 Swimming pools

Tasmania – Regulation 345 Swimming pool prohibition

What Element 3.1.1 aims to achieve

To support each child's access to indoor and outdoor environments, services (including family day care residences and venues) should have sufficient space, equipment and facilities that are fit for purpose and promote children's learning and development. Well-designed indoor and outdoor spaces:

- are flexible
- are welcoming and accessible
- reflect the diversity within the local and broader communities
- support the health and safety of children, service staff and families
- facilitate convenient and integrated access between indoor and outdoor areas, as well as convenient access to toilet (including nappy-changing, if applicable) and hand-washing facilities

- are environmentally sustainable
- promote an understanding of and respect for the natural environment
- supports the grouping of children in ways that:
  - » minimise the risk of injury
  - » minimise conflict between children
  - » reduce prolonged exposure to excess internal and external noise
  - » promote children's learning and development.

Age-appropriate furniture and equipment helps to minimise accidents and support children's learning, growing independence, confidence and self-esteem.

Assessment guide for meeting Element 3.1.1 (for all services)

A fit for purpose service environment

observe

***Assessors may* observe:**

- appropriately sized and equipped indoor and outdoor spaces
- a physical environment that is safe and includes adequate space for solitary play, and for children to work, play and talk together in small and large groups
- outdoor spaces with shaded areas that meet the recommendations of relevant recognised authorities for protection from the sun
- environments designed to support each child's access and assist educators to:
  - » adequately supervise children
  - » group children in ways that minimise the risk of injury and conflict, reduce prolonged exposure to excess noise, and promote children's learning and development
- fencing that provides safety
- facilities that enable interaction and convenient access between indoor and outdoor spaces, including toilet (and nappy-changing, if applicable) and hand-washing facilities
- a balance of natural and artificial lighting, adequate ventilation and fresh air
- appropriate areas for food preparation and storage
- quiet, comfortable and well-ventilated areas for sleeping and resting
- space available for administrative functions, private conversations and consultation with families and for educator and staff breaks
- facilities designed or adapted to support access by every child, family, educator and staff member, including adaptive equipment to support the inclusion of all children

birth to three

- nappy-changing and related facilities for services with children under three years of age
- care is taken to meet the needs of non-mobile babies, including providing adequate indoor space

school age children

- appropriate areas and resources for children to rest and relax.

discuss ***Assessors may* discuss:**

- the administration spaces used to consult and discuss confidential matters with families

centre-based service

- where relevant, how the service has considered the impact of any building modifications and/or the installation of new furniture, storage areas and fixed equipment on the unencumbered space available

family day care

- how educators balance their family members' need for privacy with providing sufficient space for the children being educated and cared for.

sight	***Assessors may* sight:**
	• the service's approach to grouping children
centre-based service	• plans of indoor and outdoor areas, including information about soft fall • plans that show evaluation of and changes to the placement of furniture and equipment, if available
school age children	• where the service shares multi-purpose areas with a school, documented risk assessment of the physical environment in relation to: » access to, and use of, multi-purpose areas » the impact of multi-purpose areas on service delivery » the service's approach to sharing the multi-purpose areas with the school
family day care	• the service's registration documentation and assessments of educators' approved premises.

ELEMENT 3.1.2
UPKEEP

PREMISES, FURNITURE AND EQUIPMENT ARE SAFE, CLEAN AND WELL MAINTAINED.

National Law & Regulations

National Law and National Regulations underpinning Element 3.1.2

Regulation 103 Premises, furniture and equipment to be safe, clean and in good repair

What Element 3.1.2 aims to achieve

In education and care services, the upkeep of buildings, furniture and equipment impact directly on the safety of children and service staff. Every child has the right to be safe.

Upkeep refers to the responsibility of services to implement effective maintenance, cleaning and appropriate safety precautions, which also helps prevent injuries and the spread of infectious diseases.

Assessment guide for meeting Element 3.1.2 (for all services)

Effective upkeep

observe

***Assessors may* observe:**

- premises, furniture and equipment that are safe, clean and well maintained
- educators regularly conducting safety checks and monitoring the maintenance of buildings and equipment
- educators following safety advice from recognised authorities and manufacturers when arranging equipment, furniture and experiences
- areas used by children that are regularly cleaned.

discuss

***Assessors may* discuss:**

- schedules for cleaning all toys and equipment used by children
- procedures for undertaking building and equipment maintenance at the service
- the arrangements the service has for appropriate laundering of soiled items.

sight

***Assessors may* sight:**

- documented procedures, correspondence and schedules relating to:
  - » maintenance and safety checks
  - » the cleaning of buildings, premises, furniture and equipment
  - » adhering to manufacturers' advice when using and cleaning furniture and equipment
- documents that confirm equipment meets Australian Standards, for example for cots, other bedding equipment and accessories
- risk assessments of the physical environment

centre-based service

- where relevant, a management plan that is in place to protect the safety of children, families and service staff while major work is occurring at the service.

EXCEEDING GUIDANCE FOR STANDARD 3.1
DESIGN

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 3.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 3.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 3.1 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times
- All outdoor and indoor spaces, buildings, fixtures and fittings:
  - support the access and full participation of every child
  - promote and positively support children's interaction with space, materials and each other
  - contribute to a flexible and stimulating environment that enhances each child's development and learning
  - are safe, clean and well-maintained at all times.
- All educators:
  - are able to explain how the design of the physical environment, including selection of furniture, equipment and resources, supports safe and inclusive access by all children and promotes each child's full engagement with the program.
- The observed and discussed approach to the design and maintenance of the physical environment:
  - consistently aligns with the design and delivery of the educational program and service philosophy
  - demonstrates a strong commitment to the principles and practices of the approved learning framework/s
  - consistently aligns with safety, cleanliness and maintenance advice from recognised authorities and reflects the service's policies, procedures and record keeping systems.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 3.1 Exceeds the NQS:

- The service's approach to design and maintenance of the physical environment:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance on creating an inclusive, safe physical environment that strengthens children's learning and development outcomes and enhances participation in the program.
- Any change to the service's approach to design and maintenance of the physical environment is understood by all and implemented appropriately.
- Educators, the educational leader and co-ordinators:
  - » are attuned to changes to the physical environment throughout the day and confidently adjust practice and the environment as needed to ensure the continued safety, participation and inclusion of all children
  - » reflect, individually and together, on the design of the physical environment, and consider opportunities to make changes to strengthen inclusion and participation, and to enhance children's safety, learning and development outcomes
  - » are aware of and able to discuss the theoretical influences on the service's design choices and how these align with the approved learning framework/s and the service's philosophy, policies and procedures
  - » consider and discuss social justice and equity implications of design choices to ensure that the physical environment supports the needs and rights of every child at the service.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 3.1 Exceeds the NQS:

- The design of the physical environment:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service
  - » shows that the service works creatively within the limitations of the physical setting
- Opportunities for collaboration with family and community partners are built into the service's approach to designing and making changes to the physical environment.

STANDARD 3.2
USE

THE SERVICE ENVIRONMENT IS INCLUSIVE, PROMOTES COMPETENCE AND SUPPORTS EXPLORATION AND PLAY-BASED LEARNING.

How Standard 3.2 contributes to quality education and care

A service environment that is inclusive, promotes competence in children and supports exploration and play-based learning creates the context for children to learn and build relationships with others. Welcoming, home-like, inclusive, vibrant and flexible environments support children's exploration, creativity and learning, and are responsive to the individual requirements of each child. A quality physical environment caters for different learning capacities and learning styles, and encourages children and families to contribute ideas, interests and questions (*Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 15). It also supports the holistic way that children learn.

Exploration of the natural environment helps to build children's competence and play-based learning. It also encourages children to develop an appreciation of the natural world, an awareness of the impact of human activity on the environment, and ways in which they can contribute to a sustainable future.

Resources should reflect the breadth of age groups and interests and capabilities of children that are sharing the environment. Resources need to be accessible to children so they can choose and be responsible for their actions (*Framework for School Age Care*, p. 15).

Questions to guide reflection on practice for Standard 3.2 (for all services)

Inclusive environment

- Is the environment welcoming, home-like and inviting for children and families (within the constraints of our setting)?
- What opportunities do we provide for children to be involved in planning, setting up and modifying the environment?
- How is the environment equipped and organised to cater for all ages and levels of capabilities?
- How are the backgrounds and cultures of families and the broader community reflected in the environment?
- How can the physical environment be adapted to include all children and provide for their needs and interests?
- How can we create a physical environment that welcomes and respects all children and families, and encourages their participation in learning experiences?

Promoting competence, supporting exploration and play-based learning

- How can we organise environments and spaces to provide children with opportunities to:
  - play independently as well as promote small and large group interactions?
  - engage in unstructured play?
- How do we plan to use the physical space to support children in building relationships?
- How do we support children's interaction between the indoor and outdoor environments?
- How does the organisation of the indoor and outdoor environment allow for a variety of uses by children and educators?
- How do we arrange indoor and outdoor spaces that support children's access to materials and equipment?
- What adaptions can be made to the environment or additional resources introduced to provoke interest, creativity, sustained shared thinking and collaborative learning?
- How do we provide spaces that promote safe exploration, learning through play and interaction with the environment for children of all ages?
- What equipment do we provide that allows for multiple uses?
- How does the physical environment contribute positively to children's developing autonomy and independence?
- What features in the physical environment encourage open-ended interactions, spontaneity, risk taking, exploration, discovery and connection with nature?
- How do we regularly evaluate the effectiveness of learning environments and draw links to the intended learning outcomes?
- What messages are given to children about how the service cares for the environment?
- What strategies can we implement to support educators to model environmentally responsible practices, and foster children's capacity to value and respect the broader environment?
- How can we access additional information, ideas and strategies to support children to take an active role in caring for the environment and contribute to a sustainable future?
- How do we foster children's capacity to understand, care for and respect the natural environment and the interdependence between people, plants, animals and the land? (*Early Years Learning Framework*, p. 14; *Framework for School Age Care*, p. 13)

school age children

- What strategies are in place to provide appropriate levels of challenge to children while ensuring that younger children are safe?

family day care

- How do we ensure the environment provides a diverse range of meaningful learning experiences while maintaining a warm, homely environment for children?

ELEMENT 3.2.1
INCLUSIVE ENVIRONMENT

OUTDOOR AND INDOOR SPACES ARE ORGANISED AND ADAPTED TO SUPPORT EVERY CHILD'S PARTICIPATION AND TO ENGAGE EVERY CHILD IN QUALITY EXPERIENCES IN BOTH BUILT AND NATURAL ENVIRONMENTS.

National Law & Regulations

National Law and National Regulations underpinning Element 3.2.1

Regulation 113 Outdoor space—natural environment

What Element 3.2.1 aims to achieve

Services provide an inclusive environment when indoor and outdoor spaces are designed to support the diverse interests, preferences and learning styles of all children in the service. Educators can also enhance inclusion by identifying aspects of the environment that can be adapted to support each child's participation. Indoor and outdoor environments offer significantly different yet complementary experiences and should be given equal focus and attention.

Flexible arrangements of furniture and equipment, together with materials that allow for multiple uses, encourage children to become flexible thinkers and investigators as they engage in play-based learning. A secure and predictable environment with adequate space and appropriate facilities and resources enables children to participate in experiences/activities of their choice, and take increasing responsibility for their own health, hygiene and personal care. This supports children to increase their self-confidence and competence, and provide them with a strong sense of self identify. Environments also support positive relationships when space is arranged for small groups of children to play and talk without undue distraction from children engaged in other activities.

School age care is characterised by opportunities to develop relationships. Some children develop social skills through quiet play, such as talking to friends. Other children socialise through physical play, requiring open spaces to develop physical and social skills, such as team building and leadership. Services should make space available for small and large groups to gather. Indoor and outdoor environments should be organised and adapted to support all aspects of children's learning and invite conversations between children, educators, families and the broader community. Flexible environments allow for the range of activities that support the learning and development of school age children (*Framework for School Age Care*, p. 15).

Assessment guide for meeting Element 3.2.1 (for all services)

Environments that support participation and quality experiences

observe

***Assessors may* observe:**

- clear pathways that direct children and adults around rather than through areas being used by others
- spaces organised to ensure that routine activities (such as toileting, nappy changing, eating and sleeping) promote positive interactions and opportunities for learning
- safe shelving and storage areas from which children can access equipment and resources that are age and capability appropriate
- challenging elements of outdoor and indoor environments that allow for experiences that scaffold children's learning and development and offer opportunities for appropriate risk taking and risky play
- children:
  - » actively engaged in a variety of rich, meaningful, enquiry-based experiences in both indoor and outdoor environments, with appropriate levels of challenge to support exploration and experimentation
  - » initiating their own experiences using equipment and resources that they can access independently
  - » exploring relationships with living things and observing, noticing and responding to change
  - » being encouraged to use their senses to explore natural and built environments
  - » accessing areas with natural features such as plants, trees, edible gardens, sand, rocks, mud and water
- educators:
  - » setting up and adapting the indoor and outdoor environments to:
    - offer both built and natural features and structures
    - meet the range of ages, interests and abilities of all children
    - facilitate the inclusion of every child and support every child to be able to participate in all daily experiences
    - promote small and large group interactions and meaningful play and leisure
    - stimulate and reflect children's interests
    - assist children to function autonomously in distinct learning or interest areas
    - encourage a free flow of activity throughout the day
    - facilitate positive interactions between children, educators and families
    - enable small groups of children to work together on their own projects

- support children to create their own games and experiences
  - » planning, implementing, modifying or changing play materials to encourage each child's participation and to allow them to experience success
  - » planning learning environments that include a range of materials and equipment with appropriate levels of challenge where children are encouraged to explore, experiment and take appropriate risks in their learning according to their current capacities, strengths and interests
  - » engaging with children in constructing and adapting their own play settings/environments
  - » supporting children to move between environments
  - » encouraging the use of natural materials in all learning environments
  - » involving children in the arrangement of spaces to increase aesthetic appeal
  - » re-organising and re-setting the environment with assistance from children to provide order and predictability for children, attract their interest to the area and stimulate learning
- a relaxed atmosphere maintained by using positive and effective strategies to modify inappropriate noise levels in the environment

birth to three

- comfortable and protected areas both indoors and outdoors where children can:
  - » rest, roll, sit, crawl and stand, alone or with others
  - » experience sensory activities
  - » safely explore their environment with their mouths, hands and bodies, and minimise time spent in high chairs, cots, playpens and strollers
  - » be cuddled or held by an adult

school age children

- built and natural environments that provide access to opportunities for play and leisure activities in which the children experience fun, enjoyment, challenge and success.

discuss ***Assessors may* discuss:**

- how educators:
  - » involve children in discussions about the use of space and resources
  - » set up the environments to manage the balance of active and quieter spaces for play, and responds to the individual requirements of all children throughout the day
  - » adjust the environment to support each child's participation and provide for their learning and development
- how resources, materials and equipment are chosen to enhance children's learning

- strategies the service has for working collaboratively with family members, specialists and/or resource agencies to support the inclusion of individual children
- how the indoor and outdoor spaces have been designed to invite open-ended interactions, spontaneity, risk-taking, exploration, discovery and connection to nature
- how the service implements strategies to support the development of children's creativity, engagement and understanding of indoor and outdoor environments.

sight

***Assessors may* sight:**

- documented learning programs that:
  - » pay equal attention to planning outdoor and indoor environments to support children's learning outcomes and extend on child-led learning
  - » outline opportunities for children to engage in outdoor and indoor experiences, such as dramatic play, construction, music and exploration
  - » incorporate opportunities for children to:
    - be active and wholly engaged for long periods of uninterrupted play
    - spend time in a quiet area away from other children if they wish
    - choose whether they wish to participate in large and small group activities
  - » indicate that the outdoor and indoor spaces are re-organised to continuously engage children
- the statement of philosophy that describes the service's approach to inclusion
- documented evidence that indicates the educational leader, nominated supervisors, educators and co-ordinators work collaboratively with family members, specialists and/or resource agencies to:
  - » plan for the inclusion of children with additional needs
  - » access adaptive equipment to support children's requirements
  - » facilitate access to support services required while the child is at the service

family day care

- evidence that strategies are in place to ensure that children in residences without direct access to outdoor environments—for example, high-rise units—have opportunities to access outdoor environments.

ELEMENT 3.2.2
RESOURCES SUPPORT PLAY-BASED LEARNING

RESOURCES, MATERIALS AND EQUIPMENT ALLOW FOR MULTIPLE USES, ARE SUFFICIENT IN NUMBER, AND ENABLE EVERY CHILD TO ENGAGE IN PLAY-BASED LEARNING.

National Law & Regulations

National Law and National Regulations underpinning Element 3.2.2

Regulation 105 Furniture, materials and equipment

What Element 3.2.2 aims to achieve

Services should design learning environments with resources that support play-based learning and encourage children to explore, solve problems, create and construct (*Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 14). Educators can provide additional interest, variety and challenge for children by choosing equipment and materials that can be used in multiple ways, and allowing the environment to be regularly and readily rearranged or adjusted. When children are challenged in play and leisure, they explore new possibilities and develop the confidence to take responsibility for their own learning.

Services should provide sufficient resources, materials and equipment for children to engage with and use for play. Resources and materials need to be accessible to children, and reflect the breadth of ages, interests and capabilities of children who are sharing the environment (*Framework for School Age Care*, p. 15). These resources encourage children's knowledge of, and connections with, the built and natural environments.

School age care settings provide children with play and leisure activities in which they experience fun, enjoyment, mastery and success (*Framework for School Age Care*, p. 32). Services should consider how they offer appropriate levels of challenge to encourage school age children to explore, experiment and take appropriate risks (*Framework for School Age Care*, p. 34), as they learn to regulate themselves and contribute to the social environment (*Framework for School Age Care*, p. 32).

Assessment guide for meeting Element 3.2.2 (for all services)

Sufficient resources to support play-based learning

observe

***Assessors may* observe:**

- resources, materials and equipment in the indoor and outdoor environment that children can explore and use freely in their play, which:
  - » are 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 or access resources or facilities
- minimise disputes over their use
- use in a range of different ways
- support the participation of all children

» are organised in ways that ensure appropriate and effective implementation of the program

» offer a range of challenges and experiences that reflect the breadth of ages, interests and capabilities of children who are sharing the environment

» are flexible and can be rearranged or adjusted to provide additional interest, variety and challenge

» are suitable for promoting play and leisure-based learning

» stimulate children's curiosity

» provide many sensory experiences

» encourage children to explore, discover and experiment

» are challenging and encourage children to take appropriate risks

- children:

» being supported to take on challenges and try new activities/ experiences

» using a range of equipment and resources to engage in physical experiences that assist them to develop movement, coordination, balance, flexibility and strength

» using a range of commercial, natural, recycled and homemade materials to support their learning in a range of ways—for example, to:

- express meaning using visual arts, dance, drama and music
- explore literacy in a range of ways
- explore numeracy concepts such as sorting, categorising, ordering and comparing collections of materials
- represent their thinking
- experiment with different technologies
- use their imagination and make up their own games
- be involved in completing day-to-day tasks, such as preparing and cooking food, caring for living things and being involved in the care of the environment

» exploring, solving problems, creating, constructing and engaging in critical thinking in the learning environment

» being supported to handle equipment and manage tools with increasing competence and skill

- educators:

» enhancing child-initiated experiences by providing additional resources and, where appropriate, participating in and extending children's play

- choosing resources, materials and equipment with children and using them in a way that supports children's sense of belonging, relationships, creativity and learning
- providing sufficient time and resources for children to initiate and become actively involved in experiences
- introducing appropriate tools, technologies and media to enhance children's learning
- demonstrating the potential of resources to children and suggesting new and different ways to use them
- being creative in their use of equipment and materials to stimulate children's interest and curiosity
- providing resources to support active learning and open-ended imaginative play
- structuring the environment so that it is flexible to allow children to move resources and equipment to extend learning opportunities
- using outdoor environments not only as places for children to release energy and engage in physical activity but also for exploration, problem solving and creative expression.

discuss

***Assessors may* discuss:**

- the strategies used to engage with families and children to ensure their views are considered and incorporated in the selection and organisation of materials, equipment and resources at the service
- how resources and materials in the educational program reflect children and adults with a range of abilities as active participants in the community
- strategies used by educators to accommodate children's changing interests, capabilities and skill levels
- how children are given opportunities to be involved in purchasing resources, including choice and use, so that their preferences support group and individual play-based learning.

sight

***Assessors may* sight:**

- documentation and learning programs that demonstrate links between the arrangement and choice of resources, materials and equipment and learning outcomes for children
- plans for the arrangement of indoor and outdoor spaces to create inviting learning environments and documentation of how children's ideas have influenced these plans
- photographs of children using materials and equipment in a variety of ways.

ELEMENT 3.2.3
ENVIRONMENTALLY RESPONSIBLE

THE SERVICE CARES FOR THE ENVIRONMENT AND SUPPORTS CHILDREN TO BECOME ENVIRONMENTALLY RESPONSIBLE.

What Element 3.2.3 aims to achieve

Education and care settings are places where children learn about self, others and the world, including environmental responsibility. Services play a role in helping children develop an understanding and respect for the natural environment and the interdependence between people, plants, animals and the land (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 15). Children develop positive attitudes and values by engaging in sustainable practices, watching adults around them model sustainable practices, and working together with educators to show care and appreciation for the natural environment (*Hughes*, 2007).

This element aligns sustainable operations within the service and children's learning about environmental responsibility. Environments and resources can emphasise accountability and advocacy for a sustainable future and promote children's understanding about their responsibility to care for the environment on a day to day and long-term basis (*Framework for School Age Care*, p. 15). This is particularly relevant for school age care environments as children's depth of understanding of these concepts develops.

Assessment guide for meeting Element 3.2.3 (for all services)

Supporting environmental responsibility

observe

***Assessors may* observe:**

- children:
  - » being supported to appreciate and care for natural and constructed environments
  - » interacting with vegetation and natural materials in the environment
  - » exploring insects and animals in their habitats to develop their understanding of biodiversity
  - » participating in environmentally sustainable practices that:
    - support their engagement with and respect for the natural environment
    - increase their awareness of the impact of human activity
    - build a sense of responsibility for caring for the environment
    - are meaningful, relevant to the service context and community, and connect service operations with the educational program and practice

- being given opportunities to increase their:
  - knowledge of and respect for natural and constructed environments
  - awareness of the interdependence of living things
- educators:
  - developing environmental awareness and programs as a platform for ongoing environmental education
  - using different ways to incorporate animals and plants into the program to support children's understanding of ecology and the environment
  - fostering children's capacity to understand and respect the natural environment and the interdependence between people, plants, animals and the land
  - sharing information and supporting children to access resources about the environment and the impact of human activities on environments
- spaces that promote the development of life skills, such as growing and preparing food, waste reduction and recycling, and children being actively engaged in these experiences
- the service's environmental strategy being implemented.

discuss

***Assessors may* discuss:**

- the development and implementation of strategies to support children to be environmentally responsible and to show respect for the environment
- how the educational program fosters wonder and knowledge about the natural world
- strategies used to support every child to engage in quality experiences in the natural environment.
- environments.

sight

***Assessors may* sight:**

- documentation of children's learning about environmental and sustainability issues
- policies that promote children's understanding about their responsibility to care for the environment and the development of life skills (such as growing and preparing food, waste reduction and recycling)
- planning documents that support children's learning through investigation and exploration of the natural environment
- photographs and displays highlighting children's understanding and learning of the natural environment, including their contributions.

EXCEEDING GUIDANCE FOR STANDARD 3.2
USE

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 3.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 3.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 3.2 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concept and the component elements, and a commitment to high quality practice at all times
- Children actively engaged in child-directed learning experiences that demonstrate environmental awareness and/or responsibility
- Observed practice and discussions demonstrate a whole-of-service approach to the use of space and resources that is inclusive, purposeful, creative, and flexible, and enhances learning and development outcomes for all children
- All educators:
  - » are able to explain how the use of the physical environment is organised to be flexible, support safe and inclusive access by all children and promote each child's engagement in play-based learning
  - » confidently organise and adapt spaces and resources as needed throughout the day, week, and month to ensure a consistently inclusive and flexible play-based learning environment for all children
  - » demonstrate an ongoing commitment to caring for the natural environment and fostering environmental awareness and responsibility in children, and are aware of how their practice aligns with practice across the service
- The service's approach to creating inclusive learning environments, engaging in sustainable practice and supporting environmental responsibility reflects the service's philosophy.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 3.2 Exceeds the NQS:

- The service's approach to organising inclusive, play-based learning environments and to supporting environmental responsibility:

- reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection
- is informed by current recognised guidance.

- Any change to the service's approach to organising inclusive, play-based learning environments and to supporting environmental responsibility is understood by all and implemented appropriately.
- All educators regularly reflect on opportunities to:
  - support every child's participation and to further enhance children's learning and development through the creative and flexible use of space, equipment and resources
  - support children's environmental awareness and responsibility.
- The service team reflect together on opportunities to:
  - further enhance children's learning and development through the creative and flexible use of space, equipment and resources
  - strengthen the service's engagement in environmental sustainability, and work together to implement agreed changes across the service.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 3.2 Exceeds the NQS:

- The service's use and organisation of space and resources:
  - reflects the unique geographical, cultural and community context of the service welcomes, respects and draws on the voices, priorities and strengths of the children and families at the service.
- The service's approach to environmentally sustainable practice and support of environmental responsibility:
  - reflects the unique geographical, cultural and community context of the service
  - welcomes, respects and draws on the voices, priorities and strengths of the children and families at the service
- The service collaborates with family and/or community partners to:
  - foster an inclusive, welcoming and flexible play-based learning environment
  - design indoor and outdoor spaces that draw on and reflect the diverse cultures of the broader community, for example engaging with the local Aboriginal and Torres Strait Islander community to design an environment that reflects their culture
  - engage in sustainable practices within the service and support environmental awareness and responsibility across the service community
- Children engaged in excursions that utilise community environments and support child-directed exploration and discovery
- Educators supporting families to develop understanding and engage in environmentally responsible and sustainable practices.

QUALITY AREA 4
STAFFING ARRANGEMENTS

Overview

Quality Area 4 of the National Quality Standard focuses on the provision of qualified and experienced educators who develop warm, respectful relationships with children, create predictable environments and encourage children's active engagement in the learning program. A collaborative and ethical culture where professional standards guide all aspects of practice is critical to a quality service.

The approved provider, educational leader, nominated supervisor, co-ordinators and educators all play a vital role in establishing effective and ethical practices in the service. A sound philosophy guides decision-making, including decisions about the appropriate arrangement of suitably qualified educators and staff members at the service. This helps to promote continuity of staff, which contributes to children's learning and development.

Standards, elements and concepts

Quality Area 4 has two standards that focus on the organisation and professionalism of educators, staff and management. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because:

- professional and collaborative relationships between management, educators and staff support continuous improvement, leading to improved learning experiences and outcomes for children
- careful organisation of staff contributes to the continuous support of each child's learning and development in an effectively supervised environment
- professional standards set quality benchmarks for educators' practice and relationships.

Standard/ Elements	Concept	Descriptor
QA4		**Staffing arrangements**
4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.1.1	Organisation of educators	The organisation of educators across the service supports children's learning and development.
4.1.2	Continuity of staff	Every effort is made for children to experience continuity of educators at the service.
4.2	Professionalism	Management, educators and staff are collaborative, respectful and ethical.
4.2.1	Professional collaboration	Management, educators and staff work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.
4.2.2	Professional standards	Professional standards guide practice, interactions and relationships.

STANDARD 4.1
STAFFING ARRANGEMENTS

STAFFING ARRANGEMENTS ENHANCE CHILDREN'S LEARNING AND DEVELOPMENT.

How Standard 4.1 contributes to quality education and care

Having sufficient educators and staff members available at all times when children are present enables the service to deliver quality education and care programs that respond to and promote children's learning and development.

Educators are likely to be responsive, purposeful and reflective when staffing arrangements at the service enable them to direct their full attention to their work with children, and when they do not have to attend simultaneously to other tasks. Responsive learning relationships are strengthened as educators and children engage and learn together (*Early Years Learning Framework*, p. 15; *Framework for School Age Care*, p. 15). The service is encouraged to arrange staff in ways that support positive experiences for all children at the service at all times.

Questions to guide reflection on practice for Standard 4.1 (for all services)

Staffing arrangements

- How do our staffing arrangements support each child's learning and development?
- How do our staffing arrangements support educators to direct their full attention to their work with children, including getting to know each child?
- How do our staffing arrangements support consistent practice, including staff members' and children's transitions?
- How does our staffing roster support continuity of care and positive experiences for children on a day-to-day basis?
- How do we inform children and families when an educator is on leave and who will be working with them instead?
- How do we facilitate children's and families' familiarity with relief staff?
- How do we support relief staff to learn about and understand the service's policies, processes?
- How do our staffing arrangements support educators to develop positive and respectful relationships with families?
- How do we provide feedback and support to educators so that they continue to learn and feel fulfilled, resulting in continuity of educators over time?

- How do we engage in reflective practice to support and encourage each other, support ongoing learning and focus on quality improvement?

family day care

- Do our service's procedures support families to access alternative care when their usual educator is unavailable at short notice?
- What arrangements are in place to ensure that our principal office can support educators and families when children are in care overnight and at weekends?
- How do we communicate with educators and with families when there is a change of co-ordinator(s) at the service?

ELEMENT 4.1.1
ORGANISATION OF EDUCATORS

THE ORGANISATION OF EDUCATORS ACROSS THE SERVICE SUPPORTS CHILDREN'S LEARNING AND DEVELOPMENT.

National Law & Regulations

National Law and National Regulations underpinning Element 4.1.1

Section 51(2) Conditions on service approval (FDC Co-ordinators)

Section 161 Offence to operate education and care service without nominated supervisor

Section 161A Offence for nominated supervisor not to meet prescribed minimum requirements

Section 162 Offence to operate education and care service unless responsible person is present

Section 163 Offence relating to appointment or engagement of family day care co-ordinators

Section 164 Offence relating to assistance to family day care

Section 164A Offence relating to the education and care of children by family day care service

Section 169 Offence relating to staffing arrangements

Section 269 Register of family day care educators, co-ordinators and assistants

Regulation 117A Placing a person in day-to-day charge

Regulation 117B Minimum requirement for a person in day-to-day charge

Regulation 117C Minimum requirement for a nominated supervisor

Regulation 118 Educational leader

Regulation 119 Family day care educator and family day care educator assistant to be at least 18 years old

Regulation 120 Educators who are under 18 to be supervised

Regulation 123 Educators to child ratios – centre-based services

Regulation 123A Family day care co-ordinator to educator ratios—family day care service

Regulation 124 Number of children who can be educated and cared for—family day care educator

Regulation 126 Centre-based services—general educator qualifications

Regulation 127 Family day care educator qualifications

Regulation 128 Family day care co-ordinator qualifications

Regulation 130 Requirement for early childhood teacher—centre-based services—fewer than 25 approved places

Regulation 131 Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children

Regulation 132 Requirement for early childhood teacher—centre-based services—25 to 59 children

Regulation 133 Requirement for early childhood teacher—centre-based services—60 to 80 children

Regulation 134 Requirement for early childhood teacher—centre-based services—more than 80 children

Regulation 135 Early childhood teacher illness or absence

Regulation 136 First aid qualifications

Regulation 143A Minimum requirements for a family day care educator

Regulation 143B Ongoing management of family day care educators

Regulation 144 Family day care educator assistant

Regulation 145 Staff record

Regulation 146 Nominated supervisor

Regulation 147 Staff members

Regulation 148 Educational leader

Regulation 149 Volunteers and students

Regulation 150 Responsible person

Regulation 151 Record of educators working directly with children

Regulation 152 Record of access to early childhood teachers

Regulation 153 Register of family day care educators, co-ordinators and assistants

Regulation 154 Record of staff other than family day care educators, family day care co-ordinators and family day care educator assistants

General transitional and saving provisions

Regulation 239 Centre-based service offering a preschool program in a composite class in a school

Regulation 239A Centre-based services in remote and very remote areas—attendance of early childhood teachers

Regulation 240 Qualifications for educators (centre-based service)

Regulation 241 Persons taken to hold an approved early childhood teaching qualification

Regulation 242 Persons taken to be early childhood teachers

Regulation 243 Persons taken to hold an approved diploma level education and care qualification

Regulation 243A Persons taken to hold an approved diploma level education and care qualification for regulation 128 in Queensland

Regulation 244 Persons taken to hold an approved certificate III level education and care qualification

Jurisdiction specific provisions

ACT

Regulation 260 Children over preschool age – minimum number of educators and qualifications required

Regulation 261 General qualifications for educators—children over preschool age—centre-based services

Regulation 262 Required qualifications to be a qualified educator for children over preschool age

Regulation 264 General qualification for educators – Centre-based services

Regulation 265 Required qualifications to be a qualified educator—unexpected absence of qualified educator

Regulation 267 Early childhood teacher—60 or more children

Regulation 386 Resignation of early childhood teacher

NSW

Regulations 271 Educator to child ratios—children aged 36 months or more but less than 6 years

Regulation 272 Early childhood teachers—children preschool age or under

Regulation 278 Qualifications for primary contact staff members-saving

Regulation 388 Educator to child ratios (centre-based services)

NT

Regulation 290 General qualification requirements for educators—children over preschool age

Regulation 294 Early childhood teacher – 60 or more children

Qld

Regulation 299 General qualification requirements for educators – children over preschool age

Regulations 299C Educator to child ratios during rest period

Regulations 299D Additional staff members of volunteers

Regulations 299E Qualifications for educators

Regulations 299F Educator to child ratios when educator or early childhood teacher on rest pause

Regulations 299G Access to or attendance of early childhood teacher on rest pause

Regulations 299H Educator to child ratios when educator or early childhood teacher absent for 5 minutes or less

Regulations 299I Access to or attendance of early childhood teacher absent for 5 minutes or less

Regulation 300 Educator to child ratios—children aged 15 months to 24 months

Regulation 301 Educator to child ratios – children aged over 24 months to 13 years

Regulation 304 Early childhood teacher – 60 or more children

Regulation 390 Resignation of early childhood teacher

SA

Regulation 321 General requirements for educators – children over preschool age

Regulation 322 Educator to child ratios—disadvantaged preschools

Regulation 323 Educator to child ratios—preschool children at an education and care service

Regulation 324 Early childhood teachers—preschools

Regulation 325 Qualifications for family day care educators

Regulation 325A Educator to child ratios during short absence of educators

Regulation 332 Early childhood teacher – 60 or more but fewer than 81 children

Regulation 333 Early childhood teacher – more than 80 children

Regulation 334 Early childhood teachers-Preschools

Regulation 335 Qualifications for family day care educators

Tas

Regulation 342 Educator to child ratio – children preschool age and under who are 36 months of age or over

Regulation 342A Educator to child ratios during short absence of educators

Regulation 343 Qualifications for educators – preschools

Regulation 349 Early childhood teacher in attendance – 60 or more children

Regulation 392 Resignation of early childhood teacher

Vic

Regulation 356 Qualifications of educators – children over preschool age

Regulation 357 Educator to child ratio – children aged over 24 months but less than 36 months

Regulation 363 Early childhood teacher in attendance – 60 or more children

Regulation 364 Educational qualifications – centre-based services- saving of existing experience and qualification

Regulation 366 Qualifications for family day care educators – saving of existing experience and qualifications

WA

Regulation 369 Educator to child ratio – children over preschool age

Regulation 370 General qualification requirements for educators – children over preschool age

Regulation 372 Educator to child ratio – pre-kindergarten programme or kindergarten programme by a school

Regulation 373 Early childhood teachers—pre-kindergarten programme or kindergarten programme provided by a school

Regulation 379 Educators required to be early childhood teachers

Regulation 394 Resignation of early childhood teacher

What Element 4.1.1 aims to achieve

The organisation of educators across a service is a key factor in supporting all children to have opportunities to engage in meaningful learning and interactions with educators with whom they are familiar and comfortable. Carefully planned rosters support educators to be available and responsive to children, and support quality experiences and adequate supervision at all times when children are attending the service.

The National Regulations set educator-to-child ratios to ensure the safety, welfare and wellbeing of children while attending the service, including during excursions and incursions. The presence of adequate numbers of qualified and experienced educators has been consistently linked with quality interactions and positive learning experiences for children.

The National Regulations also set qualification requirements for co-ordinators in family day care services. Qualified and experienced co-ordinators train, support and monitor educators in their education and care role with children.

Assessment guide for meeting Element 4.1.1 (for all services)

Organisation of educators

observe

***Assessors may* observe:**

- how the organisation of educators throughout the day supports children's learning and development and ensures that educator-to-child ratios are maintained, including during administration and/or programming time

centre-based service

- that the numbers and ratio of educators rostered at the beginning and end of the day are:
  - facilitating effective communication with families at drop off and pick up times
  - supporting adequate supervision of children
  - offering children meaningful opportunities to engage with educators while rooms are set up or packed away.

discuss

***Assessors may* discuss:**

- how staffing arrangements are managed to promote the participation of all children
- how the service communicates who is working each day to families and children

- how the service decides if it needs extra staff to support a child with additional requirements and how extra staff are orientated into the team to enable all educators to work together and build their skills and knowledge of inclusive practice to support all children
- how the service provides non-contact time to enable educators to undertake tasks such as:

centre-based service

  - » programming
  - » meeting with families
  - » meeting with inclusion support professionals
  - » networking with relevant organisations, such as other education and care services and local schools
- the service's approach to rostering educators across the day and week and what is considered when this is arranged

school age children

- the service's approach to rostering educators to support familiarity and continuity for children and families

family day care

- the service's approach to placing children with individual educators and what is considered during this process
- how the allocation of co-ordinators to individual educators supports children's learning and wellbeing
- the processes in place to assist families to access alternative care when their usual educator is unavailable.

sight ***Assessors may* sight:**

- rosters for nominated supervisors, co-ordinators, educators and other staff

school age children

- procedures and supporting documentation to assist relief educators to learn about the service's processes, routines, families and children

centre-based service

- staff rosters that demonstrate the service is meeting staffing requirements including that a first-aid-qualified staff member is on duty at all times

family day care

- staff records that demonstrate educators, co-ordinators and family day care educator assistants hold first aid qualifications
- records of co-ordinator qualifications.

ELEMENT 4.1.2
CONTINUITY OF STAFF

EVERY EFFORT IS MADE FOR CHILDREN TO EXPERIENCE CONTINUITY OF EDUCATORS AT THE SERVICE.

What Element 4.1.2 aims to achieve

Continuity of staff on a day-to-day basis and over time assists educators to build secure relationships with children and plays a significant role in promoting their learning and development. Educators who work closely with children each time they attend the service, understand each child's interests, strengths and areas where support may be needed. They are able to provide continuity of experiences to extend children's learning.

A service that values and proactively supports continuity of staff is better placed to attract and retain educators, which in turn benefits children and families. Consistent and committed educators support quality standards and continuity of care for children. It is important for the service to attract suitably qualified and experienced staff, and retain staff members who can best meet the needs of children and their families.

Assessment guide for meeting Element 4.1.2 (for all services)

Continuity of educators

observe

***Assessors may* observe:**

- children demonstrating their trust and comfort with educators by happily responding to them, having conversations and initiating interactions with them, and seeking their company
- educators, including relief educators, addressing children and families by name and demonstrating in these interactions that they are familiar with how the service operates.

discuss

***Assessors may* discuss:**

- the processes the service has in place to recruit and retain staff
- how the service helps to build staff cohesion and pride in the service
- how the service celebrates educators' commitment to the service over time
- the educational leader's, educators' and co-ordinators' understanding of the importance of educator continuity for children's learning and wellbeing
- how the service uses exit data to contribute to the service's continuous improvement

- how the nominated supervisor and co-ordinators set individual performance and learning goals for educators and other staff
- how performance development processes provide educators with targeted feedback that supports continuity
- any incentives to enhance the retention/continuity of educators

centre-based service

- when choice is an option during recruitment, how the service determines the best fit with the existing team when appointing new staff
- what strategies the service uses to ensure a regular pool of relief educators is available to provide continuity for children
- how the service considers educators' experience, qualifications and how long they have been at the service when placing educators in particular rooms and age groups.

sight ***Assessors may* sight:**

- rosters and staffing arrangements that reflect the importance of educator continuity on a day-to-day basis
- exit data and documentation that provides information about the reasons for educators leaving the service.

EXCEEDING GUIDANCE FOR STANDARD 4.1
STAFFING ARRANGEMENTS

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 4.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 4.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 4.1 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times.
- At all times, purposeful consideration is given to organisation of educators to ensure familiarity and continuity for children and a high quality learning and care environment.
- All educators and co-ordinators:
  - » are able to explain how the organisation and continuity of educators enhances children's wellbeing, learning and development; demonstrate awareness of how decisions are made about the organisation of educators across the service
  - » understand and implement effective processes to support organisation and continuity of educators to enable the establishment and maintenance of secure relationships with children.
- The observed and discussed approach to organisation and continuity of educators, including relief educators, consistently aligns with the service's philosophy, policies and procedures.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 4.1 Exceeds the NQS:

- The service's approach to organisation and continuity of educators:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by the qualifications, strengths, priorities and professional development goals of educators
  - » is informed by current recognised guidance.

- Any change to the service's approach to organisation and continuity of educators is understood by all and implemented appropriately.
- The service team:
  - » reflects together on opportunities to further enhance children's wellbeing, learning and development through possible changes to the organisation of educators or improvement in staff continuity
  - » works together to implement agreed changes across the service where necessary.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 4.1 Exceeds the NQS:

- The organisation and continuity of educators:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service and, in particular, family input on ways to support familiarity and continuity of their child's learning and development at the service
- Opportunities for collaboration with family and community partners are built into the service's approach to organisation and continuity of educators.
- The service's approach to organisation and continuity of educators supports all children to participate fully in the service program at all times.

STANDARD 4.2
PROFESSIONALISM

MANAGEMENT, EDUCATORS AND STAFF ARE COLLABORATIVE, RESPECTFUL AND ETHICAL.

How Standard 4.2 contributes to quality education and care

Professionalism is demonstrated when management, educators and other staff develop and maintain relationships with each other that are based on the principles of mutual respect, equity and fairness. Team collaboration that is based on understanding the expectations and attitudes of team members, and build on the strength of each other's knowledge, help nurture constructive professional relationships. These relationships reduce the likelihood of misunderstanding and conflict. For more information see Early Childhood Australia's *Code of Ethics* (2016), a resource that guides the behaviour of early childhood professionals.

When adults communicate effectively and respectfully with each other they promote a positive and calm atmosphere at the service, supporting children to feel safe and secure and contributing to the development of positive relationships between children and educators. Unresolved and poorly managed conflict between adults in the service affects morale and impacts on the provision of quality education and care to children.

Services support staff to act cohesively and ethically as a team and provide an environment that is conducive to children's learning and development. This may be reflected in the service's statement of philosophy (see *Element 7.1.1*).

Questions to guide reflection on practice for Standard 4.2 (for all services)

- How do we ensure that the service's statement of philosophy reflects the different views, beliefs and values of the team?
- How do we acknowledge the personal strengths, professional experiences and diversity that our colleagues bring to our work?
- What beliefs about relationships between management, educators, co-ordinators and other staff are reflected in our statement of philosophy?
- How do we promote professionalism, confidentiality and ethical conduct?
- What strategies have we developed to ensure information is appropriately shared between management and service staff?
- How do we use critical reflection to challenge our beliefs?
- How do we promote the personal and collective strengths of our team?
- How do we share the successes of our team with families?
- What opportunities do we provide for educators, co-ordinators and other staff to have conversations and discussions to further develop their skills, or to improve practice and relationships? How do we ensure that everyone's voice is heard and considered?

- What makes our service a positive place to work?
- What strategies do we use to find out how staff members feel about/within our team?
- How effective are the processes we have implemented to resolve any ethical issues that may arise?
- How regularly do we review Early Childhood Australia's ***Code of Ethics*** (2016) and our own service's code of conduct and service philosophy to ensure that our practices and policies align with current recognised approaches?

ELEMENT 4.2.1
PROFESSIONAL COLLABORATION

MANAGEMENT, EDUCATORS AND STAFF WORK WITH MUTUAL RESPECT AND COLLABORATIVELY, AND CHALLENGE AND LEARN FROM EACH OTHER, RECOGNISING EACH OTHER'S STRENGTHS AND SKILLS.

What Element 4.2.1 aims to achieve

Professional collaboration involves working together cooperatively towards common goals. Collaboration is achieved through open communication, information sharing, joint planning and the development of common understandings and objectives (*Framework for School Age Care*, p.12).

In a collaborative environment, all staff are encouraged to respect and value the diverse contributions and viewpoints of their colleagues. Staff also share resources, provide constructive feedback, and work together respectfully and professionally to solve problems. Interactions between management, educators and staff are guided by Early Childhood Australia's ***Code of Ethics*** (2016), the service's code of conduct and the service philosophy. By collaborating effectively, service staff model successful working relationships for children.

A lively culture of professional inquiry is established when the educational leader, nominated supervisor, co-ordinators and educators are all contributing to continuous improvement at the service. In this setting, staff members can raise and debate issues including program quality, environment design, inclusion and equity, children's wellbeing and working with families (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 12). By drawing on each person's diverse perspectives, skills, experiences and background, these discussions enhance the team and provide opportunities for educators to revise their practice and implement strategies for improvement. These discussions also provide educators with an opportunity to develop a shared understanding of how children learn and their role in supporting this, contributing to more effective and responsive programs for children.

Updating and maintaining educators' knowledge is a joint responsibility of management and educators. This can be achieved through providing a range of professional development strategies that challenge and extend current thinking.

Assessment guide for meeting Element 4.2.1 (for all services)

Developing a culture of professional collaboration, recognition and continuous improvement

observe

***Assessors may* observe:**

- positive working relationships within the service and an atmosphere of openness

- new educators, co-ordinators and staff members being supported by other team members
- educators, co-ordinators and staff members using strategies that assist casual and relief educators to feel a sense of belonging to the team and service
- information about current recognised approaches and research on education and care is shared among management, educators and staff members
- educators sharing their knowledge and discussing and reflecting on the needs of particular children and families
- educators, co-ordinators and staff members:
  - » sharing tasks and responsibilities
  - » offering assistance to each other
  - » responding promptly to support other team members in difficult situations
- the educational leader, nominated supervisor, co-ordinators and educators:
  - » working collaboratively to affirm and challenge their practice through supportive relationships with their colleagues
  - » discussing and adopting inclusive practices and strategies that best support each child
  - » demonstrating a commitment to learn more, regardless of their experience and current knowledge and skills.

discuss

***Assessors may* discuss:**

- the service's approach to using particular strengths, talents and interests of individual educators
- how educators acknowledge each other's strengths and diverse knowledge and skills
- how the educational leader, nominated supervisor, educators and co-ordinators openly reflect on all aspects of the service as a team
- whether the service has regular team meetings, or similar opportunities, that include a cycle of inquiry that collaboratively affirms, challenges, supports and provides opportunities for educators and staff members to learn from each other, share new information and further develop the team's skills
- how educators and staff members are encouraged to support and mentor each other
- how the approved provider, educational leader, nominated supervisor, co-ordinators and educators demonstrate that they are open to change and new possibilities

- how the service ensures that all interactions, including grievance procedures, convey mutual respect, equity and recognition of each other's strengths and skills

centre-based care

- the strategies the service has in place to facilitate communication and reflection between educators.

sight ***Assessors may* sight:**

- evidence recorded in staff meeting minutes or reflective journals that demonstrates that the educational leader, nominated supervisor, co-ordinators and educators are engaging with their colleagues to reflect on practice, explore new possibilities and record outcomes that have resulted in improved practice so that children and families benefit
- documented examples of projects or teamwork that recognises and builds on the diverse skills, knowledge and strengths of the team.

ELEMENT 4.2.2
PROFESSIONAL STANDARDS

PROFESSIONAL STANDARDS GUIDE PRACTICE, INTERACTIONS AND RELATIONSHIPS.

What Element 4.2.2 aims to achieve

The approved provider and service staff should use professional standards and ethical principles to guide professional conduct in decision-making and practice. The approved provider must provide clear guidance to all staff about their responsibilities in relation to one another and to the families and children using the service.

The approved provider should also ensure that all staff know and understand the requirements of the National Quality Framework including the National Law, National Regulations, the National Quality Standard, the approved learning frameworks, Early Childhood Australia's *Code of Ethics* (2016), as well as the services' philosophy, policies and procedures.

It is important that educators and service staff are aware that their attitudes, values and beliefs impact their work. Educators can benefit from working with each other, the educational leader and their supervisor or co-ordinator to identify where biases may have informed their values, and minimise the impact of bias in their practice and relationships with children, families, colleagues and the local community.

When all educators understand what is guiding their practice and why, educators can make improvements to their practice and enhance outcomes for children.

Assessment guide for meeting Element 4.2.2 (for all services)

Professional conduct

observe

***Assessors may* observe:**

- service staff demonstrating:
  - » care, empathy and respect for children, colleagues and families in their everyday practice
  - » professional conduct in interactions and relationships with children, colleagues, families and members of the community
- the educational leader, nominated supervisor, co-ordinators and educators taking responsibility for:
  - » working in ways that meet the requirements of the National Quality Framework
  - » implementing the approved learning frameworks.

discuss ***Assessors may* discuss:**

- the ways in which service staff access copies of:
  - » the *National Quality Standard*, *National Regulations* and Guide to the National Quality Framework
  - » the approved learning frameworks and associated guides to the frameworks
  - » Early Childhood Australia's *Code of Ethics* (2016)
  - » the service's statement of philosophy
  - » the service's policies and procedures
  - » the service's staff handbook and code of conduct
  - » other relevant professional publications
- how the service uses these documents to maintain quality standards and professional conduct
- how up-to-date information is communicated to educators (for example, service/employer information and changes or updates that impact on practice and regulatory compliance)
- strategies used to bring Early Childhood Australia's *Code of Ethics* (2016) to the attention of all staff and how is it used to guide professional conversations about day-to-day practice at the service
- how the educational leader, nominated supervisor, co-ordinators and educators use professional standards and knowledge of current recognised approaches to guide their everyday work and to meet the requirements of the National Quality Framework
- how educators recognise and minimise the impact of personal biases on their practice and relationships with children, families, colleagues and the local community
- inclusion and what it means to educators, children and families
- where information can be found to assist staff to resolve differences.

sight ***Assessors may* sight:**

- the service's code of conduct and Early Childhood Australia's *Code of Ethics* (2016) are accessible to educators and staff members, and are displayed and made available to families
- a handbook or resources for new and existing service staff that includes:
  - » the statement of philosophy
  - » position descriptions
  - » professional standards and/or code of conduct.

EXCEEDING GUIDANCE FOR STANDARD 4.2
PROFESSIONALISM

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 4.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 4.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 4.2 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concept and the component elements, and a commitment to high quality practice at all times.
- All interactions between educators and others in the service community are respectful and promote a positive atmosphere within the service.
- All educators show a willingness to share information or ask for assistance from others and acknowledge the strengths and skills of others.
- All members of the service team consistently demonstrate a high level of collaboration, affirming, challenging, supporting and learning from each other.
- The observed and discussed approach to professional collaboration and standards:
  - » consistently aligns with the approach described in the service's chosen code of conduct and code of ethics
  - » consistently aligns with the service's philosophy, policies and procedures.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 4.2 Exceeds the NQS:

- The service's approach to professional collaboration and standards:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » enables and promotes regular opportunities for all members of the service team, with special consideration to support newly inducted educators, to work collaboratively and to share and learn from each other's existing and developing strengths and skills

- » is informed by current recognised guidance and the service's chosen code of conduct and code of ethics
- The service team reflects together:
  - » on the role and application of professional ethics and standards across the service
  - » on ethical issues that arise in the service
  - » to consistently identify and implement opportunities to strengthen ethical practice.
- Educators reflect collaboratively on pedagogical knowledge and curriculum delivery.
- Educator's discussions and notes demonstrate:
  - » self-awareness of the ethical and professional standards underpinning their own practice
  - » ongoing reflection on opportunities for improvement.
- Decision-making processes are informed by professional standards, including the service's chosen code of conduct and code of ethics.
- Changes to the application of professional standards within the service, including the chosen code of conduct and code of ethics, are clearly understood by all.

Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 4.2 Exceeds the NQS:

- The approach to professional collaboration and standards:
  - » reflects the unique geographical, cultural and community context of the service;
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service.
- All members of the service team recognise diversity as a strength and work together to promote a culture of inclusiveness and sense of belonging for all children, families and the community, including cultivating a deep respect for Aboriginal and Torres Strait Islander histories and cultures.
- All members of the service team consistently identify and implement culturally sensitive ways to communicate, support and engage with families.
- Decision-making and problem-solving in regard to ethical issues that emerge within the service environment are informed by the voices of families and the community.
- Educators build relationships with families and members of the community that include the exchange of ideas and best practice.

QUALITY AREA 5
RELATIONSHIPS WITH CHILDREN

Overview

Quality Area 5 of the National Quality Standard focuses on educators developing responsive, warm, trusting and respectful relationships with children that promote their wellbeing, self-esteem, sense of security and belonging. Relationships of this kind encourage children to explore the environment and engage in play and learning.

All children need a sense of connection with others to support the development of their identity and social and emotional competence. From birth, children begin to explore how the social world works. Exploring and learning to socialise appropriately with others, and to manage feelings, behaviours and responsibilities is a complex process. When educational leaders, co-ordinators and educators take a positive, strengths-based approach to guiding children's behaviour, they ultimately empower children to regulate their own behaviour and develop the skills needed to interact and negotiate effectively with others.

Relationships with peers take on increasing importance for older children. Supportive relationships with educators enables older children to develop confidence in their ability to express themselves, work through differences, engage in new experiences and take calculated risks.

Standards, elements and concepts

Quality Area 5 has two standards that focus on relationships between educators and children, and between children and their peers. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because supportive and respectful relationships enable children to:

- develop their confidence and a strong sense of identity
- develop effective communication skills and the ability to express themselves effectively
- participate in collaborative learning and build meaningful relationships with others
- regulate their own behaviour and learn to negotiate complex social situations and relationships.

Standard/ Elements	Concept	Descriptor
QA5		**Relationships with children**
5.1	Relationships between educators and children	Respectful and equitable relationships are maintained with each child.
5.1.1	Positive educator to child interactions	Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.
5.1.2	Dignity and rights of the child	The dignity and rights of every child are maintained.
5.2	Relationships between children	Each child is supported to build and maintain sensitive and responsive relationships.
5.2.1	Collaborative learning	Children are supported to collaborate, learn from and help each other.
5.2.2	Self-regulation	Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.

STANDARD 5.1
RELATIONSHIPS BETWEEN EDUCATORS AND CHILDREN

RESPECTFUL AND EQUITABLE RELATIONSHIPS ARE MAINTAINED WITH EACH CHILD.

How Standard 5.1 contributes to quality education and care

When children experience nurturing and respectful reciprocal relationships with educators, they develop an understanding of themselves as competent, capable and respected. Consistent emotional support contributes to children developing a strong sense of wellbeing and belonging. Relationships are the foundation for the construction of identity, and help shape children's thinking about who they are, how they belong and what influences them (*Early Years Learning Framework*, p. 20; *Framework for School Age Care*, p. 19).

Constructive everyday interactions and shared learning opportunities form the basis of equitable, respectful and reciprocal relationships between educators and children. Educators who are actively engaged in children's learning and share decision-making with them, use their everyday interactions during play, routines and ongoing projects to stimulate children's thinking and to enrich their learning.

These relationships provide a solid foundation from which to guide and support children as they develop the self-confidence and skills to manage their own behaviour, make decisions and relate positively and effectively to others.

Questions to guide reflection on practice for Standard 5.1 (for all services)

Positive relationships

- How do we build close, secure relationships with children of all ages, abilities, genders and backgrounds?
- How do we ensure children feel that they belong and are included in the service, can participate in all learning experiences, and that their contributions are appreciated and recognised?
- How do we learn about individual children's non-verbal cues and communication strategies, and the specific communication requirements of each child? How do we cater for and help each child to reach their potential?
- How do we promote children's social and emotional competence?
- How do we identify and overcome potential barriers to inclusion at the service so that each child's participation is supported?
- How do we respectfully engage in children's play? What roles do we play?
- How do we deliberately, purposefully and thoughtfully interact with children to support their learning?

- What strategies and techniques do we use to extend and build on children's comments and conversations?
- How do we respond to the distress some children experience when they have to adapt to unfamiliar routines, new people and new places?
- How do we respond sensitively and appropriately to all children's efforts to communicate?

family day care

- How do we respond in a fair and consistent way to our own children and to the children who attend the service?

Dignity and rights of every child

- How do we consider the rights of every child when planning and implementing the program?
- How do we encourage all children to understand their rights and the rights of others?
- How do our service's policies and procedures support each child's dignity and rights?
- How do we identify and minimise the impact of our own biases on our practices and relationships with children and families? How are children's rights considered in these reflections?

ELEMENT 5.1.1
POSITIVE EDUCATOR TO CHILD INTERACTIONS

RESPONSIVE AND MEANINGFUL INTERACTIONS BUILD TRUSTING RELATIONSHIPS WHICH ENGAGE AND SUPPORT EACH CHILD TO FEEL SECURE, CONFIDENT AND INCLUDED.

National Law & Regulations

National Law and National Regulations underpinning Element 5.1.1

Section 166 Offence to use inappropriate discipline

Regulation 155 Interactions with children

What Element 5.1.1 aims to achieve

Positive interactions between educators and children involve educators viewing each child as capable and competent, with a right to a voice and able to contribute to decisions that affect them. This enables educators to focus their education and care practices on children's strengths and inclusion in the group environment.

Educators who are responsive to children's thoughts and feelings are supporting them to develop a strong sense of wellbeing. By interacting positively and meaningfully with children, educators help children to feel accepted and to develop a sense of attachment and trust. Children who are supported to understand themselves experience a sense of belonging that fosters self-esteem. Self-esteem contributes to the development of identity and is critical to children's capacity to understand their own strengths, abilities and interests. When children feel safe, secure and supported, they develop confidence to explore and learn (*Early Years Learning Framework*, p. 20; *Framework for School Age Care*, p. 19).

Positive and responsive one-on-one interactions, especially with children under three years old, are important to children's wellbeing and their future development. Secure relationships with educators encourage children under three years to thrive, and provides them with a secure base for exploration and learning. As children grow and develop they continue to rely on secure, trusting and respectful relationships with the adults in their lives.

Mutually supportive relationships are important for school age children. Secure, respectful and reciprocal relationships are key to establishing a positive and trusting community in school age care settings, and enable children to develop their independence, leadership and social skills, and a strong sense of identity (*Framework for School Age Care*, p. 10).

Assessment guide for meeting Element 5.1.1 (for all services)

Building trusting relationships

observe

***Assessors may* observe:**

- educators:
  - » sitting and engaging in relaxed and unhurried two way conversations with children, particularly at mealtimes
  - » assisting new children to settle into the program by talking with them or their families about their interests
  - » responding openly, positively and respectfully to children's comments, questions and requests for assistance
  - » engaging with children in conversations throughout the day or session, talking about what is happening around them and what they are learning
  - » engaging in sustained conversations with each child about their individual interests
  - » showing enthusiasm and respect when interacting with all children and their families
  - » comforting children who cry or show other signs of distress
  - » responding positively to the varying abilities, individual strengths and confidence of all children, and facilitating their involvement in the service
  - » acknowledging children's efforts and achievements and supporting children to experience success
  - » adjusting and tailoring their interactions to best support the differing ages and capabilities of children attending the service
  - » demonstrating that they know each child well and have developed a unique, reciprocal relationship with each child
  - » actively supporting the maintenance of each child's home language where interactions with the family supports this approach
  - » respectfully participating in children's play and using children's cues to guide their level and type of involvement
  - » modelling reasoning, predicting, reflective processes and appropriate language
  - » collaborating with children about routines and experiences and providing opportunities for them to make decisions and choices
- using appropriate techniques, such as sign language and other resources and tools, to support communication with all children

birth to three

- talking with children about what is about to happen during routines and transitions
- encouraging 'turn taking' communication by responding and adding to interactions initiated by children
- responding to children when they practice and play with language, by repeating the words, sounds and gestures that children use
- describing objects and events as the children participate in play

school age children

- respectfully stepping into and out of children's play, to support children's decision-making
- setting up learning environments which support children to learn independently
- providing opportunities for children to develop relationships by teaching others

family day care

- co-ordinators:
  - » supporting educators' relationships with children during home visits and playgroups by sharing their expertise and professional experience
  - » developing respectful relationships with children
- children:
  - » demonstrating a sense of belonging, security and comfort in the environment
  - » communicating their need for comfort and assistance
  - » initiating conversations with educators about their experiences inside and outside the service
  - » confidently expressing ideas and feelings and sharing humour with educators
  - » asking educators for assistance when they engage in new experiences, take on new challenges and try to complete tasks independently

birth to three

- » being supported to build secure attachments with one educator initially and then other educators in the environment
- » using a favourite toy, photograph or comfort item brought from home to help them settle and feel secure in the service (adapted from the *Early Years Learning Framework*, pp. 21, 26; and the *Framework for School Age Care*, pp. 20, 22).
- an atmosphere that is relaxed and positive where children are engaged in experiences that interest them
- an environment that reflects the lives of the children, their families and the local community
- practices and routines that observe children and their family and community contexts
- group sizes and staffing practices that:
  - » support the establishment of secure relationships between educators and children
  - » support children settling into the service each day
  - » meet each child's requirements throughout the day
  - » facilitate effective daily communication with families

birth to three

- predictable and respectful personal-care routines that are enjoyable experiences for children and that enrich their learning
- many opportunities for children to experience relaxed physical contact and one-to-one interactions with familiar educators.

discuss

***Assessors may* discuss:**

- ways in which nominated supervisors, co-ordinators and educators learn more about the histories, cultures, languages, traditions, child-rearing practices and lifestyle choices of families using the service
- strategies used to respond to each child's preferences and assist all children to develop a sense of security, belonging and confidence in the service
- how plans for the inclusion of children with additional needs are shared and communicated with educators and staff members
- the ways in which children's cues are used to guide the level and type of adult involvement in children's play
- how children are encouraged to share their stories and ideas
- how routines and everyday experiences are guided by children and used to support their learning, based on children's preferences and the dynamics of the day
- the ways in which educators use information gained from their observations and interactions with children to extend children's thinking and learning
- how educators use their interactions with children to support the maintenance of home languages and learning English as an additional language, following communication with families

birth to three

- how staffing, group arrangements and the environment support children to feel secure and relaxed at the service

centre-based service

- how rosters are planned to promote continuity of, and enhance, relationships with children and families.

sight

***Assessors may* sight:**

- examples of information gathered from:
  - families to support their child during the settling-in process
  - other professionals or support agencies that work with children, including children who require additional support and those from culturally and linguistically diverse backgrounds
- the service's approach to equity and inclusion, documented in the statement of philosophy
- plans for the inclusion of children who require additional support
- evidence that educators and co-ordinators draw on the diverse knowledge, experiences and views of their colleagues when reviewing their teaching strategies and experiences planned for children, to ensure that all children have opportunities to achieve learning outcomes

- evidence of planned and spontaneous experiences and routines where educators support the engagement of individual children and groups of children in experiences of their own choosing
- documentation of children's learning that shows evidence that educators' interactions with children are used to support children's developing ideas, skills and relationships.

ELEMENT 5.1.2
DIGNITY AND RIGHTS OF THE CHILD

THE DIGNITY AND RIGHTS OF EVERY CHILD ARE MAINTAINED.

National Law & Regulations

National Law and National Regulations underpinning Element 5.1.2

Section 166 Offence to use inappropriate discipline

Regulation 155 Interactions with children

What Element 5.1.2 aims to achieve

The United Nations Convention on the Rights of the Child is a universally agreed set of non-negotiable standards and obligations founded on respect for the dignity and worth of each child, regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status or ability.

By agreeing to undertake the obligations of the Convention on the Rights of the Child, Australia has committed to protecting and ensuring children's rights. This includes Article 19 of the convention, which states that children have the right to be protected from being hurt and mistreated, physically or mentally.

Assessment guide for meeting Element 5.1.2 (for all services)

Dignity and rights of children

observe

***Assessors may* observe:**

- spaces, resources and routines arranged to minimise times when children are likely to experience stress or frustration or made to wait unnecessarily
- children:
  - » supported to make choices and to experience the consequences of these where there is no risk of harm to themselves or another person
  - » being acknowledged when they make positive choices in managing their own behaviour

school age children

  - » having independence and increased autonomy in recognition of their growing maturity and ability to take responsibility for their own behaviour
- educators:
  - » pre-empting potential conflicts or challenging behaviours by monitoring

children's play and supporting interactions

- using positive language, gestures, facial expressions and tone of voice when redirecting or discussing children's behaviour with them
- responding promptly to children's disruptive behaviour by acknowledging their feelings, spending time with them and suggesting alternative ways of responding
- being patient, gentle, calm and reassuring even when children strongly express distress, frustration or anger
- talking to children about the importance of empathy, treating others equally and celebrating differences
- encouraging each child's sense of identity
- supporting children to treat each other with dignity and respect in their interactions
- using diverse resources to celebrate different cultures and backgrounds
- modelling and encouraging children to identify and challenge discrimination when they observe inappropriate behaviour, or hear inappropriate comments
- respectfully considering information received from families, other professionals and resource agencies and responding appropriately to support the rights of children
- encouraging children to reflect on and consider the impact of their behaviour
- guiding all children's behaviour in ways that:
  - are focused on supporting children to develop skills to self-regulate
  - preserve and promote children's self-esteem and confidence

birth to three

- speaking in comforting tones and holding babies to soothe them when they are crying
- using distraction and redirection techniques when children want the same toy or are distressed
- responding positively to children's exploratory behaviour

school age children

- taking action if bullying occurs, according to the service's policies and procedures such as anti-bullying, interactions with children or behaviour guidance policies

family day care

- responding to their own children's behaviour and the behaviour of children using the service in a fair and consistent way.

discuss ***Assessors may* discuss:**

- how the service celebrates diversity, including:

- supporting each child's sense of identity
- guiding children's understanding of cultural diversity
- how the service communicates its culturally diverse practices with families

- how the service maintains an environment of cultural inclusion and supports educators' cultural competence
- how educators reflect on the equity and rights of each child, in particular how their own practice and behaviour may affect individual children
- how educators reflect on, identify and minimise the impact of their own biases on their practices and relationships with children and families

birth to three

- how the service manages situations such as when children bite, including communication with families

school age children

- whether services located in schools have regard to the school's approach to guiding behaviour, and how the service and the school cooperate to maintain the rights of children in a recreation and leisure program.

sight

***Assessors may* sight:**

- documentation that shows that diverse views, including family backgrounds and values, are considered in planning and programming for each child
- the United Nations Convention on the Rights of the Child displayed
- documented reflections on children's experiences at the service including whether all children's rights are being upheld.

EXCEEDING GUIDANCE FOR STANDARD 5.1
RELATIONSHIPS WITH CHILDREN

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 5.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 5.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 5.1 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times.
- Each educator's practice reflects a deep commitment to building and maintaining respectful and equitable relationships with each child.
- At all times, interactions between educators and children across the service:
  - support each child to feel secure, confident, and included
  - maintain each child's dignity and rights.
- All educators are able to explain how their relationships with children are guided by an understanding of and commitment to:
  - building trusting relationships which engage and support each child to feel secure, confident and included
  - respecting the dignity and worth of each child
  - protecting and ensuring children's rights.
- The observed and discussed approach to relationships between educators and children:
  - consistently aligns with the principles and practices of the approved learning framework/s
  - consistently aligns with the service's philosophy, policies and procedures.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 5.1 Exceeds the NQS:

- The service's approach to relationships between educators and children:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance.
- Any change to the service's approach to relationships between educators and children is understood by all and implemented appropriately.
- All educators:
  - » systematically reflect on their interactions with children across the service and on opportunities to further enhance children's lifelong learning and sense of belonging within the service and the child's world
  - » demonstrate self-awareness and are purposeful in the consideration of the theoretical perspectives that influence their pedagogy and the practice across the service.
- The service team reflect together to:
  - » consider the social justice and equity implications of educators' approaches to relationships with children to ensure interactions support the dignity, rights, cultures and best interests of all children, including children who identify as Aboriginal and Torres Strait Islander peoples
  - » challenge stereotypes and biases in promoting and maintaining a culture of inclusiveness
  - » engage in robust debate and discussion in which personal, professional and organisational values that influence relationships between educators and children are identified and discussed.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 5.1 Exceeds the NQS:

- The service's approach to building and maintaining respectful and equitable relationships with each child:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service
  - » contributes to a culture of inclusiveness and sense of belonging for children and families at the service
  - » is strengthened by meaningful relationships with families and the community
  - » seeks, values and considers family input to inform 'Interactions with Children' policy and practice.

STANDARD 5.2
RELATIONSHIPS BETWEEN CHILDREN

EACH CHILD IS SUPPORTED TO BUILD AND MAINTAIN SENSITIVE AND RESPONSIVE RELATIONSHIPS.

How Standard 5.2 contributes to quality education and care

When educators create supportive environments in which children experience mutually enjoyable, caring and respectful relationships, children respond accordingly (*Early Years Learning Framework*, p. 25; *Framework for School Age Care*, p. 24). Positive relationships provide children with the confidence and agency to explore and learn about their world. As their relationships become more complex and far-reaching over time, children's interactions with others also help them to extend their knowledge, thinking and ability to apply what they already know in new and unfamiliar contexts. Developing effective relationships with others is a key part of children's social development and these relationships also provide a base for children's learning.

An important aspect of children's 'belonging, being and becoming' involves them learning how their behaviours and actions affect themselves and others. By learning how to make sensible choices about their behaviour, children develop the skills to regulate their actions independently and understand the benefits of positive behaviour. When children have opportunities to contribute to decisions and participate collaboratively with others in everyday settings, they learn to live interdependently and make informed choices (*Early Years Learning Framework*, p. 25; *Framework for School Age Care*, p. 24). The service should ensure that all children are supported to develop the skills, dispositions and understandings they need to interact sensitively and empathetically with others.

Educators and co-ordinators can assist by developing:

- positive and respectful strategies for guiding children's behaviour, and helping children to negotiate their requests with others
- strategies that demonstrate respect and understanding of individual children when they strive to recognise and understand why each child may behave in a certain way, or why behaviour may occur in particular circumstances or at specific times of the day.

Questions to guide reflection on practice for Standard 5.2 (for all services)

Supporting sensitive and responsive relationships

- How do we support children to form and maintain positive relationships with others?
- How is a culture of respect, equity and fairness encouraged in the service? How is this communicated to educators, children and families?
- How do we model positive and respectful relationships for children?
- How do we support children's development and understanding of respectful relationships?

- How do we ensure that the physical environment, program and routines are conducive to the development and maintenance of children's interpersonal relationships?
- How do we promote a sense of community within the service?

family day care

- How do we foster positive relationships between members of the educator's family and the children being educated and cared for?

Collaborative learning

- How do we plan the program and routines to ensure adequate time for children to engage in uninterrupted play experiences and projects of their own choosing, with a variety of peers and adults?
- How do educators plan and create opportunities for children to collaborate with others to progress their learning?

Guiding children's behaviour

- How do we support individual children to engage with others in ways that are appropriate for each child's development?
- How do we ensure that our policies regarding interactions with children and behaviour guidance reflect current information about child development and current recognised approaches in guiding young children's behaviour?
- How do we reflect on our own experiences, beliefs and attitudes that may influence the way in which we guide children's behaviour?
- How do we support children to recognise their own emotions and those of others?
- What opportunities do children have to make decisions about rules, expectations and consequences in relation to their own and others' behaviour?
- How do we manage situations where we experience challenges in guiding the behaviour of a child or a group of children?
- How do we work with families, other professionals and support agencies to ensure that behaviour guidance strategies maintain the rights of each child to be included in the environment and program at all times? How are different expectations managed?

school age children

- How do we meet older children's needs for independence and greater freedom?
- How do we ensure a consistent approach to guiding children's behaviour between schools and the service as well as meeting the rights of children in a recreation and leisure program?

family day care

- How do we support educators when they are feeling stressed by, or are having difficulty coping with, a child's behaviour?

ELEMENT 5.2.1
COLLABORATIVE LEARNING

CHILDREN ARE SUPPORTED TO COLLABORATE, LEARN FROM AND HELP EACH OTHER.

What Element 5.2.1 aims to achieve

Services provide a range of opportunities for children to learn how to work with others collaboratively and effectively, including through play experiences. Educators can support children to learn about and experience cooperation by modelling cooperative behaviour themselves and acknowledging cooperation when it occurs. As children develop their social skills, educators provide time and space for children to engage in collaborative experiences. These enjoyable experiences help children to learn about their responsibilities to others and to appreciate their connectedness and interdependence as learners. They learn to balance their own needs and wants with those of other children. By nurturing respectful and reciprocal relationships among children, educators support children to value collaboration and teamwork.

School age care settings are places for children to learn more about themselves, others and the world as they increasingly cooperate and work collaboratively with others. By encouraging children's active involvement in learning experiences, children learn to explore and solve problems and develop greater capacity for independence and collaboration. Older children can challenge and extend their own thinking, and that of others, and create new knowledge in collaborative interactions and negotiations with peers. By exchanging ideas and collaborating with others, older children can also learn life and social skills, such as conflict resolution and negotiation skills.

Assessment guide for meeting Element 5.2.1 (for all services)

Supporting cooperation and collaboration

observe

***Assessors may* observe:**

- children:
  - » participating in play and showing awareness and interest in others
  - » developing friendships as part of a small group
  - » engaging in enjoyable interactions with their peers, contributing to shared play experiences, and responding positively to ideas and suggestions from others
  - » engaged in experiences that support them in establishing and maintaining relationships with children of various ages, genders, cultures and capabilities
  - » engaged in ongoing collaborative projects they have initiated that involve research, planning, problem-solving and shared decision-making

- » engaged in activities that may benefit others (such as helping re-set experiences or setting the table for a meal)
- » showing kindness and compassion towards their peers
- » negotiating roles and relationships in play and leisure experiences
- » spending time with their peers

family day care

- » experiencing friendly and genuine interactions with members of the educator's family (*Early Years Learning Framework*, pp. 21–26; *Framework for School Age Care*, pp. 20–24).

- educators:
  - » supporting children's progress through different stages of play, to help them gain confidence in interacting with their peers
  - » modelling collaborative behaviour through their interactions with children and colleagues, to help children to initiate interactions and join in play and social experiences with their peers
  - » respectfully and thoughtfully engaging in children's group play and projects
  - » supporting children to understand or communicate with each other
  - » planning experiences that encourage children to work together to achieve success
  - » allocating time for relaxed, unhurried experiences that enable children to collaborate and direct their own learning together
  - » creating opportunities for peer scaffolding in small and large group play
  - » asking follow-up questions to extend children's learning in group situations
  - » promoting a sense of community in the service
  - » providing opportunities and resources for children to assume leadership roles and direct play experiences with their peers
  - » acknowledging older children's complex relationships and sensitively intervening in ways that promote social inclusion

school age children

- » implementing mentoring programs within the service to connect older children with younger children
- » providing grouping opportunities related to children's interests

family day care

- » supporting, in a fair and consistent way, collaboration and teamwork between the children at the service and their own children.

discuss

***Assessors may* discuss:**

- how staffing and grouping arrangements support positive relationships between children
- how educators support and promote children's interpersonal relationships
- how educators support inclusion of children from diverse backgrounds and capabilities in collaborative play, projects and experiences with others

- how educators learn about children's shared interests and how they use this information to plan further learning opportunities

school age children

- opportunities provided for children to take on leadership roles within the service
- how educators broaden children's perspectives and encourage an appreciation of diverse views and ideas within the group
- how educators differentiate the curriculum to engage children in collaborative learning experiences when they differ in knowledge and skills

family day care

- how educators provide opportunities for children to experience a variety of group settings
- how the service addresses and communicates the role that educators' family members may play in the service.

sight ***Assessors may* sight:**

- the service's policy on interactions with children and behaviour guidance
- evidence that:
  - » the program and routines include regular opportunities for children to engage in social play and collaborative experiences
  - » educators identify children's shared interests and use this information to plan further collaborative learning opportunities

school age children

- » the program includes collaborative and challenging learning experiences that are responsive to children's interests

family day care

- guidelines about the role of educators' families in the provision of family day care
- documented plans for children to spend time in group experiences with children of similar ages and other educators.

ELEMENT 5.2.2
SELF-REGULATION

EACH CHILD IS SUPPORTED TO REGULATE THEIR OWN BEHAVIOUR, RESPOND APPROPRIATELY TO THE BEHAVIOUR OF OTHERS AND COMMUNICATE EFFECTIVELY TO RESOLVE CONFLICTS.

National Law & Regulations

National Law and National Regulations underpinning Element 5.2.2

Section 166 Offence to use inappropriate discipline

Regulation 155 Interactions with children

Regulation 156 Relationships in groups

What Element 5.2.2 aims to achieve

Self-regulation becomes increasingly important as children move through childhood. They become more mindful of the way others interact with them, and at the same time develop understandings of how their actions affect the way others feel and behave. Educators work with young children to promote and model positive ways to relate to others. This includes role modelling and supporting children to convey and construct messages with purpose and confidence, for example when expressing needs, resolving conflict or responding to the behaviour of others.

School age care educators actively support the inclusion of all children in play, help children to recognise when play is unfair, and offer constructive ways to build a caring, fair and inclusive learning community.

Assessment guide for meeting Element 5.2.2 (for all services)

Relating positively with others

observe

***Assessors may* observe:**

- children:
  - » engaging in cooperative, helping behaviour
  - » exploring different identities and points of view in dramatic play
  - » challenging other children's behaviour when it is disrespectful or unfair
  - » expressing their feelings and responses to others' behaviours confidently and constructively
  - » being supported to communicate effectively to resolve disagreements with others
- educators and co-ordinators:
  - » implementing planned and spontaneous discussions about emotions, feelings and issues of inclusion and exclusion, fair and unfair behaviour, bias and prejudice

- » modelling respectful behaviour and providing supportive language to enable children to vocalise their concerns
- » encouraging children to listen to other children's ideas, consider alternative behaviours and solve problems together
- » talking with children about the outcomes of their actions, and the rules and reasons for these
- » planning and implementing strategies to support individual children's behaviour
- » discussing with and supporting children to identify their feelings, and providing a safe place for them to explore calming strategies
- » listening empathetically to children when they express their emotions, acknowledging their feelings and reassuring children that it is normal to experience positive and negative emotions at times
- » supporting children to negotiate their rights in relation to the rights of others and intervening sensitively when children experience difficulty in resolving a disagreement

family day care

- educators and members of their family modelling positive, socially acceptable behaviour and language.

discuss

Assessors may* discuss *how:

- educators:
  - » learn about and support individual children's relationships with other children
  - » help children to understand that others may not always wish to play with them
  - » use their knowledge of individual children's personalities and friendship preferences to support children to manage their own behaviour and develop an understanding of the feelings of others
  - » encourage positive behaviour in children, and support them to understand the expectations for their behaviour and the consequences of inappropriate behaviours
  - » support children when they are trying to negotiate and resolve conflicts with others
  - » support children to negotiate and share ownership of acceptable behaviours as a group
  - » work with families and other professionals to appropriately support each child's emotional and social learning
- service staff work with each child's family and, where applicable, their school, to ensure an inclusive and consistent approach is used to support all children to regulate their behaviour and communicate effectively

- the nominated supervisors, co-ordinators and educators manage situations in which:
  - » families have different views and expectations compared to those of the service about guiding children's behaviour
  - » a child may benefit from more support in managing their behaviour
- the educational leader supports educators to enhance their skills and knowledge to positively guide children's behaviour
- the service positively influences educators' views and beliefs around children's behaviour, with a focus on all children being supported when they are distressed

school age children

- the nominated supervisors, co-ordinators and educators guide children's behaviour in ways that have regard to those followed in the school/s children attend, while maintaining the rights of children in a recreation and leisure program
- children are supported to develop skills to identify and report inappropriate behaviours such as bullying (including cyber bullying) and social exclusion.

sight ***Assessors may* sight:**

- the service's policies and procedures on interactions with children and behaviour guidance
- evidence of:
  - » planned and spontaneous experiences that support children to develop and practise the skills required to participate in group discussions and negotiate shared decision-making with their peers
  - » collaboration with schools, other professionals or support agencies that work with children who have diagnosed behavioural or social difficulties
- examples of information gathered from families about their children's social skills and relationship preferences
- documented communication with families that shows their views, ideas and preferences have been considered when planning appropriate strategies to support their child's positive inclusion in the program
- the service's policy on interactions with children that outlines a clear process for guiding children's behaviour, based on current recognised approaches and with a focus on children's rights
- individual behaviour guidance plans for children, including evidence of consultation with their families and if appropriate, input and suggestions from other professionals and support agencies.

EXCEEDING GUIDANCE FOR STANDARD 5.2
RELATIONSHIPS BETWEEN CHILDREN

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 5.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 5.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 5.2 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times.
- All educators:
  - confidently and effectively facilitate cooperative and collaborative learning opportunities, in appropriate group sizes, to ensure that every child is consistently supported to collaborate, learn from and help others
  - demonstrate a consistent approach to behaviour guidance to ensure that each child is supported at all times to regulate their own behaviour, respond appropriately to the behaviour of others, and communicate effectively to resolve conflict.
- All educators are able to explain how their support of children to build and maintain sensitive and responsive relationships is guided by an understanding of and commitment to:
  - creating supportive environments that enable children to collaborate, learn from and help each other
  - supporting each child to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.
- The observed and discussed approach to supporting children to build and maintain sensitive and responsive relationships:
  - consistently aligns with the principles and practices of the approved learning framework/s
  - consistently aligns with the service's philosophy, policies, and procedures, including the behaviour management/guidance strategy.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 5.2 Exceeds the NQS:

- The service's approach to supporting children to build and maintain sensitive and responsive relationships:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » enables the identification and implementation of opportunities to strengthen practice
  - » is informed by current recognised guidance.
- Any change to the service's approach to supporting children to build and maintain sensitive and responsive relationships is understood by all and implemented appropriately.
- Educators demonstrate self-awareness of the theoretical perspectives that influence their pedagogy, and the practice across the service, and show that they are committed to continuous improvement.
- The service team reflect together to:
  - » consider the social justice and equity implications of educators' approaches to facilitating active and collaborative learning opportunities and behaviour guidance
  - » engage in robust debate and discussion in which personal, professional and organisational values that support children to build and maintain sensitive and responsive relationships are identified and discussed.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 5.2 Exceeds the NQS:

- The service's approach to supporting children to build and maintain sensitive and responsive relationships:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service
  - » contributes to a culture of inclusiveness and sense of belonging at the service
  - » encourages all children to challenge stereotypes and biases, and develop a deep understanding and appreciation of the cultural diversity of the service and the broader community, including Aboriginal and Torres Strait Islander histories and cultures.
- All educators:
  - » draw on their knowledge of each family's strengths and priorities, including behaviour guidance approaches in the home environment, to support children to build and maintain sensitive and responsive relationships
  - » tailor their approaches to supporting children to build and maintain sensitive and responsive relationships in response to input from families and the community.

QUALITY AREA 6
COLLABORATIVE PARTNERSHIPS WITH FAMILIES AND COMMUNITIES

Overview

Quality Area 6 focuses on supportive, respectful relationships with families which are fundamental to achieving quality outcomes for children. Community partnerships that are based on active communication, consultation and collaboration also contribute to children's inclusion, learning and wellbeing.

Families are the primary influence in their children's lives; they often have strong beliefs and values regarding the education and care of their children. When families and services collaborate and build respectful relationships, children have the opportunity to develop a positive sense of self and experience respectful relationships. As well, the child, the family and the service do not exist in isolation; they are part of a much wider community. Children benefit from services engaging with local communities because these partnerships strengthen children's interest and skills in being active contributors to their community. Collaborative partnerships are achieved when the service's philosophy has a strong commitment to valuing diversity, inclusive practice and connecting to the community. To help services be prepared to engage all children in the educational program, services may also develop specific plans (for example a ***Strategic Inclusion Plan***) to ensure the service is 'inclusion ready'.

Related National Law

A number of the guiding principles that underpin the National Law support services' engagement with Quality Area 6. These principles are:

- that the principles of equity, inclusion and diversity underlie 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 (see section 3(3) of the ***National Law***).

Standards, elements and concepts

Quality Area 6 has two standards that support building collaborative partnerships with families and communities to enhance children's inclusion, learning and wellbeing as they transition through the early years into school and/or attend outside school hours care services. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because:

- authentic family engagement encourages the active participation of each child and their family in service decisions and the educational program
- reflecting on inclusive practice helps the service to identify and remove potential barriers to an inclusive environment and support the wellbeing of all children and families

- community engagement helps the service to build relationships between each child, the families of the service and the community they reside in, and encourages each child to develop their identity within the context of their local community
- as well as enriching programs, practices and policies, it provides an opportunity to support children to respect and value diversity.

Standard/ Elements	Concept	Descriptor
QA6		**Collaborative partnerships with families and communities**
6.1	Supportive relationships with families	Respectful relationships with families are developed and maintained and families are supported in their parenting role.
6.1.1	Engagement with the service	Families are supported from enrolment to be involved in the service and contribute to service decisions.
6.1.2	Parent views are respected	The expertise, culture, values and beliefs of families are respected and families share in decision-making about their child's learning and wellbeing.
6.1.3	Families are supported	Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.
6.2	Collaborative partnerships	Collaborative partnerships enhance children's inclusion, learning and wellbeing.
6.2.1	Transitions	Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.
6.2.2	Access and participation	Effective partnerships support children's access, inclusion and participation in the program.
6.2.3	Community engagement	The service builds relationships and engages with its community.

STANDARD 6.1
SUPPORTIVE RELATIONSHIPS WITH FAMILIES

RESPECTFUL RELATIONSHIPS WITH FAMILIES ARE DEVELOPED AND MAINTAINED AND FAMILIES ARE SUPPORTED IN THEIR PARENTING ROLE.

How Standard 6.1 contributes to quality education and care

Standard 6.1 acknowledges that the family is the most powerful influence on each child's life and that learning outcomes are most likely to be achieved when educators work in partnership with families to ensure the experiences planned for children are meaningful (*Early Years Learning Framework*, p. 12; *Framework for School Age Care*, p. 10). This standard also recognises that each family's wellbeing and capacity to nurture and support their children, is influenced by the community in which they live and the material resources and social supports available to them.

In Australia there is a diversity of family types (including, for example blended and extended families, LGBTI parents) and all families are different. Children have diverse understandings of 'family' and unique relationships with those who feature prominently in their lives. Services that reflect on what the concept of family means to each child can nurture the important relationships that exist between children and their families. For example, services need to recognise the importance of extended families, kinship ties, carers and guardians in children's lives.

Effective, respectful communication between educators and families builds shared understanding of each other's expectations and attitudes, and builds on the strength of each other's knowledge. Educators create a welcoming environment when the diversity of families, and the families' practices and aspirations they hold for their children, are respected (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 11). Sometimes family aspirations and expectations can be in conflict with service philosophy and practice. Open, respectful and non-judgmental communication between educators and families builds a shared understanding of children's learning and participation.

Collaborative partnerships with families contribute to building a strong, inclusive community within the service. Respectful, honest and open two-way communication with educators assists families to feel connected with their children's experience in education and care and helps them develop trust and confidence in the service. The service also supports families in their parenting role by becoming a reliable source of practical information about resources and services within the local community and by helping families to understand what constitutes quality practice.

Questions to guide reflection on practice for Standard 6.1 (for all services)

Respectful and inclusive relationships with families

- How do we help all families to feel comfortable, welcome and valued at the service?
- Does our concept of family reflect the diversity of family structures in the service and the wider community?
- How could we improve our approach to support relationships with all families?
- How do we promote a common understanding of inclusion?
- How do we promote the benefits and value of inclusion for all children and families?
- How can we engage in genuine partnership with families to challenge and address stereotypical or biased views of family compositions?
- How do we listen to families and include their perspectives in the educational program?
- What role do families play in the service? How can we recognise their contributions?
- How do we share decision-making with families? What decisions can we make together with families?
- How does the information that families provide to the service contribute to operational decision-making?
- How does the service establish and maintain meaningful partnerships with all families?
- How can the service be more accessible to families?
- How do we communicate our philosophy and educational choices with families?
- What strategies are in place for information sharing between families and the service during orientation, settling in and onwards?
- What techniques or strategies do we use to communicate with families who have specific or diverse communication preferences?
- How can we find out if our communication strategies are reaching all families and if they would prefer other methods?

Supporting families in their parenting role

- How do we encourage families to contribute to their child's experiences in ways that are meaningful for them?
- How do we learn about children's families and others who are important in their lives?
- How do we respond when families make requests or express concerns?

- How do we find out and share information about the community resources that are relevant to our service and to the children in the service and their families?
- How do we support families to access community services and resources? How do we find out what kinds of support would be beneficial to families?
- How do we support and reassure families whose children are using an education and care service for the first time?
- How do we seek information that will assist children to manage separation from their primary caregiver without anxiety?

ELEMENT 6.1.1
ENGAGEMENT WITH THE SERVICE

FAMILIES ARE SUPPORTED FROM ENROLMENT TO BE INVOLVED IN THE SERVICE AND CONTRIBUTE TO SERVICE DECISIONS.

National Law & Regulations

National Law and National Regulations underpinning Element 6.1.1

Regulation 157 Access for parents

What Element 6.1.1 aims to achieve

Families' first major engagement with the service occurs during the enrolment process. The enrolment process presents an opportunity for services to share information about its operations, philosophy and governance with families. Services can also encourage families to express their preferences about how the orientation of their child into the service will occur. This helps families to feel supported from the beginning and to understand that the service values their input about what is best for their child.

When families are given the opportunity to provide information about their children that will assist educators to get to know them and help them settle into the program, families feel that their suggestions are clearly valued and that they are regarded as partners in their child's experience at the service. This partnership between the service and the family strengthens when educators seek further information from families while assessing children's progress and planning their individual goals.

Services encourage families to become involved in ways that suit their current commitments, availability and skills. For example families can contribute to service processes, such as reviewing the service philosophy and self-assessments, revising policies and procedures, and identifying goals for the Quality Improvement Plan.

When services seek and encourage families' meaningful involvement in the service, families are included as co-contributors to decisions and are able to influence service programs, policies and planning processes. Services may use a range of strategies to cater to the diversity of family preferences on information sharing and engagement.

Assessment guide for meeting Element 6.1.1 (for all services)

Enrolment and settling-in process

observe

***Assessors may* observe:**

- prospective families being:
  - » invited and encouraged to visit and become familiar with the service before their child starts
  - » encouraged to talk with service staff about the values and expectations they hold in relation to their child's time at the service before, during and after the enrolment process
  - » encouraged to share information about other child-related services accessed by the family
- families being encouraged to:
  - » stay with their child for as long as they choose during the settling-in period and on an ongoing basis
  - » contact the service, and in particular their child's educator/s during the day if they wish
- educators assisting families to develop and maintain a routine for saying goodbye to their child
- each child being offered comfort and reassurance in a way that is suited to the child during separation from their family
- educators sharing honest information with families about how their child is settling into the service

family day care

- a principal office that is well signposted, and accessible and welcoming to families and children

school age children

- services acknowledging and respecting children's prior learning from school.

discuss

***Assessors may* discuss:**

- how the service identifies the individual education and care requirements of each child and their family
- the provisions made to support families during the enrolment and orientation process
- how the settling-in process is tailored to meet the needs of individual children and families
- how information is gathered from families to support continuity of care between home and the service

school age children

- how currently enrolled children are involved in the orientation of new children and their families
- how links and communication with schools can be established and maintained

family day care

- how co-ordinators:
  - » determine the best placement for a new child and how families are involved in the selection of an educator best able to support the child's wellbeing, learning and development
  - » collaborate with educators and families to settle new children into the service
  - » work with educators to make decisions about the placements of children from diverse cultural backgrounds and/or children requiring additional support
- the educator's approach to interviewing prospective families and settling their children into the service.

sight ***Assessors may* sight:**

- the service's enrolment and orientation procedures and documentation
- evidence that families seeking a place at the service are provided with easy-to-read information about how the service operates and what it can provide (including information about inclusion and learning)

family day care

- documented information provided:
  - » to new families about the role of the principal office, including how co-ordinators:
    - monitor each child's placement
    - provide ongoing support for educators, families and children
    - assist families in finding an alternative placement when the child's educator is unavailable
    - assist families to access service policies and procedures
  - » by the educator to new families about themselves and their family, and their philosophy, expectations, routines and experiences offered to children.

Family involvement and contribution to service decisions

observe

***Assessors may* observe:**

- a culture of open, respectful communication, characterised by friendly conversations between families, their child's educator and other members of the service
- educators and families sharing information about children's progress, relationships, interests, strengths and experiences while participating in the service and within their family
- the service:
  - » creating a welcoming environment for all families
  - » communicating respectfully and sensitively with all families
  - » recognising and valuing diversity when engaging with families
  - » responding to families' questions, concerns and requests in a prompt and courteous way
  - » implementing a range of strategies to share information and engage families in decision-making processes.

discuss

***Assessors may* discuss:**

- processes in place to communicate with families in ways that are convenient for them
- opportunities provided for families to:
  - » talk with the approved provider, educational leader, nominated supervisor, co-ordinators and educators about their participation in the service and any issues or concerns
  - » provide regular feedback and input about all aspects of the service
- how families, including extended family members, are able to contribute to the operation of the service and be involved in an advisory, consultative or decision-making role
- how families are encouraged to contribute to the development and review of the service's programs, philosophy, policies and procedures
- how the service involves families and uses their suggestions during self-assessment, planning for quality improvement and development of the Quality Improvement Plan (see *Element 7.1.2*)

family day care

- how the principal office collaborates with and seeks contributions from families about service decisions
- how educators and co-ordinators maintain two-way communication with families about children's placements and their progress
- how co-ordinators:

- » work with educators to facilitate family involvement
- » support the involvement of families in the service
- » support and involve families who have difficulty accessing the principal office due to their geographical location and/or lack of transport.

sight — ***Assessors may* sight:**

- evidence that:
  - » the service has strategies in place to communicate with families with varying literacy skills, or where English is not a first language
  - » the service provides resources that are available to families in a range of languages
  - » families are able to share their understanding of their child's strengths, interests, abilities and needs
  - » families have easy access to the service's policies and procedures
  - » families, including extended family members, are invited and supported to participate in the program and events at the service
  - » families are invited to participate and become actively involved in decision-making at the service, and are asked for feedback on service decisions
  - » families have opportunities to contribute to the development and review of the service's programs, statement of philosophy, policies and Quality Improvement Plan
- information available to families about the range of opportunities they have to participate in the service

family day care

- evidence of regular communication between co-ordinators and families.

ELEMENT 6.1.2
PARENT VIEWS ARE RESPECTED

THE EXPERTISE, CULTURE, VALUES AND BELIEFS OF FAMILIES ARE RESPECTED AND FAMILIES SHARE IN DECISION-MAKING ABOUT THEIR CHILD'S LEARNING AND WELLBEING.

What Element 6.1.2 aims to achieve

Educators recognise that families are children's first and most influential teachers, and that the views of parents should be respected (*Early Years Learning Framework*, p. 12; *Framework for School Age Care*, p. 10). Children are born belonging to a culture, which is not only influenced by traditional practices, heritage and ancestral knowledge, but also by the composition, experiences, values and beliefs of individual families and communities (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 12).

When educators communicate with families to find out about their child's evolving preferences, experiences and routines, and respect the expertise, cultures, languages, values, beliefs and child-rearing practices of families, they are able to:

- better support each child's learning and wellbeing
- develop a tailored educational program that builds on each child's background, strengths and promotes their development
- support families in their parenting role (*Early Years Learning Framework*, pp. 12–13; *Framework for School Age Care*, pp. 10–11).

In a service environment where families are respected and share in decision-making, families and educators are supported to value each other's knowledge and roles, and communicate freely and respectfully. Genuine partnership relationships which include shared decision-making with families support consistency between children's experiences at home and at the service, which positively enhances children's learning, wellbeing and inclusion (*Early Years Learning Framework*, p. 12; *Framework for School Age Care*, p. 10).

Assessment guide for meeting Element 6.1.2 (for all services)

Respecting families and sharing decision-making

observe

***Assessors may* observe:**

- information being exchanged between families and educators at arrival and departure times
- educators and families discussing children's individual requirements and play preferences sensitively, respectfully and confidentially
- educators demonstrating a non-judgmental understanding of each child, and each child's family and community context

- educators sharing with families:
  - some of the interactions they have had with children
  - children's successes and achievements
- families:
  - being informed promptly and sensitively of any incidents affecting their child
  - talking about the values and expectations they hold in relation to their child's wellbeing and learning
  - sharing their knowledge, skills and expertise as well as aspects of their family life and culture
  - contributing to the documentation of their child's learning and goal-setting.

discuss

***Assessors may* discuss:**

- the strategies used by the service to facilitate shared decision-making with families and to respect families' requests
- how the service supports consistency between each child's home and the service but still ensures best practice and upholds the rights of each child
- opportunities provided for families to:
  - contribute to curriculum decision-making
  - provide feedback about the experiences planned for their child
  - have private discussions with the educational leader, nominated supervisor, co-ordinators and educators.

sight

Assessors may* sight *evidence that:

- information from the family about each child's background, experiences, preferences and home routines is updated, recorded in the child's documentation and used to support curriculum decision-making
- families are given opportunities to:
  - provide feedback about their child's experiences
  - make suggestions about service routines, transitions and activities
  - contribute to curriculum decision-making and the documentation of children's learning
- families' knowledge of their children is incorporated into plans for children's experiences and learning.

ELEMENT 6.1.3
FAMILIES ARE SUPPORTED

CURRENT INFORMATION IS AVAILABLE TO FAMILIES ABOUT THE SERVICE AND RELEVANT COMMUNITY SERVICES AND RESOURCES TO SUPPORT PARENTING AND FAMILY WELLBEING.

National Law & Regulations

National Law and National Regulations underpinning Element 6.1.3

Section 175 Offence relating to requirement to keep enrolment and other documents

What Element 6.1.3 aims to achieve

Services use a variety of methods to support families and keep them informed of the details about their child's learning, development and wellbeing, as well as the operational aspects of the service. This includes informing families about the service's ongoing self-assessment in relation to the National Quality Standard, quality improvements being achieved, as well as their participation in, and outcome of, the assessment and rating process.

Educators and co-ordinators are able to support families in their parenting role by being readily available for informal discussions with them at mutually convenient times. Further support is offered by referring families to current information on parenting and family issues displayed in the service, as well as referring them to recognised parenting and child development websites.

Providing easily accessible and reliable information about support networks and local community services helps families to make connections and use resources that support parenting. Improving the wellbeing of families is an important contributing factor in improving children's overall wellbeing. School age care educators facilitate communication between families and the schools their children attend.

Assessment guide for meeting Element 6.1.3 (for all services)

Providing information about the service and other community services

observe

***Assessors may* observe:**

- educators and families sharing information about:
  - » the service's operations
  - » parenting roles and relevant support services and resources
  - » community services
- educators assisting families to identify, locate, contact and/or access local community services.

discuss

***Assessors may* discuss:**

- how information is available to families about the service's operations
- how families are kept informed about the service's quality improvement against the National Quality Standard
- the processes used by the service to maintain current contact details for local support services
- how families are sensitively supported and encouraged to access local community services and resources that may be relevant to them

family day care

- how co-ordinators:
  - » keep families informed about the operation of the family day care service
  - » advise families about proposed policy changes, encourage input and inform them of any changes
  - » support educators' knowledge of community resources and services that families could be referred to
  - » provide guidance and support to educators in discussing sensitive issues with families.

sight

***Assessors may* sight:**

- newsletters, communication books or other methods of communication with families
- information about the service's philosophy, operation, policies and procedures being available:
  - » in areas of the service regularly accessed by families
  - » in service documentation provided to them
  - » on noticeboards, charts or posters in areas regularly used by families and/or through appropriate media
- information about community services and resources available in:
  - » areas of the service regularly used by families but where they can be accessed privately
  - » service documentation such as the family handbook
- easy-to-read information about the service in the languages used at the service and in the local community
- evidence that policy changes are explained in detail and communicated to families prior to implementation.

EXCEEDING GUIDANCE FOR STANDARD 6.1
SUPPORTIVE RELATIONSHIPS WITH FAMILIES

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 6.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 6.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 6.1 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times
- Educators, co-ordinators and the educational leader:
  - » engage collaboratively and respectfully with families from enrolment and orientation to learn about their expertise, culture, values and beliefs and priorities for their child's learning and wellbeing
  - » consistently support families to participate in the service, make meaningful contributions to service decisions, and share in decision-making about their child's learning and wellbeing
  - » regularly provide families with comprehensive, current and accessible information about the service, relevant community services, and resourcing to support parenting and family wellbeing
  - » recognise the leading role of families in their children's wellbeing and development
- Across the service, the observed and discussed approach to building respectful and supportive relationships with families demonstrates a strong commitment to the principles and practices of the approved learning framework/s, and aligns with the educational program, the service's statement of philosophy, and the enrolment and orientation process.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 6.1 Exceeds the NQS:

- The service's approach to supporting relationships with families:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance on supporting relationships with families
- Any change to the service's approach to supportive relationships with families is understood by all and implemented appropriately
- Educators, co-ordinators and the educational leader:
  - » Intentionally consider alternate ways of engaging with families and supporting their participation at the service, and make changes where opportunities to further enhance children's and families' outcomes are identified
  - » are able to explain how ongoing engagement with families influences the design and delivery of the educational program
  - » are aware of and able to discuss how the approach to engaging with families and supporting their participation at the service aligns with practice theory, the approved learning framework/s and the service's philosophy, policies and procedures
  - » are aware of how families' perceptions of their role influences how they participate in the service
  - » consider and discuss social justice and equity implications of their approach to engaging with and supporting each family's participation in the service, including self awareness of their own biases and how these may impact on building respectful relationships with families
- As a team, educators, co-ordinators and the educational leader engage in robust debate and discussion about the service's approach to engaging with families and supporting their participation at the service. As part of this debate and discussion, personal, professional and organisational values that influence practice are identified, discussed and challenged.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 6.1 Exceeds the NQS:

- Relationships with families:
  - » reflect the unique geographical, cultural and community context of the service
  - » welcome, reflect and draw on the voices, priorities and strengths of the children and families at the service

- Educators, co-ordinators and the educational leader:
  - » actively support families to build relationships with other families and with relevant community services to strengthen child, parenting and family outcomes
  - » consistently tailor their approaches to communicating with and engaging with each family in recognition of individual families' circumstances and ways of connection, and seek out families' views on their preferred means of communication and participation from enrolment
  - » draw on their knowledge of each family to provide thoughtful and tailored opportunities for each family to participate in the service , for example building a sense of belonging for Aboriginal and Torres Strait Islander families
  - » explore opportunities to build trust and support families to contribute to the educational program in ways that celebrate and share their strengths, beliefs and culture with children, families and the service team
  - » build and maintain community partnerships that support and promote parenting and family wellbeing and proactively and respectfully engage with families to support their parenting and family wellbeing circumstances and priorities.

STANDARD 6.2
COLLABORATIVE PARTNERSHIPS

COLLABORATIVE PARTNERSHIPS ENHANCE CHILDREN'S INCLUSION, LEARNING AND WELLBEING.

How Standard 6.2 contributes to quality education and care

Standard 6.2 recognises the connections between children, families, the service and communities and the importance of collaborative relationships and partnerships in enhancing all children's inclusion, learning, development and wellbeing (*Early Years Learning Framework*, p. 14; *Framework for School Age Care*, p. 13).

When working with families, the service understands the importance of seeing families in the context of their participation in the local community and wider society. Services can also establish and maintain an active presence in the local community, seek to strengthen community links and use community resources to support families. This supports the inclusion of children in their community and broadens children's understanding of the world in which they live.

Open communication and collaboration between the service, families and other professionals within the community can be mutually beneficial. These partnerships:

- build the relationships between each child, their families and the service so that each child's capacity to fully participate in the program is supported
- assist children to become aware of the similarities, differences and connections between people within the community
- can provide everyone with a holistic understanding of each child, which contributes positively to every child's inclusion, wellbeing and learning
- create opportunities to develop a shared understanding about inclusion
- give families an opportunity to provide information about their child's interests, strengths and abilities, as well as provide feedback that assists educators to develop programs that are focused on supporting the learning and development of every child
- build the capacity of organisations involved in supporting children and families in the local community
- are more likely to result in information sharing and collaborative problem-solving
- assist in building an environment that supports inclusion and celebrates diversity
- are built on understanding children's and families' right to privacy and confidentiality (see ***Element 7.1.2***).

Questions to guide reflection on practice for Standard 6.2 (for all services)

Building collaborative partnerships

- How do we share information to support children's learning and development with other services with which the child and family are connected?
- How do we share our knowledge and expertise about children's learning and inclusion with other professionals who are working with children and families enrolled in the service?
- How do we support each child's transition from and to other education and care environments?
- How do we support each child's successful transition to formal schooling?
- In what ways do we work with schools and other community organisations to support children and families? How effective are these strategies and how can we improve them?
- How do we access support for children's specific individual requirements and rights?
- What local resources and networks exist that might connect children and families with the local community?
- How is information and data (for example the Australian Early Development Census) used to build an understanding of the local community?
- What inclusion support services are available to provide tailored advice for our service?
- What is happening in our local community that is relevant to our work with children and families? How can we best be involved?
- How are we assisting children and their families to develop a sense of belonging to their local community?
- How are we supporting children to see themselves as active contributors to their community?

ELEMENT 6.2.1
TRANSITIONS

CONTINUITY OF LEARNING AND TRANSITIONS FOR EACH CHILD ARE SUPPORTED BY SHARING INFORMATION AND CLARIFYING RESPONSIBILITIES.

National Law & Regulations

National Law and National Regulations underpinning Element 6.2.1

Section 175 Offence relating to requirement to keep enrolment and other documents

What Element 6.2.1 aims to achieve

Transitions in early childhood education settings occur:

- from home to the education and care setting
- between rooms and groups in a setting
- between settings
- from education and care settings to school
- between routines and experiences.

Transitions offer opportunities and challenges for children as different spaces and settings have different purposes, expectations and practices. Working collaboratively with families, other educators, and other professional services, educators support children to actively prepare for transitions between settings and experiences by:

- helping children to understand the expectations, routines and practices of different settings, and building resilience to feel comfortable with the process of change
- sharing information about each child's learning, strengths and interests to support educators in a new setting or group to build on these foundations
- building on children's prior and current experiences to help them to feel secure, confident and connected in their new setting or group (*Early Years Learning Framework*, p. 16; *Framework for School Age Care*, p. 16).

Assessment guide for meeting Element 6.2.1 (for all services)

Supporting smooth transitions

observe

***Assessors may* observe:**

- children:
  - » experiencing positive transitions within the service, between services and between the service, home, preschool/kindergarten and/or school

school age children

- » being supported and appropriately supervised when being transported to or from the service by car, bus, train, tram or on foot

centre-based service

- educators on different shifts in centre-based services communicating with each other about:
  - » children's experiences earlier in the day
  - » information shared by families about their child.

discuss

***Assessors may* discuss:**

- the strategies in place to ensure:
  - » children are supported when:
    - moving from one group to another
    - moving between settings
    - returning to the service after an absence
    - transitioning between routines and experiences

school age children

- they arrive at the service at short notice or unexpectedly

  - » excursions are positive and safe learning experiences for children
- the strategies and processes used to support:
  - » children's positive transition to formal schooling
  - » children requiring additional support in their transition to school and to specialist services
- how road safety education and any active transport initiatives are incorporated into the program
- how families are involved in decision-making regarding transitions within the service (for example children moving to a different educator, room or group)

school age children

- how:
  - » information from families about their child's attendance/non-attendance at the service is communicated to educators responsible for transitioning children between school and the service
  - » information is shared between educators working in the before-school and after-school components of the service
  - » the service works with families to support and manage children's attendance at extracurricular and sporting activities

family day care

- processes in place to ensure families are able to access alternative education and care if their usual educator is unavailable.

sight ***Assessors may* sight:**

- examples of summaries of the child's progress towards the learning outcomes when transitioning between different age settings
- examples of plans and statements to assist children in making positive transitions from the service to formal schooling
- written procedures for releasing children from the service and ensuring that they are released only to authorised nominees
- records of children's arrivals and departures, with the signature of the person responsible for verifying the accuracy of the record and the identity of the person collecting the child

birth to three

- evidence that in centre-based services, shifts are planned to maximise continuity of education and care for children

school age children

- documented procedures for transitioning children between school and the service, including a procedure that addresses enrolled children who have not arrived at the service.

ELEMENT 6.2.2
ACCESS AND PARTICIPATION

EFFECTIVE PARTNERSHIPS SUPPORT CHILDREN'S ACCESS, INCLUSION AND PARTICIPATION IN THE PROGRAM.

What Element 6.2.2 aims to achieve

The inclusive practices of educators, and the partnerships they form with each child and their families, have a significant effect on each child's access, participation and success in learning. Educators' attitudes, beliefs and values about inclusion are key factors for successful inclusion. Children thrive when families, educators, local schools and the wider community work together in partnership to support their access, inclusion and participation.

Services can support each child's access, inclusion and participation in the program by learning about their individual context (family circumstances, geographic location, cultural and linguistic experiences) as well as their interests, learning styles, strengths and abilities. The educational leader and educators use this knowledge when making decisions about the physical environment, the curriculum and the day to day routines and transitions. They ensure that there are no barriers to children's participation in any aspect of the program (*Early Years Learning Framework*, p. 13; *Framework for School Age Care*, p. 11).

By developing their professional knowledge and skills, and working in collaborative partnership with children, families and other services within the community, educators find effective ways to ensure that all children have opportunities to experience quality learning. This gives children a sense of personal worth and enhances each child's access and participation in everyday events, routines and play experiences (*Early Years Learning Framework*, p. 12–13; *Framework for School Age Care*, p. 11). Planning and reflecting on practices, programs and policies assists educators to ensure that potential barriers to participation are addressed, each child is participating in the educational program, and services are 'inclusion-ready' and welcoming.

Assessment guide for meeting Element 6.2.2 (for all services)

Supporting children's access, inclusion and participation

observe

***Assessors may* observe:**

- all children:
  - » demonstrating a sense of belonging and comfort in the service environment
  - » demonstrating trust and confidence in educators and staff members
  - » participating and engaging in play experiences (adapted from *Early Years Learning Framework*, p. 21; *Framework for School Age Care*, p. 20).

centre based service

- that educators have adapted aspects of the environment, routines, transitions and staffing arrangements to facilitate the inclusion of all children.

discuss

***Assessors may* discuss:**

- how the service:
  - » demonstrates its commitment to the participation of all children
  - » ensures that the educational leader, co-ordinators and educators access support and/or participate in professional development to build the skills and expertise necessary to support the inclusion of children with specific health, cultural or developmental requirements
  - » collaborates with families, other professionals, therapists or specialists from inclusion/support agencies to support all children and encourage their participation
- how other professionals/therapists are involved in devising programs for individual children, and how shared goals for learning are identified and implemented
- how plans are developed to support the inclusion of children who require specific health, cultural or developmental support
- the processes involved in making or taking a referral to or from other services/agencies
- how the service implements strategies to ensure environments are welcoming to children and families in the community, and enrolment information and procedures are accessible and clear
- how educators identify potential barriers to inclusion and ensure the environment and routines are adapted appropriately to facilitate the participation of all children

school age children

- how the service collaborates with their local school to devise complementary support plans for individual children.

sight

***Assessors may* sight:**

- evidence:
  - » that the service seeks to build their capacity to respond to each child's specific requirements
  - » of professional development that supports responsiveness to each child's specific requirements and inclusive practices
  - » that the service's philosophy, policies and procedures demonstrate a commitment to access, inclusion and participation for every child and their family in the service
  - » of meetings and/or communication between the service, families, and other agencies or specialists working with individual children
  - » that where required, families are referred and supported to make contact with appropriate support services/agencies
  - » that with the family's consent and when required, information about the child's experiences and achievements in the service is appropriately shared with other support services/agencies
- examples of individual support plans for children that are embedded within the daily program and support the inclusion of the child
- Strategic Inclusion Plans that promote inclusive programs and practices
- procedures for families or educators to request referrals for children
- processes for making and accepting referrals from other services/agencies in the local community such as:
  - » child protection agencies
  - » early childhood intervention services
  - » cultural support agencies
  - » family support agencies
  - » health professionals
- images, books and resources that reflect children and adults, from a range of backgrounds, cultures and abilities, as active contributors to and participants in the community.

ELEMENT 6.2.3
COMMUNITY ENGAGEMENT

THE SERVICE BUILDS RELATIONSHIPS AND ENGAGES WITH ITS COMMUNITY.

What Element 6.2.3 aims to achieve

Services can further support children's sense of belonging by helping them to experience connections and be engaged with their local community. When services develop respectful and responsive connections with their immediate or wider community, they are likely to further enrich the educational program for children. Inviting members of diverse groups within the community to share their interests and expertise helps to extend children's knowledge, and assists the service to reflect on the inclusiveness of its practices. This broadens children's understanding of the world in which they live and contribute.

Building connections and relationships with people in the community helps children to learn more about various cultures that exist within Australia, including knowledge about Aboriginal and Torres Strait Islanders' perspectives, identity, histories, cultures and places of significance in their local community.

Having opportunities to visit places in the community helps children to form relationships with a broad range of people from the community, and to build respect and trust in adults outside their immediate family and service.

Children in school age settings have opportunities to be involved in a wide range of community activities. This allows older children to develop their capacity for independence and self-direction within the context of their local community (*Framework for School Age Care*, p. 24).

Assessment guide for meeting Element 6.2.3

Community engagement

observe

***Assessors may* observe:**

- an environment that reflects the lives of the children and families using the service and the cultural diversity of the broader community, including Aboriginal and Torres Strait Islander communities
- images, books and resources that provide a balanced view of contemporary Australians
- all service staff responding positively to the differences in families' home lives and lifestyle choices
- the educational leader and educators planning and implementing experiences in the program to support children's understanding of the community within which they live.

discuss

***Assessors may* discuss:**

- how the service:
  - » builds connections between the service and the local community
  - » reflects and incorporates the diversity of the local community across its operations
  - » strengthens children's connection with and understanding of their community
  - » uses community resources to improve the educational program and provide quality learning experiences for each child
  - » demonstrates a commitment to developing their own cultural competence in a two-way process with families and communities
  - » shares information about community events relevant for children and families
- examples of community members coming into the service and examples of the service's participation in the local community
- how the educational leader, nominated supervisor, educators and co-ordinators raise awareness of Aboriginal and Torres Strait Islander and/or other local communities
- how children are supported to develop an understanding of their social and cultural heritage

school age children

- how educators incorporate educational excursions or incursions to develop children's understanding of their local community.

sight

***Assessors may* sight:**

- evidence that:
  - » the service liaises with other children's services, local businesses, schools, health and family support services and other organisations working with families and children in the local area
  - » members of the local community are invited into the service to contribute to the program
  - » children have opportunities to learn about and contribute to the community in which the service is located
- planned experiences that involve incursions and/or children visiting parts of their community to extend on knowledge gained.

EXCEEDING GUIDANCE FOR STANDARD 6.2 COLLABORATIVE PARTNERSHIPS

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 6.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 6.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 6.2 Exceeds the NQS:

- Educators, the educational leader, and the co-ordinator demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times
- Educators, co-ordinators and the educational leader:
  - » establish and maintain ongoing collaborative partnerships with the community and link with community and support agencies to enhance children's learning, wellbeing and participation
  - » consistently facilitate inclusion and support assistance to ensure that the educational program enables each child to fully participate
  - » systematically promote continuity of learning and transitions for each child by sharing relevant information, clarifying responsibilities, and building collaborative strategies with relevant stakeholders
- Across the service, the observed and discussed approach to building collaborative partnerships with the community displays a strong commitment to the principles and practices of the approved learning framework/s, and aligns with the educational program and with resources that support community engagement and inclusion.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 6.2 Exceeds the NQS:

- The service's approach to collaborative partnerships:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance on collaborative partnerships.

- Any change to the service's approach to collaborative partnerships is understood by all and implemented appropriately
- Educators, co-ordinators and the educational leader:
  - » purposefully consider and create opportunities to strengthen the service's approach to enhancing children's inclusion, learning and wellbeing, and seek out new links and partnerships where opportunities to further enhance children's and families' outcomes are identified
  - » are able to explain how ongoing community engagement influences the design and delivery of the educational program and supports children's learning, wellbeing and enables full participation in the program for every child
  - » are aware of and able to discuss how the service's approach to inclusion support and supporting transitions between learning environments aligns with practice theory, the approved learning framework/s and the service's policies and procedures
  - » consider and discuss social justice and equity implications of their approach to inclusion support and supporting transitions for all children, including self awareness of their own biases and how these may impact on child and family outcomes
  - » challenging stereotypes, raising awareness of, and cultivating deep respect for Aboriginal and Torres Strait Islander histories and cultures
- As a team, educators, co-ordinators and the educational leader engage in robust debate and discussion about the service's approach to building community partnerships and supporting inclusion and transitions. As part of this debate and discussion, personal, professional and organisational values that influence practice are identified, discussed and challenged.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 6.2 Exceeds the NQS:

- The service's collaborative partnerships:
  - » reflect the unique geographical, cultural and community context of the service
  - » welcome, reflect and draw on the voices, priorities and strengths of the children and families at the service.
- Educators, co-ordinators and the educational leader:
  - » support families to build relationships with relevant community services and agencies that enhance children's wellbeing, learning and participation in the educational program
  - » seek out and build new community partnerships in response to the perspectives, priorities and strengths of the children and families at the service, including the changing support and transition needs of children and including at the direct request of families if appropriate.
- Community partnerships contribute to a culture of inclusiveness and sense of belonging at the service.
- The service demonstrates a commitment to building and sustaining reciprocal relationships with community groups, including mutually beneficial partnerships that make connections with local Elders and give back to the community.

QUALITY AREA 7
GOVERNANCE AND LEADERSHIP

Overview

Quality Area 7 focuses on effective leadership and governance of the service to establish and maintain quality environments for children's learning and development. Effective leaders establish shared values for the service that reflect the service context and professionalism and set clear direction for the service's continuous improvement. Governance refers to the systems in place to support effective management and operation of the service, consistent with the service's statement of philosophy.

To achieve the best outcomes for children and families, a service requires a skilled and engaged workforce, sound administrative and risk management systems, well-documented policies and procedures, and a safe and healthy learning environment for children.

Effective evaluation and self-review enables a service to continuously improve their practice, policies and procedures. An ongoing cycle of self-assessment, planning and review, together with engagement with all stakeholders including families, creates a culture of continuous improvement at the service.

Educational leaders support educators to develop the curriculum and reflect on their practice to identify opportunities for improvement. The educational leader also assists educators to identify areas for ongoing learning and professional development to enhance their practice.

Standards, elements and concepts

Quality Area 7 has two standards that focus on governance and leadership at the service. These standards are crucial to delivering quality outcomes for children under the National Quality Framework because:

- effective governance requires a statement of philosophy, adequate management systems and clearly delineated roles and responsibilities to support the effective operation of a quality service
- effective leadership establishes a culture of reflective practice to encourage continuous improvement across all aspects of the service, resulting in a higher quality service for children and their families.

Standard/ Element	Concept	Descriptor
QA7		**Governance and Leadership**
7.1	Governance	Governance supports the operation of a quality service.
7.1.1	Service philosophy and purpose	A statement of philosophy guides all aspects of the service's operations.
7.1.2	Management systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.1.3	Roles and responsibilities	Roles and responsibilities are clearly defined, and understood, and support effective decision-making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.
7.2.1	Continuous improvement	There is an effective self-assessment and quality improvement process in place.
7.2.2	Educational leadership	The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.
7.2.3	Development of professionals	Educators, co-ordinators and staff members' performance is regularly evaluated and individual plans are in place to support learning and development.

STANDARD 7.1
GOVERNANCE

GOVERNANCE SUPPORTS THE OPERATION OF A QUALITY SERVICE.

How Standard 7.1 contributes to quality education and care

Governance provides leadership and direction to the service. The approved provider must ensure that there are effective systems, procedures and processes in place to support the service to operate effectively and ethically. This promotes the confidence of families and local community in the service.

An effective governance framework includes:

- a statement of philosophy based on the service's beliefs, values and aims for the educational program that the framework provides
- an effective and efficient management system to:
  - » enable the operation of a quality service
  - » ensure that all aspects of its operations, including policies and procedures, are consistent with the principles underlying the National Law, National Regulations and any other legislation that applies to the service
  - » manage foreseeable and long-term risks to the service's operations and to children while they attend the service
- ethical codes and practices that guide decision-making
- clearly defined roles and responsibilities that support effective decision-making and operation of the service
- an effective complaints management process
- a continuous improvement approach to all aspects of the service and its educational program.

By establishing effective administrative and records management systems and implementing documented policies and procedures, the service can focus on delivering quality education and care for children and families.

Questions to guide reflection on practice for Standard 7.1 (for all services)

- What are the strengths of our management and administration systems that contribute to delivering a quality service for children and their families?
- How does our service's governance contribute to the development of a service vision and purpose?
- How do we determine the appropriate management and governance structure at our service?
- How do we support the development of effective leaders at the service?

- What is the process for making decisions within the service and is this process fair and equitable?
- How can we improve the efficiency and effectiveness of our systems and processes?
- Does our management of confidential information meet requirements?
- To what extent does our statement of philosophy reflect our purpose, guide our practice and show a commitment to continuous improvement?
- How and when is our statement of philosophy reviewed?
- How do we address complaints? How is the complaints management process used to identify strategies for quality improvement?
- Is our complaints management system/process effective in supporting quality improvement and empowering families to express their concerns and suggestions?
- How can we ensure that families are able to contact the appropriate person when making a complaint?
- What systems are in place to ensure the service's compliance with the National Law and Regulations?
- What systems are in place to regularly check the currency and validity of working with children checks, teaching registrations, first aid qualifications, and anaphylaxis and asthma management training?
- How and when are our policies and procedures reviewed?
- What systems are in place to ensure policies and procedures are being used to inform practice and is this information being communicated to families in respectful ways?
- How does the service involve stakeholders in consultation, evaluation and advisory processes?
- What information is provided to families about our governance structures?

ELEMENT 7.1.1
SERVICE PHILOSOPHY AND PURPOSE

A STATEMENT OF PHILOSOPHY GUIDES ALL ASPECTS OF THE SERVICE'S OPERATIONS.

What Element 7.1.1 aims to achieve

A written statement of philosophy outlines the purpose and principles under which the service operates. It also reflects the guiding principles of the National Quality Framework (see section 3(3) of the *National Law*), and the approved learning frameworks (see *Element 1.1.1*).

A statement of philosophy serves three purposes. It:

- underpins the decisions, policies and daily practices of the service
- reflects a shared understanding of the role of the service among staff, children, families and the community
- guides educators' pedagogy, planning and practice when delivering the educational program.

When the educational leader, nominated supervisors, co-ordinators and educators contribute to the review of a philosophy statement, it is more likely to be owned by all members of the team. It encourages commitment and willingness to put it into practice.

Assessment guide for meeting Element 7.1.1 (for all services)

Service philosophy

observe

***Assessors may* observe:**

- the practices of the educational leader, nominated supervisor, educators and co-ordinators are in line with the service's statement of philosophy
- the values stated in the service philosophy being reflected in the service's environment, policies and procedures.

discuss

***Assessors may* discuss:**

- how a shared understanding of the service's statement of philosophy underpins practice and decision-making for both individual educators and the service, including the planning cycle and approaches to equity and inclusion
- how educators and families are encouraged to be meaningfully involved in reviews of the service's statement of philosophy

- examples of how the statement of philosophy is used to set directions, build commitment and align actions with the service's goals and desired outcomes
- the service's approach to reviewing their philosophy statement to ensure it fits with changes to management and staffing, and new knowledge about practice that educational leaders and educators may have gained.

sight

***Assessors may* sight:**

- the service's statement of philosophy
- documentation relating to the service's review of its statement of philosophy (such as staff meeting minutes)
- evidence that the service's statement of philosophy is included in the induction process for all staff members and in the enrolment and orientation process for families.

ELEMENT 7.1.2
MANAGEMENT SYSTEMS

SYSTEMS ARE IN PLACE TO MANAGE RISK AND ENABLE THE EFFECTIVE MANAGEMENT AND OPERATION OF A QUALITY SERVICE.

National Law & Regulations

National Law and National Regulations underpinning Element 7.1.2

Section 21 Reassessment of fitness and propriety

Section 51(2) Conditions on service approval (FDC co-ordinators)

Section 56 Notice of addition of nominated supervisor

Section 56A Notice of change of a nominated supervisor's name or contact details

Section 161 Offence to operate education and care service without nominated supervisor

Section 161A Offence for nominated supervisor not to meet prescribed minimum requirements

Section 162 Offence to operate education and care service unless responsible person is present

Section 162A Persons in day-to-day charge and nominated supervisors to have child protection training

Section 163 Offence relating to appointment or engagement of family day care co-ordinators

Section 164 Offence relating to assistance to family day care educators

Section 164A Offence relating to the education and care of children by family day care service

Section 165 Offence to inadequately supervise children

Section 166 Offence to use inappropriate discipline

Section 167 Offence relating to protection of children from harm and hazards

Section 168 Offence relating to required programs

Section 169 Offence relating to staffing arrangements

Section 170 Offence relating to unauthorised persons on education and care service premises

Section 171 Offence relating to direction to exclude inappropriate persons from education and care service premises

Section 172 Offence to fail to display prescribed information

Section 173 Offence to fail to notify certain circumstances to Regulatory Authority

Section 174 Offence to fail to notify certain information to Regulatory Authority

Section 174A Family day care educator to notify certain information to approved provider

Section 175 Offence relating to requirement to keep enrolment and other documents

Section 188 Offence to engage person to whom prohibition notice applies

Section 269 Register of family day care educators, co-ordinators and assistants

Regulation 158 Children's attendance record to be kept by approved provider

Regulation 159 Children's attendance record to be kept by family day care educator

Regulation 160 Child enrolment records to be kept by approved provider and family day care educator

Regulation 161 Authorisations to be kept in enrolment record

Regulation 162 Health information to be kept in enrolment record

Regulation 163 Residents at family day care residence and family day care educator assistants to be fit and proper persons

Regulation 164 Requirement for notice of new persons at residence

Regulation 165 Record of visitors

Regulation 166 Children not to be alone with visitors

Regulation 167 Record of service's compliance

Regulation 168 Education and care service must have policies and procedures

Regulation 169 Additional policies and procedures

Regulation 170 Policies and procedures to be followed

Regulation 171 Policies and procedures to be kept available

Regulation 172 Notification of change to policies and procedures

Regulation 173 Prescribed information to be displayed

Regulation 174 Time to notify certain circumstances to Regulatory Authority

Regulation 174A Prescribed information to accompany notice

Regulation 175 Prescribed information to be notified to Regulatory Authority

Regulation 176 Time to notify certain information to Regulatory Authority

Regulation 176A Prescribed information to be notified to approved provider by family day care educator

Regulation 177 Prescribed enrolment and other documents to be kept by approved provider

Regulation 178 Prescribed enrolment and other documents to be kept by family day care educator

Regulation 179 Family day car educator to provide documents on leaving service

Regulation 180 Evidence of prescribed insurance

Regulation 181 Confidentiality of records kept by approved provider

Regulation 182 Confidentiality of records kept by family day care educator

Regulation 183 Storage of records and other documents

Regulation 184 Storage of records after service approval transferred

Regulation 185 Law and regulations to be available

Jurisdiction specific provisions

Tasmania – Regulation 344 Working with vulnerable people registration—staff members

Victoria – Regulation 358 Working with children check to be read

Victoria – Regulation 359 Criminal history record check to be read and considered

What Element 7.1.2 aims to achieve

Efficient and effective systems

Efficient and effective management systems allow the service to identify and manage organisational risks in a timely manner, and carry out risks assessments as required to manage foreseeable risks to children's safety and wellbeing (see *Element 2.2.1*). Effective management systems support the educational leader, nominated supervisor and educators in their planning, delivery and reflection on the educational program, and the development of strategies to continuously improve. When educators have adequate time and administrative support to perform their roles, they can focus on delivering a quality service to children and their families.

Confidentiality and records management systems

Services are required to safely store and maintain the confidentiality and currency of information provided by families, service staff and other stakeholders. This builds families' confidence in the service's records management practices, and is an indicator of the level of professionalism at the service.

Administrative systems

The approved provider is required to:

- ensure that the service operates in compliance with the National Law, the National Regulations and the National Quality Standard
- liaise with the regulatory authority when required.

The approved provider must ensure that there are adequate systems in place to maintain the effective, compliant operation of the service.

Complaints management system

An effective complaints and grievance management system confirms to staff, families and the community that complaints and grievances are taken seriously and investigated promptly, fairly and thoroughly. Effective management of complaints may inform quality improvement processes and is an efficient way of considering and acting on feedback from families.

Notifying the regulatory authority of operational changes, incidents and complaints

The approved provider must notify the regulatory authority of certain circumstances and information, including any:

- significant changes to the operation of the service

- changes relevant to the fitness and propriety of the approved provider
- complaints that may impact on the regulatory authority's consideration of provider or service approvals
- complaints alleging that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the service*, or the National Law has been contravened
  * In WA the approved provider must notify of complaints alleging that the safety, health or wellbeing of a child (or children) has been compromised, or the National Law has been contravened
- serious incidents that occur at the service
- any incident where the approved provider reasonably believes that physical or sexual abuse of a child or children has occurred or is occurring while the child is being educated and cared for by the service.

Documented policies and procedures

The service should ensure that policies and procedures are well-documented, maintained and easily accessible to staff members and families. This supports the service to implement practices that are based on the service's policies and procedures.

Regularly reviewing policies and procedures in collaboration with families supports a shared understanding of the service's practices.

Risk management and employing fit and proper staff

Fitness and propriety describes a person's suitability to be involved in the operation of an education and care service. Prior to granting provider approval or service approval, regulatory authorities assess whether the applicant applying for provider approval is fit and proper to provide an education and care service. The approved provider is responsible for assessing a person's suitability for the roles of nominated supervisor and responsible person at the service.

The approved provider, nominated supervisor and responsible person must remain fit and proper for the service to operate under their management.

When a family day care service is provided in an educator's home, adults who reside on the premises must be assessed as, and remain, fit and proper for the service to operate.

Checking and maintaining accurate records that relate to the fitness and propriety of all staff assists in safeguarding children against risks to their safety and wellbeing.

Assessment guide for meeting Element 7.1.2 (for all services)

Records management

observe

***Assessors may* observe:**

- the facilities for storage of confidential records that are at the service or are immediately accessible by the service
- program information being shared in a way that respects the rights of children and families to privacy and confidentiality.

discuss

***Assessors may* discuss:**

- the processes in place at the service for reviewing and updating records and information on a regular basis
- the service's practice in relation to the retention and disposal of records.

sight

***Assessors may* sight:**

- the following records available and kept for the required length of time:
  - » evidence of current public liability insurance (this does not apply if the insurance is provided by a state or territory government)
  - » a Quality Improvement Plan
  - » child assessments
  - » an incident, injury, trauma and illness record
  - » a medication record
  - » the child attendance record
  - » the child enrolment record
  - » the record of the death of a child while being educated and cared for by the service
  - » a record of the service's compliance history
  - » a record of the responsible person in day-to-day charge
  - » the name of the person designated as the educational leader
  - » the nominated supervisor's written consent to the nomination
  - » the record of volunteers and students

centre-based service

- » staff records, including:
  - the names of responsible persons for each time that children are being educated and cared for by the service
  - the record of educators working directly with children

family day care

- » records of:
  - family day care staff
  - visitors to family day care residences or approved family day care venues
  - working with children checks for residents aged 18 years and over (or other checks as required, depending on the service's jurisdiction: see *Regulation 163*)
  - assessments of family day care residences and approved family day care venues

- evidence that the educator is adequately monitored and supported by a family day care co-ordinator, including records of visits by the co-ordinator to the family day care residence or family day care venue, and any correspondence provided by the co-ordinator for the purpose of monitoring or support to the educator
- evidence that records are stored appropriately to protect confidentiality
- that the following prescribed information is displayed:
  - » provider approval, including:

- the approved provider name
- the provider's approval number
- any conditions relating to the provider approval

» service approval, including:
- the name of the approved service
- the service approval number
- any conditions or waivers relating to the service approval

» service or temporary waivers, including:
- the elements of the National Quality Standard and/or National Regulations that have been waived
- the duration of the waiver
- whether the waiver is a service or a temporary waiver

» nominated supervisor, including:
- the name of the nominated supervisor

» service rating, including the:
- current ratings for each quality area under the National Quality Framework
- overall rating of the service

» service operation, including the:
- opening days and hours
- name and phone number of the responsible person in charge at any given time
- name and phone number of the person who can be contacted for a complaint
- name of the educational leader
- contact details of the Regulatory Authority

» health and safety, including a notice:
- stating that a child at risk of anaphylaxis is enrolled at the service, if applicable
- of an occurrence of an infectious disease at the service, if applicable.

Administrative systems

Assessors may* observe *the availability of information technology for administration, planning, evaluation and communication purposes, including for communication with families.

discuss

***Assessors may* discuss:**

- the role of the nominated supervisor in the service
- procedures that apply to educators when requesting specific resources to support program delivery

- human resource management procedures including recruitment and selection, leave, rosters and access to training and development
- opportunities for all staff members to comment on and improve the effectiveness of systems within the service.

Assessors may* sight *examples of internal communications, such as meeting minutes, distribution of notices and staff bulletins.

Notifications to the regulatory authority

Assessors are unlikely to **observe** practice in relation to this element.

discuss

***Assessors may* discuss:**

- the process the service has in place for informing the regulatory authority about relevant changes
- the service's processes for notifying the regulatory authority of required matters
- with the nominated supervisor, examples of the types of incidents they consider to be serious, which would require notification to the regulatory authority.

sight

***Assessors may* sight:**

- information displayed in staff areas about the required notifications
- records of notifications to the Regulatory Authority
- records held by the regulatory authority in relation to complaints against the service that allege a breach of legislation or a serious incident.

Complaints management

Assessors are unlikely to* observe *practice in relation to this element.

discuss

***Assessors may* discuss:**

- the management of any complaints or grievances lodged with the service
- how educational leaders, educators, nominated supervisors, co-ordinators and staff members listen to, document and follow up issues raised by children, families and other stakeholders.

sight

***Assessors may* sight:**

- a documented grievance and complaints management procedure
- evidence that grievances and complaints are investigated and documented in a timely manner
- evidence that complaints lead to amendments to policies and procedures as required

- information for families on how complaints and grievances are made and how they are managed by the service.

Documented policies and procedures

Assessors may* observe *that the service's practices are consistent with documented policies and procedures.

discuss

***Assessors may* discuss:**

- the provision of information about the service's policies and practices to parents/families prior to the child's attendance at the service
- the ways in which families are encouraged to contribute to the development and review of policies
- how families are explicitly informed of policy changes.

sight

Assessors may* sight *the following required policies and procedures available at the service, which are also available to families:

- health and safety policies and procedures, including:
  - » delivery and collection of children
  - » excursions
  - » refusal of authorisation for a child to leave the service
  - » dealing with infectious disease
  - » dealing with medical conditions
  - » emergency and evacuation
  - » health and safety, which covers:
    - nutrition, food and beverages, dietary requirements
    - sun protection
    - sleep and rest for infants and children
    - water safety
    - the administration of first aid
  - » incident, injury, trauma and illness
  - » a child-safe environment
- staffing policies and procedures, including:
  - » a code of conduct
  - » determining the responsible person present
  - » the participation of volunteers and students
- relationships with children policies and procedures, including interactions with children
- service management policies and procedures, including:
  - » governance and management of the service, and confidentiality of records

- » enrolment and orientation
- » payment of fees
- » dealing with complaints

family day care

- the assessment, approval and reassessment of approved family day care residences and family day care venues
- the engagement or registration of family day care educators
- keeping a register of family day care educators
- monitoring, support and supervision of family day care educators
- fit and proper assessment of family day care educators and assistants and adults residing at family day care residences
- visitors to family day care residences and venues
- provision of information, assistance and training to family day care educators
- engagement and registration of family day care educator assistants.

Fit and proper staff

Assessors are unlikely to **observe** practice in relation to this element during a site visit.

discuss

***Assessors may* discuss:**

- with service staff their understanding of their responsibilities under the relevant child protection legislation
- with the approved provider the fitness and propriety of nominated supervisors

family day care

- the service's approach to ensuring the fitness and propriety of adults who reside in educators' homes when the education and care service is provided to children.

sight

Assessors may* sight *evidence:

- in the staff record of sighting, and recording the identifying number and expiry date of, working with children checks (or equivalent as required in Part 4.4 Divisions *9* and *10* of the National Regulations)
- of required safety screening clearance for:
  - » educators, co-ordinators, family day care educator assistants and staff members prior to engagement at the service

family day care

- » residents aged 18 years and over.

ELEMENT 7.1.3
ROLES AND RESPONSIBILITIES

ROLES AND RESPONSIBILITIES ARE CLEARLY DEFINED, AND UNDERSTOOD, AND SUPPORT EFFECTIVE DECISION-MAKING AND OPERATION OF THE SERVICE.

National Law & Regulations

National Law and National Regulations underpinning Element 7.1.3

Section 51(2) Conditions on service approval (FDC co-ordinators)

Section 163 Offence relating to appointment or engagement of family day care co-ordinators

Section 164A Offence relating to the education and care of children by family day care service

Section 174A Family day care educator to notify certain information to approved provider

What Element 7.1.3 aims to achieve

Each individual who begins work at the service should have a clear understanding of their role, responsibilities and the expectations for their performance. They should be encouraged to engage with the philosophy and context that underpin the operation of the service as early as possible. A comprehensive induction process plays a critical role in creating and maintaining a positive and professional culture.

Services should foster a clear and open understanding of the staffing structure and responsibilities of all staff. This supports effective decision-making and efficient service operation.

Assessment guide for meeting Element 7.1.3 (for all services)

Roles and responsibilities

Assessors are unlikely to **observe** practice in relation to this element during a site visit.

discuss

***Assessors may* discuss:**

- how responsibilities and expectations are communicated to all staff members
- educators' understanding of:
  - the National Law and National Regulations
  - the National Quality Standard
  - the *Early Years Learning Framework* and/or the *Framework for School Age Care* or any other approved learning framework implemented at the service
  - the service's statement of philosophy

- the service's particular code of conduct and any code of ethics used to inform and evaluate practice (for example Early Childhood Australia's *Code of Ethics*)
- with any new staff members, their level of understanding of the philosophy of the service and the context in which it operates
- with staff members their experience of, and satisfaction with, the service's induction process
- induction processes for all educators and staff, including relief educators

family day care

- the service's approach to inducting new educators and developing their understanding of their roles and responsibilities as a family day care educator.

sight ***Assessors may* sight:**

- the service's documented induction procedure
- information provided to all staff members about the service and their role, such as position descriptions.

EXCEEDING GUIDANCE FOR STANDARD 7.1
GOVERNANCE

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 7.1 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 7.1 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see ***Exceeding NQS theme guidance***.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 7.1 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times
- Well established governance arrangements and administrative systems consistently support the operation of a high quality service and drive continuous quality improvement
- Educators, co-ordinators and those with management responsibilities are able to discuss and demonstrate how the service's management systems support proactive risk management and drive continuous improvement, for example in relation to:
  - Recruitment and staff selection
  - Responding to and learning from incidents, complaints and feedback from families
  - Maintaining up-to-date records that support effective service provision
- Educators, co-ordinators and those with management responsibilities are able to discuss and demonstrate how their daily practice is underpinned by the service's statement of philosophy and how they are involved in reviewing the statement regularly
- Persons with management responsibilities are able to discuss and demonstrate how the statement of philosophy underpins service operations, and explain how it was developed and how and when it is reviewed
- The guiding principles of the National Law (see ***section 3*** of the Law) are reflected in and consistently enacted through the service's statement of philosophy

- The service's policies and practices on recruitment and retention of staff reflect the diversity of the local community
- All members of the service team, including relief staff, understand and are able to articulate their roles and responsibilities, including in relation to each other, children, and families, and the service's decision-making processes
- Across the service, observed and discussed governance and administrative arrangements align with systems, documented policies, procedures and records.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 7.1 Exceeds the NQS:

- Any change to the service's approach to governance is understood by all and implemented appropriately
- Educators, co-ordinators and those with management responsibilities:
  - » critically reflect on the statement of philosophy, individually and together, to ensure it aligns with the service's current purpose, priorities, and approach to practice, and make changes where required to strengthen alignment and drive continuous improvement
  - » engage in regular reviews of systems, policies and procedures to ensure they are effective, align with quality practice, are responsive to feedback identified through the service's risk management and quality improvement systems, and support consistent, high quality practice across the service
  - » are aware of and able to discuss the service's governance and decision-making processes and how these align with professional standards and contribute to continuous quality improvement
- The service supports and enables all members of the service team to provide feedback on opportunities to strengthen governance and administrative systems, including decision-making processes, and this feedback is respectfully considered
- Change processes are managed sensibly and collaboratively with key stakeholders and the rationale for change is clearly communicated.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 7.1 Exceeds the NQS:

- Governance of the service:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service
- Educators, co-ordinators and those with management responsibilities:
  - » actively support families and the community to meaningfully engage with the service philosophy, policies and procedures, and to provide feedback and contribute to regular reviews
  - » actively support families and the community to understand the roles and responsibilities of members of the service team and how to engage with the service's feedback processes
- The service supports and enables families and the community to provide feedback on governance arrangements and administrative systems, including decision-making and feedback processes
- Governance and administrative arrangements contribute to a culture of inclusiveness and a sense of belonging at the service and suit the unique context of the service.

STANDARD 7.2
LEADERSHIP

EFFECTIVE LEADERSHIP BUILDS AND PROMOTES A POSITIVE ORGANISATIONAL CULTURE AND PROFESSIONAL LEARNING COMMUNITY.

How Standard 7.2 contributes to quality education and care

Effective leadership builds and maintains a professional workplace in which all staff members can communicate and raise issues openly, participate in respectful debate and contribute to each other's ongoing professional learning.

A positive work culture that is focused on quality encourages management and staff to continuously improve the service for the benefit of children and their families. Building a positive culture and professional learning community involves:

- reflecting on and continuously questioning how to improve teaching methods, educators' practices, curriculum quality, equity, and the wellbeing and inclusion of each child
- building staff members' professional knowledge
- strengthening relationships with children and families
- establishing expectations for:
  - » the quality of education and care provided by nominated supervisors, educational leaders, educators and co-ordinators
  - » programs and practices that promote children's wellbeing, learning and development.

To lead effectively, leaders need current, in-depth content knowledge as well as a deep understanding and appreciation of children's learning and development. Research demonstrates that there is a strong link between leadership and improved outcomes for children. Effective leaders are clear about the purpose of education and care services and have the skills to effectively communicate shared goals and expectations.

To develop and maintain an organisational culture that is inclusive, leaders need to demonstrate ongoing commitment to inclusion and a respect for diversity in all aspects of the service.

Questions to guide reflection on practice for Standard 7.2 (for all services)

- How is the leadership in our service contributing to the development of a positive organisational culture?
- How can we develop the skills and capacity of team members in a way that leads to improved shared leadership?
- How are we creating opportunities for professional conversations?
- How do our performance management processes support continuous improvement?

- How can we share the collective knowledge of the team?
- What do we know about the rate of, and reasons for, turnover of educators, co-ordinators and staff members at this service?
- How can we structure our staffing arrangements to improve continuity of care for children?
- How does the evidence/data we collect inform our self-assessment and quality improvement processes? Do we need to collect additional or different data?
- How are children, families and communities included in evaluating the quality of our service?
- In what ways does our service analyse feedback, complaints, serious incidents, injuries and illness to drive continuous improvement?
- How are resources allocated and targeted to support our quality improvement plan?
- How do we raise awareness of inclusion amongst service staff, and support educators to promote and reduce the barriers to inclusion for all children and families?
- What strategies are proving successful in building a professional learning community? How do we know they are successful?
- How can we use the Assessment and Rating Instrument in our self-assessment process?
- How can the ***guiding principles*** of the National Law be considered in our self-assessment process?

ELEMENT 7.2.1
CONTINUOUS IMPROVEMENT

THERE IS AN EFFECTIVE SELF-ASSESSMENT AND QUALITY IMPROVEMENT PROCESS IN PLACE.

National Law & Regulations

National Law and National Regulations underpinning Element 7.2.1

Regulation 31 Condition on service approval-quality improvement plan

Regulation 55 Quality improvement plans

Regulation 56 Review and revision of quality improvement plans

What Element 7.2.1 aims to achieve

Quality services regularly monitor and review their performance to guide planning and improve service quality. This creates a shared understanding of the principles that guide the service, and encourages continuous improvement in practice, policies and procedures.

Quality services regularly update and maintain their Quality Improvement Plan as a dynamic document to guide progress towards improvement. Quality services use the Quality Improvement Plan for continuous assessment against the National Quality Standard and the approved learning frameworks, to identify new goals for the service as part of an effective cycle of improvement. Incorporating regular self-assessment and quality improvement discussions in staff meetings encourages educators to participate in reflection on key practices, such as pedagogy and inclusion, and enables all staff members to provide input into planning for continuous quality improvement.

Establishing and maintaining a culture of ongoing reflection and self-review offers challenge, inspires motivation, and supports positive levels of staff satisfaction. This provides opportunities for all staff to improve their practice and programming, which contributes directly to improved learning outcomes for children.

An effective cycle of continuous improvement includes reviewing:

- the extent to which the service meets or exceeds the National Quality Standard
- the performance of all staff members
- how the service and its practices are delivered in accordance with the *Early Years Learning Framework* and/or the *Framework for School Age Care* (or other approved learning frameworks)
- the outcomes for children at the service against the learning outcomes in these frameworks
- feedback and complaints from children and families.

Assessment guide for meeting Element 7.2.1 (for all services)

Regular self-assessment

Assessors may* observe *service practices and program delivery that match the service's self- assessment, which is reflected in its Quality Improvement Plan.

discuss

***Assessors may* discuss:**

- how the service:
  - » aligns program delivery with quality improvement planning
  - » collects and uses information from a range of sources as part of the process of self-assessment and planning for quality improvements
  - » uses reflections on children's learning and development to plan, implement and evaluate programs and to support children in achieving outcomes (see *Elements 1.3.1 and 1.3.2*)
  - » engages in reflective practice on inclusion in the service's Quality Improvement Plan
- how the educational leader supports educators to engage in reflective practice to refine strategies and to create and sustain improvements
- processes for regularly updating the Quality Improvement Plan and identifying new goals and strategies for quality improvement
- how the views and suggestions of educators, children and families are considered and used to inform the development and review of the service philosophy, quality improvement planning processes, including self-assessments.

sight

***Assessors may* sight:**

- the service's Quality Improvement Plan displayed so that families and staff can view the current goals and strategies for quality improvement
- the documented process for ongoing self-assessment, planning and review against the National Quality Standard
- systems for collecting information from families, children and staff members about their perceptions of the service.

ELEMENT 7.2.2
EDUCATIONAL LEADERSHIP

THE EDUCATIONAL LEADER IS SUPPORTED AND LEADS THE DEVELOPMENT AND IMPLEMENTATION OF THE EDUCATIONAL PROGRAM AND ASSESSMENT AND PLANNING CYCLE.

What Element 7.2.2 aims to achieve

Educational leadership

The role of the educational leader is primarily to:

- collaborate with educators and provide curriculum direction and guidance
- support educators to effectively implement the cycle of planning to enhance programs and practices
- lead the development and implementation of an effective educational program in the service
- ensure that children's learning and development are guided by the learning outcomes of the *Early Years Learning Framework* and/or the *Framework for School Age Care* or other approved learning frameworks.

The educational leader of a service plays a significant role in guiding and developing educators' and families' understandings about play and leisure-based learning, and the significance of the early years in the education continuum for children. Their approach to leadership for learning has the potential to build the knowledge, skills and professionalism of educators, and to help communicate these important messages to families, schools and the broader community.

'A lively culture of professional enquiry is established when educators, co-ordinators and staff members are encouraged to build their professional knowledge, reflect on their practice and generate new ideas. In a culture that values professional learning, issues relating to curriculum quality, equity and children's wellbeing can be raised, debated and used to enhance programs, practices and policies' (*Early Years Learning Framework*, p. 13: *Framework for School Age Care*, p.12).

Selecting and supporting the educational leader

Leadership in education and care is complex, multi-faceted and diverse. Emerging research on the role of educational leader in the Australian context demonstrates that this type of pedagogical leadership may present a range of challenges and require a different set of skills than other types of leaders within the service. It also recognised that for the educational leader to be successful in generating quality outcomes, they need to be supported in their role. An approved provider/ nominated supervisor might consider the following skills, knowledge and attributes in nominating and developing the educational leader:

- communication and interpersonal skills

- comprehensive knowledge of theory that relates to early childhood education and care (for example, child development, attachment, learning), professional standards and approved learning frameworks, and contemporary understanding of evidence-based best practice approaches to teaching and learning
- knowledge of leadership theory and the use of a range of leadership styles
- thinking skills, including the ability to critically analyse and challenge conventional practice and ideas
- a sense of purpose and direction, and the ability to influence
- a willingness to mentor and support educators from diverse backgrounds and with varying levels of knowledge and experience
- commitment to learning and participating in professional learning opportunities.

Approved providers and nominated supervisors might also consider how they provide support for the educational leader and what the outcomes for the role might look like in terms of improved quality programs and practice. Some key features include enabling capacity building opportunities, empowering leaders and ensuring the role is well-resourced. Resources may include time, professional learning materials and opportunities, clearly defined role description, expectations, networking and collegial support opportunities.

Leading, developing and implementing the program

The educational leader provides guidance on educators' pedagogy and professional practice, by supporting educators to build and nurture secure respectful relationships with children and families, and assisting educators to articulate how and why they make decisions about the curriculum/program.

An effective educational program includes realistic goals which have a clear purpose in line with the service's philosophy (see ***Element 7.1.1***). The educational program and practice reflect the principles, practice and outcomes of an approved learning framework (see ***Element 1.1.1***).

Other key aspects of the educational leader's role in leading, developing and implementing the program include:

- mentoring and supporting educators' understanding of educational program and practice, such as:
  - how theory supports best practice in all parts of the program
  - building relationships and interactions with children to assist their learning through play and leisure-based programs
  - intentional teaching strategies and thoughtful, deliberate educator practices that support children's wellbeing, learning and development
  - routines and transitions
  - providing for continuity of learning when children transition to, from or within the service
  - developing documentation that is meaningful, relevant and promotes reflection on educators' pedagogy and practice

- drawing on a range of understandings about learning theories and styles, as well as educators' strengths, to develop educators' professional skills and confidence
- encouraging and empowering educators to draw on their creativity, intuition, knowledge of child development, as well as children's knowledge, identity and culture in their teaching and planning for learning
- liaising with other early childhood education and care professionals (such as therapists, maternal and child health nurses, and early childhood intervention specialists)
- assisting educators to make connections in the community, including with diverse cultures and Aboriginal or Torres Strait Elders or their representatives.

Assessment and planning cycle

An ongoing cycle of assessment and planning is critical to the delivery of a quality educational program. The educational leader plays a pivotal role in this process, including:

- leading educators to use current approaches to documentation and planning
- mentoring and supporting educators in how they assess learning
- ensuring that the assessment and planning cycle is applied to each child and the program as a whole (see *Element 1.3.1*); note some jurisdictions have different requirements for the *program in school age services*)
- assisting educators to understand and implement reflective practice (see *Element 1.3.2*)
- leading critical reflection discussions to examine program and practice, investigate alternative approaches and ways of thinking, identify quality improvements required and plan for improvements
- leading further discussions after educators have implemented a change to program or practice, and identifying if other improvements are needed
- communicating in sensitive and meaningful ways with families when they need more information about the educational program and/or their child's learning.

For more information about the assessment and planning cycle, see *Standard 1.3 and Element 1.3.1*.

Assessment guide for meeting Element 7.2.2 (for all services)

Educational leadership

Assessors may* observe *the educational leader working with educators to build capacity and understanding about their pedagogy and practice, including ways they assess, reflect on and plan for children's learning.

discuss

***Assessors may* discuss:**

- how the service supports the educational leader to have opportunities for discussions with educators, provide mentoring, lead reflective practice, and realise the intent of their role
- how the educational leader assists educators to promote children's learning and development and, when necessary, facilitate discussions with families
- what strategies and processes the educational leader uses to lead the development of effective programs within the service and to ensure that the planning cycle is implemented effectively
- how the educational leader supports and builds educators' understandings of how to assess, plan for and evaluate children's learning, including supporting the development of documentation that is meaningful and relevant
- the ways that leadership is tailored and targeted to reflect individuals' strengths and areas for growth
- how educators are mentored and supported through learning communities, positive organisational culture and professional conversations
- how the educational leader works with the service's leadership and management structure to support educators through periods of change.

sight

Assessors may* sight *evidence of:

- designation of the educational leader in the staff record
- documentation of the educational leader providing feedback and guidance to educators about the assessment and planning cycle
- reflective practice discussions that critically examine current practice and that lead to quality improvement.

ELEMENT 7.2.3
DEVELOPMENT OF PROFESSIONALS

EDUCATORS, CO-ORDINATORS AND STAFF MEMBERS' PERFORMANCE IS REGULARLY EVALUATED AND INDIVIDUAL PLANS ARE IN PLACE TO SUPPORT LEARNING AND DEVELOPMENT.

What Element 7.2.3 aims to achieve

A system of regular performance review alongside individual learning and development plans is essential to the development of skills and professional knowledge of educators. Performance planning and review ensures that the knowledge, skills and practices of educators and other staff members are current, and that areas requiring further development are addressed.

An effective performance review provides opportunities for educators to assess their own work performance against their job description, relevant code of ethics (for example Early Childhood Australia's *Code of Ethics*) and the service's code of conduct. The process recognises the specific strengths and contributions of each educator, which has the potential to encourage continuous quality practice and motivate them to continue to learn and develop professionally. Services can address areas that require improvement using a supportive and professional approach, to assist in accessing opportunities to engage in ongoing learning.

Educators who are committed to ongoing learning and performance improvement lift the quality of the service, potentially benefitting staff members, children, families and communities.

Learning and development can be enhanced when educational and/or service leaders (see *Element 7.2.2*) take on an active mentoring role, in collaboration with educators, to develop individual professional development plans that:

- develop educators' professional knowledge, skills and practices
- support creativity, imagination, innovation and continuous quality improvement
- build an understanding of the influence of theories and beliefs
- support educators to stay abreast of current policies, practice and thinking (for example inclusive policies and practice).

For example, educational leaders can mentor new educators to develop their capacity for inclusion and ensure that an inclusive philosophy underpins their pedagogy, program planning and interactions with each child and their families.

There is no one size fits all approach to the performance review, planning and improvement process. The main focus should be on developing an effective and efficient process for quality improvement. The outcome of the process is to:

- build and strengthen educators' understanding of the National Quality Framework
- support the development of strategies, practices and processes to meet the standards
- further educators' knowledge of quality early childhood education practices and programs.

Effective performance reviews include the following components:

Review

- expectations of the position description
- links to service vision and philosophy
- review of previous plan
- acknowledging achievements and contributions

Planning

- identify opportunities for capacity building and leadership
- build on strengths and capabilities
- links to other plans
- set timelines for goals and reviews

Improvement

- set clear goals and expectations with measurable indicators
- plan for professional learning
- identify strategies and approaches for support and mentoring
- tailor to suit individual needs
- collaborate with the educational leader

Assessment guide for meeting Element 7.2.3 (for all services)

Supporting staff learning and development

Assessors may* observe *the performance of each educator, co-ordinator and staff member supported by the educational leader and/or nominated supervisor.

discuss

***Assessors may* discuss:**

- processes to ensure each educational leader, co-ordinator, educator and staff member receives ongoing feedback about their performance and support to improve practice
- how the educational leader, co-ordinators, educators and staff members self-assess their performance and set individual performance and learning goals
- how performance processes identify strengths and areas for development, and how these areas for development are addressed
- how the service's performance review process contributes to planning for educators' learning and further development, and how the service supports this process
- how the effort, contribution and achievement of educators, educational leaders, co-ordinators and staff members is acknowledged and celebrated

family day care

- opportunities for educators to provide feedback about the effectiveness of the support provided by the coordination unit.

sight

***Assessors may* sight:**

- individual performance plans for educators, co-ordinators and staff members
- documented position descriptions for educators, educational leaders, co-ordinators and staff members that:
  - » clearly outline the responsibilities of the position
  - » clearly explain the approved provider's expectations
  - » are used as the basis for monitoring and reviewing the performance of educators, educational leaders, co-ordinators and staff members
- evidence of participation by educators, educational leaders, co-ordinators and staff members in professional development activities to update their knowledge and skills
- evidence that performance reviews for all educators, educational leaders, co-ordinators and staff members are conducted regularly and include a process for reviewing and updating professional development plans based on an evaluation of their professional strengths, interests and goals

family day care

- home visit/support contact records
- policies and procedures about conducting visits to educators' homes.

EXCEEDING GUIDANCE FOR STANDARD 7.2
LEADERSHIP

Overview

The following guidance is provided to assist services and assessors to consider if practice for Standard 7.2 demonstrates the Exceeding themes at the level required for a rating of Exceeding NQS. The indicators provided are not exhaustive, and services may demonstrate Exceeding level practice for Standard 7.2 in a variety of ways that suit their particular operating environment and approach to practice.

For further information on the three Exceeding themes, see *Exceeding NQS theme guidance*.

Exceeding theme 1: Practice is embedded in service operations

Assessors may consider the following indicators when assessing whether service quality for Standard 7.2 Exceeds the NQS:

- Educators, the educational leader, and co-ordinators demonstrate a deep understanding of the requirements of the standard, concepts and the component elements, and a commitment to high quality practice at all times.
- Effective leadership:
  - builds and consistently promotes a positive organisational culture and professional learning community that supports all members of the service team to develop as professionals and contribute meaningfully to quality improvement processes
  - builds educator capacity by supporting educators through ongoing professional development opportunities, for example mentoring.
- All members of the service team:
  - are able to explain how the service's performance evaluation process consistently supports their learning and development goals and growth as professionals, including how a tailored professional development plan provides a focus for continuous performance improvement
  - are able to discuss and demonstrate how they actively participate in the service's ongoing self-assessment and quality improvement process, and how this process drives continuous improvement in service quality and enhances outcomes for children and families.
- The educational leader is able to discuss and demonstrate how they are supported by the service's leadership team and work collaboratively with educators to effectively lead the development of the curriculum and set high expectations for teaching and learning.
- Educators are able to discuss and demonstrate how they are supported by the educational leader to learn and grow in their professional practice, and how they work with the educational leader to consistently deliver an educational program that sets high expectations for each child's learning.

- Across the service, observed and discussed quality improvement processes align with the service's Quality Improvement Plan and with other supporting documentation, including individual professional development plans for staff members.

Exceeding theme 2: Practice is informed by critical reflection

Assessors may consider the following indicators when assessing whether service quality for Standard 7.2 Exceeds the NQS:

- The service's approach to leadership:
  - » reflects robust debate, discussion, and opportunities for input by all educators, and is informed by critical reflection and past incidents
  - » is informed by current recognised guidance on leadership that supports the operation of a quality service.
- Any changes to the service's approach to leadership is understood by all and implemented appropriately.
- The leadership team regularly reflects on the service's quality improvement processes and makes changes where opportunities are identified to enhance outcomes for the service team, children and families.

All members of the service team:

  - » regularly reflect on their own learning and professional development goals and opportunities to strengthen their performance and practice, and share their insights through informal and formal performance discussions to support alignment of expectations and goals
  - » systematically reflect, individually and as a team, on service performance in relation to the National Quality Standard, focus areas identified in the Quality Improvement Plan, and goals for teaching and learning to ensure the service is meeting its own and the regulatory system's expectations for high quality and continuous improvement.
- The service supports and enables all members of the service team to provide feedback on quality improvement processes and this feedback is respectfully considered.
- Change processes are managed sensitively and collaboratively with key stakeholders and the rationale for change is clearly communicated.

Exceeding theme 3: Practice is shaped by meaningful engagement with families and/or the community

Assessors may consider the following indicators when assessing whether service quality for Standard 7.2 Exceeds the NQS:

- Leadership at the service:
  - » reflects the unique geographical, cultural and community context of the service
  - » welcomes, reflects and draws on the voices, priorities and strengths of the children and families at the service.

- Educators, co-ordinators and those with management responsibilities:
  - » support families and the community to participate meaningfully in the service's quality improvement processes, including the development and review of the Quality Improvement Plan
  - » support families and the community to understand the role of the educational leader in relation to their own child's participation in the service, and regularly invite them to discuss their own goals and expectations for their child's learning to inform the educational program.
- The service supports and enables families and the community to provide feedback on quality improvement processes, and this feedback is actively considered as part of the regular cycle of self-assessment that supports continuous quality improvement.
- The service builds and maintains community partnerships that strengthen the professional learning community and support continuous quality improvement, enhancing outcomes for children, families, and the service team.
- Quality improvement processes contribute to a culture of inclusiveness and a sense of belonging at the service, and suit the unique context of the service.

ASSESSMENT AND RATING PROCESS

This chapter explains the assessment and rating process of education and care services and provides guidance on the self-assessment and quality improvement planning process. It also provides detail about how ratings are calculated and reviewed against the National Quality Standard.

1. INTRODUCTION

National Law & Regulations

Sections 3(2)(c), 3(2)(e) and 133
Regulation 133

Services are assessed and rated against the National Quality Standard (NQS) to:

- promote continuous improvement in the provision of quality education and care
- improve knowledge and access to information about the quality of services to help families make informed decisions about their child's education and care.

Services are assessed and rated against the NQS by the state or territory regulatory authority.

The National Regulations outline the assessment and rating process for education and care services including the rating levels.

See the *Guide to the National Quality Standard* chapter for more information on the NQS.

Summary of the assessment and rating process

Self-assessment and quality improvement

Approved provider conducts a self-assessment to determine the quality of current practices against the NQS and linked regulatory requirements.

Approved provider identifies strengths and where improvements can be made which is documented in a Quality Improvement Plan (QIP).

Notice of visit

Regulatory authority provides written notice to approved provider that the assessment and rating process has commenced. The QIP is submitted to the regulatory authority prior to the visit, along with any additional information requested by the regulatory authority.

Assessment and rating visit takes place at the service.

Draft report

Regulatory authority provides the approved provider with a draft assessment and rating report.

Feedback on draft report

Provider can give feedback on any factual inaccuracies in the report and evidence to support feedback.

Final report and notice of final ratings is issued to the provider

Feedback considered before final report is finalised and issued.

Final report

Approved provider may choose to apply for a review of final ratings within the set review period.

Ratings published on national registers

Once the review period has ended, the final ratings are published on the national registers on the ACECQA website.

2. SELF-ASSESSMENT AND QUALITY IMPROVEMENT PLANNING

National Regulations

Regulation 55

Ongoing self-assessment against the National Quality Standard (NQS) drives continuous improvement and is essential to providing quality outcomes for children.

Under the National Regulations, the approved provider must ensure a Quality Improvement Plan (QIP) is in place for each service.

The purpose of the QIP is to help providers self-assess their performance in delivering quality education and care, and to plan future improvements. The QIP also helps regulatory authorities with the assessment of the service. The QIP does not have to be provided in any specific format, but must include the three required components outlined below.

A QIP must:

- include an assessment by the approved provider of the quality of the practices of the service against the NQS and the National Law and Regulations
- identify areas that the approved provider considers may require improvement
- include a statement of philosophy for the service.

The following section explains the three components of the QIP.

Self-assessment

The first step in the quality improvement planning process is to conduct a self-assessment.

Self-assessment involves critically reflecting on current practice at the service, deciding what is being done well and identifying opportunities for improvement.

The approved provider, educators and management should be familiar with the NQS and related regulatory requirements and reflect on practice, policies and procedures against the seven (7) quality areas of the NQS and related regulatory requirements. This will provide an informed picture of:

- current practice
- the quality of education and care experienced by children and families.

This picture of current practice highlights and confirms the service's strengths and is the starting point for planning to improve quality.

The *Guide to the National Quality Standard* includes a set of reflective questions that serve as prompts to explore current practice at the service. This can assist the provider to think about how and why things are done in a particular way while reflecting on specific practices to determine the:

- effectiveness of practice for all children and families
- relevance of the practice to the service and its stakeholders
- equity and fairness of the practice for all children, families and educators.

Areas for improvement

Reflection determines quality improvements

Following the reflection and self-assessment of current practice in the service, the next step is to identify the opportunities where quality improvements can be made and to plan effectively to implement them.

It is important to be open, honest and critically reflective when undertaking the self-assessment and quality improvement planning processes.

Turning reflection into quality improvement strategies

The QIP must include strategies to address the areas for further improvement identified during the self-assessment process.

A service rated Meeting or Exceeding NQS in all quality areas should be able to demonstrate its ongoing commitment to continuous improvement by documenting how the service will continue to explore opportunities to improve quality.

Statement of philosophy

The statement of philosophy describes the service's values, beliefs and understandings about children, families, the role of educators and the ways children learn. To meet the NQS, the statement of philosophy should be used to guide all aspects of the service's operations.

It is recommended educators, families and children be involved in the development and review of the service's philosophy statement. Regular review of the philosophy in light of new research, the approved learning frameworks, and families' views and expectations will support the service's goals for quality education and care, and continuous improvement.

A statement of philosophy:

Quality Improvement Plan: the main points

National Regulations

Regulations 55–56

Submit the plan: timeline for new services

The approved provider must ensure that a QIP is prepared for a new service within three months of the service approval being granted, and must provide the QIP to the regulatory authority on request.

Update the plan: timeline for existing services

The QIP is designed to be a dynamic, evolving document. At the commencement of the assessment and rating process, the regulatory authority will request that the service QIP is provided within a specified timeframe. Providers can make any necessary revisions to their existing plan before submitting.

National Regulations

Regulation 56

Review the plan annually

The approved provider must review and revise the QIP at least annually, having regard to the NQS, and at any time when directed by the regulatory authority. The provider must submit the most current copy of the QIP to the regulatory authority on request.

Developing the QIP

Visit the ACECQA website (acecqa.gov.au) to download an optional QIP template. Approved providers can use an alternate format however information required under regulation 55 must be included.

When writing the QIP, providers should reflect on the outcomes of the self-assessment process. Services may prioritise areas for improvement against the seven (7) quality areas of the NQS and the related regulatory requirements. There is no requirement that all 15 standards and 40 elements are addressed in the QIP. The QIP should include the key areas for improvement.

Services may have a range of documents that assist and record the planning process. The QIP is a summary of the key areas prioritised for improvement.

Collaborate when developing the plan

Developing the service's plan can be a collaborative process which involves children, families, educators, staff members, management and other interested parties, such as representatives of the community or agencies that work with the service to support the inclusion of children.

Update the plan after assessment and rating

It is recommended the QIP is updated after the assessment and rating process is completed to reflect the outcomes of the assessment and rating process.

National Regulations

Regulation 31

Keep a current QIP at the service and make it available to families and regulators

A service approval is granted subject to the condition that the approved provider ensure a current QIP is kept on the premises of the service at all times or, in the case of a family day care service, at the principal office of the family day care service.

The QIP must also be available on request for inspection by the regulatory authority and to parents of a child who is enrolled or who is seeking to enrol at the service.

3. THE RATING SYSTEM

National Law & Regulations

Section 153
Regulations 57–62, 172(d)

The rating levels under the National Law and Regulations are:

- Excellent rating (the criteria for this rating level is determined by ACECQA)
- Exceeding National Quality Standard
- Meeting National Quality Standard
- Working Towards National Quality Standard
- Significant Improvement Required.

Services that have not been assessed and rated hold the provisional rating of 'Provisional – Not Yet Assessed'.

The rating certificate must be displayed at the service at all times.

What do the ratings mean

1. Educational program and practice
2. Children's health and safety
3. Physical environment
4. Staffing arrangements
5. Relationships with children
6. Collaborative partnerships with families and communities
7. Governance and leadership

Significant Improvement Required

Service does not meet one of the seven quality areas or a section of the legislation and there is a significant risk to the safety, health and wellbeing of children.

The regulatory authority will take immediate action.

Working Towards National Quality Standard

Service provides a safe education and care program, but there are one or more areas identified for improvement.

RATED WORKING TOWARDS NATIONAL QUALITY STANDARD

Meeting National Quality Standard

Service meets the National Quality Standard.

Service provides quality education and care in all seven quality areas.

RATED MEETING NATIONAL QUALITY STANDARD

Exceeding National Quality Standard

Service goes beyond the requirements of the National Quality Standard in at least four of the seven quality areas.

RATED EXCEEDING NATIONAL QUALITY STANDARD

Excellent

Service promotes exceptional education and care, demonstrates sector leadership, and is committed to continually improving.

This rating can only be awarded by ACECQA.

Services rated Exceeding National Quality Standard in all seven quality areas may choose to apply for this rating.

Rated EXCELLENT by ACECQA

Assessment process

National Regulations

Regulation 63

Under the National Regulations, an authorised officer of the regulatory authority conducts an assessment and rating visit:

- of the service premises at a centre-based service
- of one or more approved family day care venues or residences for a family day care service.

As part of the assessment and rating process, the regulatory authority must consider:

- the current QIP for the service
- any rating assessment history of the service, including any records of previous rating assessments made under the National Law
- the service's history of compliance.

National Regulations

Regulation 62(2)

The regulatory authority may also consider a range of information when determining a rating, including:

- information disclosed by a government department, public or local authority, state or territory regulatory authority or the relevant Commonwealth department
- steps taken by the service to address matters identified during the rating assessment
- other quality assurance or registration process under an education law applicable to the service
- in the case of a service that provides education and care to children in their year before school, whether the service facilitates access to a preschool program.

Steps in the assessment and rating process

The following table outlines the steps and timelines in the assessment and rating process. These timeframes are guidelines only.

Timeline	Step	Process
Week 1	A. Notice of start of process	Approved provider is notified the assessment and rating process has commenced and the four (4) week period in which the assessment and rating visit will occur. The notification may also include: • the purpose of the assessment and rating process • a request to submit the service QIP and a date for when it should be submitted, typically within three to four weeks • that the authorised officer will advise of the actual assessment and rating visit date at least five working days in advance • guidance on how to source information on the assessment and rating process and developing/updating the QIP • a request for the approved provider or their key contact person (usually a nominated supervisor) to be available at specific times during the visit, for example at the beginning and the end. At the same time, the authorised officer starts an analysis of the available information about the service, including reviewing the compliance and rating history.
Weeks 3–4	B. Quality Improvement Plan	The approved provider submits the QIP to the regulatory authority. The regulatory authority notifies the approved provider that the QIP was received. The notification may also include: • a reminder that the approved provider or their key contact person (usually a nominated supervisor) is to be available at specific times during the visit. • details of the visit, including the approximate time and minimum length for the visit. For centre-based services the letter may advise that the assessment covers each room and all common areas (including outdoors). For family day care services the letter may advise that there will be an initial visit to the service's principal office, a request for the service's family day care register, an assessment of a sample of educators and a final visit to the service's principal office. The authorised officer reviews the service's QIP and prepares for the assessment and rating visit.
Weeks 5–8	C. Notice of visit	For all service types, the authorised officer will confirm the date of the visit and approximate time of arrival at least five working days before the assessment and rating visit. For family day care services, the authorised officer will give notice of the educator sample to be visited either on the day of the visit or up to five days before the visit occurs.

Timeline	Step	Process
	D. Visit occurs	The authorised officer conducts the assessment visit and records observations and evidence. The authorised officer: • focuses on observations of practice • visits a sample of family day care educators' residences or venues, for family day care services • engages in discussion with the approved provider or their key contact person, educators and staff members, and co-ordinators for family day care services • sights and considers documentation. The authorised officer may give some general feedback at the time of the visit but will not give an indication of the service rating. The authorised officer also gives the approved provider, at the time of assessment or as soon as practicable afterwards, an indication of any minor adjustments that may be made at the service before the draft assessment and rating report is issued to the approved provider. Any minor adjustments made by the service are included on the authorised officer's notes and in the assessment and rating report.
	E. After the visit	The authorised officer analyses the information gathered through the assessment and rating process, including whether there was any evidence of inconsistent practice at the service. The authorised officer prepares the draft report with the proposed ratings. The authorised officer also: • addresses any issues that need to be attended to immediately as a result of a risk to the safety, health or wellbeing of a child or children • clarifies any identified non-compliance • informs the service that a draft report with ratings for all quality areas and an overall rating will be provided approximately three to five weeks after the visit, and that the provider will have 10 working days to provide feedback.
Approx. 3–5 weeks after the visit date	F. Draft report	The approved provider is issued the draft report and covering letter. The covering letter includes the contact details of the regulatory authority for providing feedback on any factual inaccuracies in the report and providing evidence to support their feedback. It also states that the draft report will become the final report if no feedback is received within ten (10) working days.
	G. Consider feedback	The regulatory authority considers feedback received from the approved provider.
Approx. 8 weeks after the visit date	H. Final report	The report is finalised, the final ratings are determined and the notice of final ratings is issued to the approved provider. The regulatory authority informs the approved provider and provides information about the review process, including: • requests for a review must be lodged within 14 days of the approved provider's receipt of the report • details of the person to whom a review application is made (name and address) • what can/cannot be reviewed • the review timeline. The approved provider has 14 days to apply for a first tier review. The 14 day period commences: • from the day the rating notice is sent if provided electronically • from the fourth day after the rating notice was posted.

Before the assessment and rating visit

Before the visit, the approved provider determines who should be the key contact person. For example, this may be the approved provider themselves, a person in a management or control or a nominated supervisor.

Authorised officers will gain an understanding of the service before the visit by conducting a desktop review. This review must include the service's QIP, assessment history and compliance history. The desktop review contributes to the plan authorised officers develop for the visit.

National Regulations

Regulation 63

Assessment and rating visit length

As a guide, it is expected that assessment and rating visits for centre-based services will be for at least six (6) hours. There may be circumstances where this is not adhered to due to the size and configuration of the centre-based service.

For services providing multiple types of outside school hours care (e.g. before/after and vacation), it is likely that not all types of care will be visited in the assessment and rating process.

For family day care services, assessment and rating visits generally involve visits to:

- the service (scheme/coordination unit) at the beginning and or end of the assessment and rating visit
- a sample of one or more approved family day care venues or family day care residences. The regulatory authority will determine the sample from the register of family day care educators.

Frequency of the assessment and rating cycle

When regulatory authorities schedule quality rating assessments, the goal is to assess and rate the quality of services, drive continuous improvement and keep information for families and communities accurate and up to date.

To focus resources on services most in need of service improvement, the actions of regulatory authorities are responsive and risk-based. Services with a lower quality rating will be re-rated more frequently. Services with higher quality ratings will generally have a longer period of time between assessment and rating visits in recognition of their ability to operate above the NQS.

Regulatory authorities consider the following factors when managing assessment and rating schedules:

- The quality rating of a service when previously assessed, including results against the quality area, standard and element level – for example, services with three to five quality areas rated at Working Towards NQS may be reassessed more frequently than services with one or two quality areas rated at Working Towards NQS. Similarly, services rated Working Towards NQS in certain Standards, or for a higher number of Standards may also be reassessed more frequently.

- A change in service attributes that could be reasonably considered to affect the service's quality – for example, changes in provider or service management.
- Events that occur at the service – for example, serious incidents, complaints or non-compliance with the National Law can indicate a change in quality and a higher scheduling priority.
- The length of time since the last assessment – for example, over time a quality rating can lose its currency and value for families.

Each regulatory authority manages its assessment schedule in a responsive manner, making adjustments to the schedule as new information emerges and making best use of available resources.

4. HOW IS AN ASSESSMENT AND RATING VISIT CONDUCTED?

Evidence collection

Authorised officers are trained to use 'observe', 'discuss' and 'sight' techniques to gather information and evidence that supports assessment of the service against the NQS, and the National Law and National Regulations.

Observe. The authorised officer may observe children, families, educators, directors, co-ordinators and staff members as part of the service's practices.

Discuss. The authorised officer may discuss the service's practices with the key contact person, educators, directors, co-ordinators, family day care educator assistants or staff members.

Sight. The authorised officer may sight documentation required by the National Law and Regulations, and other documentation as evidence of the service's practices.

For more guidance on how the elements of the NQS may be assessed, see the *Guide to the National Quality Standard*.

Communication during the visit

When visiting a service, the authorised officer(s) introduces themselves to the key contact person and explains what to expect in an assessment and rating visit, including how they will gather evidence (by observing, discussing and sighting evidence). Typically, the authorised officer will ask for a brief tour of the service and to be introduced to educators and staff.

During the visit, authorised officers will try to minimise disruption to practice, unless there is a significant risk to children.

Authorised officers may:

- inform the key contact person when taking breaks
- provide the key contact person with broad verbal feedback, but they cannot give an indication of the rating at this time
- advise of any matters where they can offer the Minor Adjustment Policy, and the timeframe to fix the issue/s.

The assessment and rating process is an important opportunity for providers to demonstrate how the service is delivering quality outcomes against the NQS for children in the context of the service, families and community.

The authorised officer should inform the service that a draft report with ratings for all quality areas and an overall rating will be provided approximately three to five weeks after the visit, and that the approved provider will have 10 working days to provide feedback on any inaccuracies in the report.

National Law & Regulations

Section 152
Regulations 57–62

How are ratings determined?

After an assessment and rating visit occurs, the regulatory authority will:

- consider evidence provided by the approved provider where there have been minor adjustments
- determine the ratings, including assessing inconsistent practice where applicable.

The regulatory authority determines ratings by assessing each element of the NQS. Each standard and quality area is then rated. The overall rating is calculated based on these results.

Services must be rated Exceeding in all quality areas of the NQS to be eligible to apply to ACECQA for the Excellent rating.

Assessing elements

The authorised officer will assess each element as met or not met.

Assessing standards

The authorised officer will assess the evidence against each standard.

- If any element under a standard is not met, the rating for that standard will be Working Towards NQS.
- If all elements are met, the authorised officer will determine whether service practice for each standard represents what is expected at the Meeting level (Meeting NQS) or represents a level of quality above what is required at the Meeting level (Exceeding NQS).
- Each standard will be rated at either Meeting NQS or Exceeding NQS.

The following three themes must be demonstrated in service practice for a standard to be rated as Exceeding NQS:

Theme 1. Practice is embedded in service operations

Theme 2. Practice is informed by critical reflection

Theme 3. Practice is shaped by meaningful engagement with families and/or the community.

See *Exceeding theme guidance* for more information.

Determining quality area ratings

After the authorised officer has assessed each standard, the quality area ratings are calculated.

- If any standard within a quality area has been rated as Working Towards NQS, the rating for the quality area will be Working Towards NQS.
- If all standards within a quality area are rated at least Meeting NQS, the rating for that quality area will be at least Meeting NQS.
- If all standards within a quality area are rated Exceeding NQS, the rating for the quality area will be Exceeding NQS.
- If all standards within a quality area are rated at least Meeting NQS, but not all standards are rated Exceeding NQS, the rating for the quality area will be Meeting NQS.

Determining overall service ratings

- If any quality area has been rated as Working Towards NQS, the overall service rating cannot be higher than Working Towards NQS.
- If all quality areas are at least Meeting NQS and four or more quality areas are rated as Exceeding NQS, with at least two of these being quality areas 1, 5, 6, or 7, the overall rating will be Exceeding NQS.
- Services rated Exceeding NQS in all seven quality areas are eligible to apply to ACECQA for the Excellent rating.

The Significant Improvement Required rating

A rating of Significant Improvement Required can be applied at the standard and quality area level. If a rating of Significant Improvement Required is given for any standard or quality area, the overall service rating is Significant Improvement Required.

How quality rating levels are determined

The following table demonstrates how the authorised officer determines ratings by assessing each element against the NQS to determine if it is met or not met. This information is then used to rate each standard and quality area to determine the overall rating.

Task	Rating Levels			
	Significant Improvement Required	Working Towards National Quality Standard	Meeting National Quality Standard	Exceeding National Quality Standard
1. Assess each element as 'met' or 'not met'	Assess each element as 'met' or 'not met' and determine compliance with the relevant regulations.			
2. Rate each standard	A Significant Improvement Required rating may be given for a standard and/or quality area. See below.	Service does not meet one or more elements or relevant regulations for the standard. The service does not meet the standard.	All elements and relevant regulations for the standard are 'met'. The service does not demonstrate the three Exceeding themes for the standard. The standard is rated Meeting NQS	All elements and relevant regulations for the standard are 'met'. The service demonstrates the three Exceeding themes for the standard: 1. Practice is embedded in service operations 2. Practice is informed by critical reflection 3. Practice is shaped by meaningful engagement with families and/or the community The standard is rated Exceeding NQS. See ***Exceeding theme guidance*** for more information.

Task	Rating Levels			
3. Rate each quality area	Service does not meet that quality area or a relevant regulation for that quality area and the regulatory authority is satisfied there is a significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service.	Service does not meet a standard in that quality area or a relevant regulation for that quality area but is not rated as Significant Improvement Required (regulation 60(1)).	Service meets the standards and relevant regulations for that quality area (regulation 61(1)). Some standards may be rated Exceeding in the quality area.	Service exceeds the standards for that quality area and complies with the relevant regulations for that quality area (regulation 62(1)), subject to the following criteria: **Criteria 1** If a service provides education and care for children who are in the year that is 2 years before grade 1 of school, the service can only be rated Exceeding NQS in Quality Area 1 if the service either: • provides a preschool program, or • has a documented arrangement with an approved provider of another education and care service to provide a preschool program and informs parents of this arrangement (regulation 62(2)). **Criteria 2** To be rated Exceeding NQS in a quality area: • All standards in the quality area must be rated Exceeding NQS.
4.Determine overall rating	Overall rating is Significant Improvement Required if the service is rated Significant Improvement Required for any quality area (regulation 59(2)).	Overall rating is Working Towards NQS if any quality areas are rated Working Towards NQS but the service does not have a Significant Improvement Required rating for any quality area (regulation 60(2)).	Overall rating is Meeting NQS if all quality areas are rated Meeting NQS and/or Exceeding NQS but the service does not satisfy the requirements of regulation 62 for an overall Exceeding NQS rating (regulation 61(2)).	Overall rating is Exceeding NQS if all quality areas are rated at least Meeting NQS, and four or more quality areas are Exceeding NQS, with at least two of these being quality areas 1, 5, 6 or 7.

5. EXCEEDING NQS THEME GUIDANCE

To achieve a rating of Exceeding NQS for any standard, the Exceeding themes need to be demonstrated in service practice for that standard:

1. Practice is embedded in service operations
2. Practice is informed by critical reflection
3. Practice is shaped by meaningful engagement with families and/or the community

This section provides more information about each of the three Exceeding themes. It also includes a list of indicators designed to assist services and assessors to consider if practice is evident in service operations, as expected at the Exceeding NQS level. See the ***Guide to the National Quality Standard*** for more information on what is expected for each standard.

Exceeding Theme 1: Practice is embedded in service operations

Overview

At the Exceeding level for any standard, high quality practice is demonstrated consistently and frequently across the service. It is interwoven through all aspects of the program and is visible, directly or indirectly, in many forms.

At the Exceeding level, educators' embedded practice is consistent with what is considered high quality practice in relation to the standard. When practice is 'embedded' this means it is usual practice for the standard. Members of the service team know and understand what is expected in regard to high quality practice for the standard and consistently work at this level as appropriate for their role and responsibilities within the service.

When high quality practice is embedded, it is reflected across the service's operations and systems. Observed and discussed practices align with the service's philosophy, the principles and practices of the approved learning framework/s, and policies and procedures that relate to the standard.

At the Exceeding level, educators demonstrate a deep understanding of pedagogy. This leads to exemplary practice such as embedding high quality practice throughout service provisions, underpinning all practice with critical reflection and creating contextually appropriate practice for the service community. When educators demonstrate this they are able to link their practice with the National Quality Standards and the reasons behind this approach, in particular how it connects to the service philosophy and broader vision for quality.

Fundamentally, educators understand the themes of exceeding for high quality practice and for the purpose of improving learning and development outcomes for children.

What we aim to achieve with Exceeding Theme 1

When the service team approaches practice with a shared sense of understanding, purpose and agency, this creates a stable, high quality education and care environment that benefits children, families, and the broader service community.

The underlying consistency in intent and approach to practice across the service helps to create a sense of continuity, predictability, and security for each child. A consistent approach to practice does not mean that practice is rigid, unchanging, unreflective, or habit-based. Rather, practice is of high quality, thoughtful and intentional, but is also responsive to the everyday flow of events.

Understanding what is expected and why provides a basis for ongoing discussions about practice, and for ensuring systems are in place to re-think and refine practice, contributing to continuous quality improvement over time.

Assessment indicators for Exceeding Theme 1

Services may demonstrate Exceeding level practice for standards in a variety of ways that suit their particular operating environment and approach to practice. The following list of indicators is designed to assist services and assessors to consider if practice is demonstrated at the Exceeding NQS level.

- Quality practice is demonstrated consistently and frequently across the service at all times.
- Members of the service team, as appropriate to their role and responsibilities within the service:
  - » understand what is expected in regard to quality practice for the standard and work consistently at this level
  - » are able to explain how their practice in relation to the standard connects to the service's philosophy and supports the service's broader vision for quality
  - » are thoughtful and intentional in their practice for the standard and respond confidently to the daily flow of events.
- Observed and discussed practice aligns with the service's philosophy, the principles and practices of the approved learning framework/s and programs in place, and any policies and procedures that underpin practice for the standard.

A tailored list of indicators of what can be considered Exceeding practice for each standard is included in the ***Guide to the National Quality Standard***.

Exceeding Theme 2: Practice is informed by critical reflection

Overview

Critical reflection means continually thinking about, questioning, analysing and re-evaluating practice to identify where further improvements could be made for educators, children and families.

At the Exceeding level for any standard, members of the service team engage in ongoing critical reflection on their practice, as appropriate for their role and responsibilities within the service. Individually and as a team they:

- ask ***why*** and ***how*** questions of themselves and each other, such as:
  - Why do we do that?
  - Why do we do it in ***this*** way?
  - How does this practice contribute to improved outcomes for all children and families?
  - Does this practice advantage some children and families and disadvantage others?
  - Does this practice include any stereotyping, bias or inequity?
  - Does this practice need to change?
  - How can we improve this practice?
- consider the theoretical perspectives underpinning their actions and decision-making
- seek different views and opinions and are open to exploring possibilities that they may not have previously considered
- draw on various sources of knowledge and research evidence, and evaluate these sources for their credibility and relevance as well as their 'fit' to the context of the service
- consider the rationale behind new ideas and practices to assess if they align with the approved learning framework and the philosophy of the service.

Respect, trust and collegiality are valued so that all members of the service team are able to raise concerns, ask difficult questions, challenge the way things are currently done, and create change in the approach to practice across the service.

The service is responsive to issues, incidents, complaints or feedback. All members of the service team are willing to reconsider their views and re-evaluate their practice, and are mindful of their responsibility to make ethical and well-informed decisions.

What we aim to achieve with Exceeding Theme 2

Engaging in critical reflection supports the service team to make well-informed decisions and plans, to implement and evaluate carefully considered changes to their practice, and to respond with integrity to complex situations and challenges. It also assists them to articulate the reasons for their decisions and practices and to be accountable to children, families, colleagues and communities for their choice of approaches.

Continuously reflecting on practice assists educators to become increasingly thoughtful about their work and motivated to explore new ideas and approaches. Reflective practice supports educators to continue their ongoing professional learning by further developing their knowledge, skills and practices. It also encourages them to stay focussed on continuous quality improvement to improve outcomes for children.

Assessment indicators for Exceeding Theme 2

Services may demonstrate Exceeding level practice for standards in a variety of ways that suit their particular operating environment and approach to practice. The following list of indicators is designed to assist services and assessors to consider if practice reflects critical reflection as expected at the Exceeding NQS level.

- Practice is systematically and regularly reflected on and implications for further improvements are purposefully identified and implemented.
- Ongoing learning and quality improvements occur through a systematic cycle of inquiry.
- All members of the service team, as appropriate to their role and responsibilities:
  - are aware of the influences on their practice including the key theoretical perspectives identified in the approved learning framework/s and are able to describe how they draw on these in their work
  - can identify personal, professional and organisational values in relation to practice
  - are comfortable raising concerns and challenging the way things are done, with the expectation that their views will be valued and considered
  - are mindful of their responsibility to make ethical and informed decisions
  - consider the social justice and equity implications of their practice.
- Decision-making processes draw on diverse perspectives, which are considered in relation to how they align with the service philosophy and the approved learning framework/s used at the service.
- Reasons for decisions that result in changes to practice are clearly understood by all.
- The service is responsive to issues, incidents, complaints or feedback, and these inform ongoing quality improvement.

A tailored list of indicators of what can be considered Exceeding practice for each standard is included in the *Guide to the National Quality Standard*.

Exceeding Theme 3: Practice is shaped by meaningful engagement with families and/or the community

Overview

At the Exceeding level for any standard, practice is informed by meaningful engagement with children, families and the community and is suited to the unique context of the service.

Educators learn from, and build on the strengths of children, families, colleagues and the community. They view responsive, reciprocal and ongoing relationships as crucial to gaining a greater understanding of the priorities and aspirations of children, families and the community. Educators recognise, respect and build on the primary role of families in their own child's learning and development.

Educators seek deeper insights into the wealth of knowledge, capacities, expertise and resources within families, the community and colleagues, including professionals from local support agencies. Educators look for opportunities to build purposeful collaborations and partnerships that utilise and extend these strengths in ways that contribute to achieving the aspirations and priorities of children, families and the service.

Respect for different perspectives is central to the culture of the service. This respect is evident in the way educators seek input, guidance and feedback from all involved in the service, including children. Educators are committed to listening to children's voices and to trying to understand their perspectives so that they can honour children's rights to have input into matters that affect them.

Each service has a unique context that is shaped by its families, community and location. Diversity in factors such as language, cultural identity, child rearing practices, values and beliefs contributes to the unique depth and complexity of each service. At the Exceeding level for any standard, practice is suited to and draws inspiration from this unique context. The service team is inclusive, modelling and actively promoting respect and valuing of diversity with children, families, colleagues and the community. Educators take every opportunity to extend children's understanding of their local context and of their wider world.

What we aim to achieve with Exceeding Theme 3

Services that demonstrate that they are Exceeding the NQS do so in ways that are unique to the children, families and context of their service. Educators consider the children and families who are using the service as well as the particular characteristics, priorities and strengths of the local community when planning, delivering and reflecting on everyday practice. This results in practice that is tailored and responsive to the needs of the children, families and community.

Children learn and develop in the different contexts in which they live. They are more likely to be confident and involved learners when they see connections and experience continuity of learning between their different contexts. Drawing on the strengths of the service context fosters a culture of inclusiveness that enhances families' sense of belonging, making it more likely that they will sustain their engagement with the service. It also provides opportunities for children to develop a sense of identity and to see themselves as agents of change in a tolerant and diverse world.

Assessment indicators for Exceeding Theme 3

Services may demonstrate Exceeding level practice for standards in a variety of ways that suit their particular operating environment and approach to practice. The following list of indicators is designed to assist services and assessors to consider if practice reflects meaningful engagement with families and/or the community and suits the unique context of the service as expected at the Exceeding NQS level.

- Practice reflects, utilises and builds on the unique strengths and priorities of children and families at the service.
- The service actively builds and maintains relationships with families and/or community partners, drawing on a range of communication strategies to support meaningful participation by all.
- Opportunities are regularly provided for family and/or community partners to meaningfully participate in service decisions and solve problems.
- Practice suits the unique environmental context and/or location of the service.
- Practice reflects the cultural and community context of the service.
- The voices of children are valued and taken into account.
- Practice fosters a sense of inclusiveness and belonging for children, families, the service team, and the broader community.

A tailored list of indicators of what can be considered Exceeding practice for each standard is included in the *Guide to the National Quality Standard*.

4. MAKING MINOR ADJUSTMENTS

National Regulations

Regulation 63(2)(b)

The regulatory authority may consider any information available to them about any steps taken by the education and care service to rectify any matters identified during the rating assessment.

A service rating should accurately reflect service quality. Minor matters that do not seriously impact on a service's quality may not affect the rating if they are able to be rectified quickly and easily. There may be some circumstances in which the regulatory authority gives an approved provider the opportunity to make minor adjustments prior to finalising a service's assessment report and overall rating. If a minor adjustment could result in an individual element being assessed as 'met' instead of 'not met', the regulatory authority should consider offering a minor adjustment, even if other elements in the standard are 'not met'.

The regulatory authority may give an approved provider a short time to make these minor adjustments in the following circumstances.

Circumstances in which minor adjustments may be offered
There is no unacceptable risk to the safety, health or wellbeing of children
The quality of service provided is minimally impacted
Rectification can take place quickly and easily
The matters to be adjusted are minor
Elements that have been assessed as not met are elements where a minor adjustment could result in the element being met. The service may receive a higher rating against a standard if the issue is rectified
The changes required involve simple, concrete solutions that can be implemented within the specified timeframe (e.g. within days of the assessment and rating visit, preferably immediately, unless otherwise specified by the regulatory authority).

At the time of the assessment or soon after, the regulatory authority will inform the approved provider of the opportunity to make minor adjustments and provide evidence of those adjustments before the draft assessment and rating report is provided. The regulatory authority assesses whether the evidence provided demonstrates that an element assessed as 'not met' during the assessment and rating visit is now considered to be 'met'.

The approved provider's evidence must satisfy the regulatory authority that appropriate corrective action has been taken without the need to make a subsequent assessment and rating visit to the service. Examples of evidence could include:

- photographs (e.g. to demonstrate that a physical hazard has been removed or fixed, or to demonstrate that an item of documentation is now being displayed at the service)
- copies of revised written policies or procedures
- a record indicating that information has been provided to families attending the service (such as an email).

The evidence must satisfy the regulatory authority that the issue has been fully rectified. Evidence provided after the regulatory authority has issued the draft report to the approved provider for feedback will generally not be considered.

An approved provider may choose not to make minor adjustments, or not to provide evidence of minor adjustments, in which case the regulatory authority will draft the service's assessment report and rating based on the circumstances of the service at the time of the assessment and rating visit.

Providing evidence to demonstrate that an issue has been rectified does not guarantee that the service will be assessed as having met the relevant element or standard.

The right to review

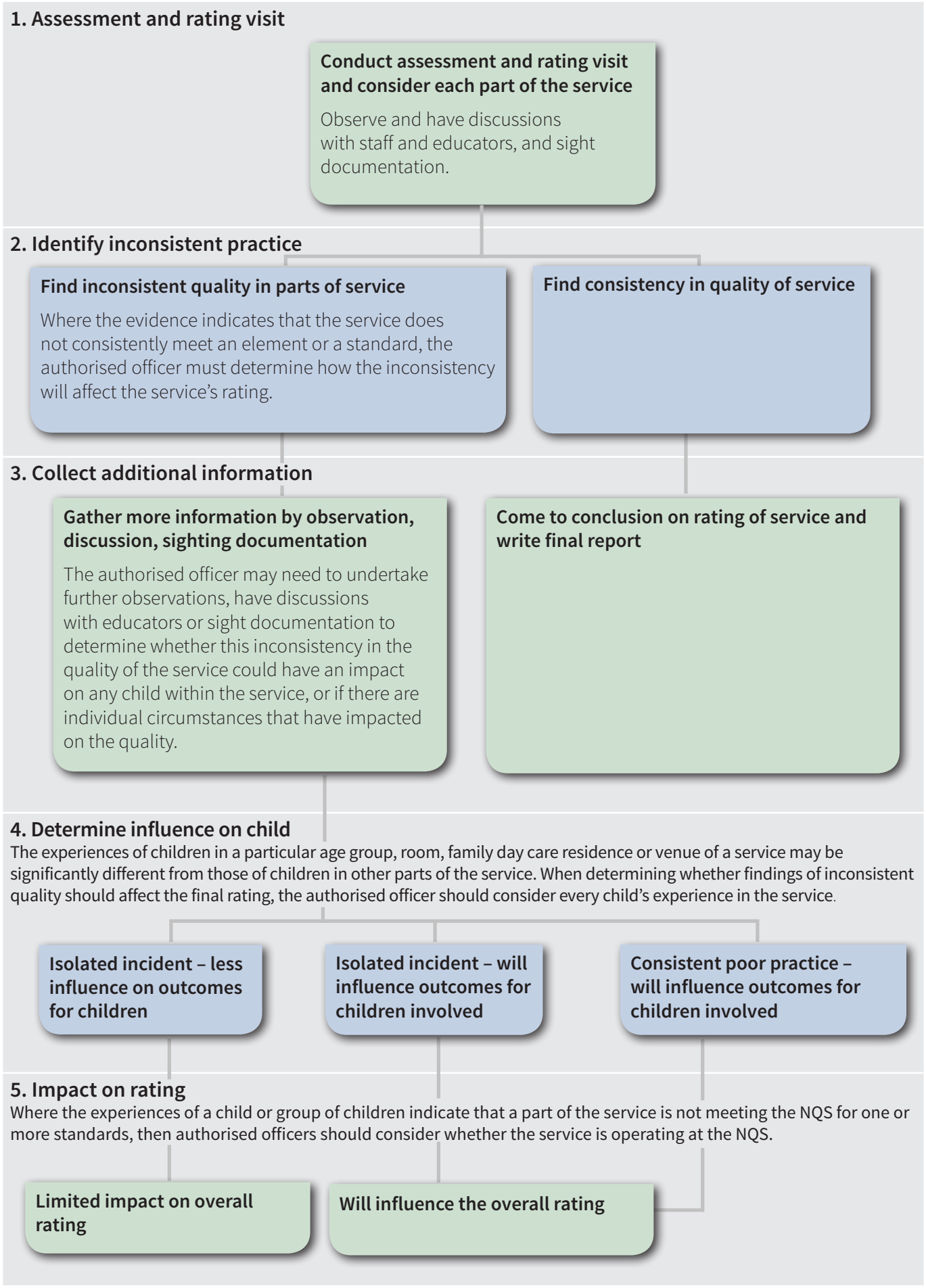
An approved provider cannot request a review of a decision made by the regulatory authority to apply the minor adjustments policy.

Assessing inconsistent quality

The term 'inconsistent quality' refers to situations where different levels of service quality are identified at an assessment and rating visit, including in different rooms, sessions, residences or venues or between different educators in the one room. The experiences of children within particular age groups or specific rooms within a service may be significantly different from what has been identified across the service. For example, experiences of some children in the service may be consistently below the NQS.

The final rating should take into consideration the impact this inconsistent quality has on the experiences of each child in the service.

The following flow chart provides guidance to authorised officers about assessing inconsistent quality.


1. Assessment and rating visit
Conduct assessment and rating visit and consider each part of the service
Observe and have discussions with staff and educators, and sight documentation.
2. Identify inconsistent practice
Find inconsistent quality in parts of service
Where the evidence indicates that the service does not consistently meet an element or a standard, the authorised officer must determine how the inconsistency will affect the service's rating.
Find consistency in quality of service
3. Collect additional information
Gather more information by observation, discussion, sighting documentation
The authorised officer may need to undertake further observations, have discussions with educators or sight documentation to determine whether this inconsistency in the quality of the service could have an impact on any child within the service, or if there are individual circumstances that have impacted on the quality.
Come to conclusion on rating of service and write final report
4. Determine influence on child
The experiences of children in a particular age group, room, family day care residence or venue of a service may be significantly different from those of children in other parts of the service. When determining whether findings of inconsistent quality should affect the final rating, the authorised officer should consider every child's experience in the service.
Isolated incident – less influence on outcomes for children
Isolated incident – will influence outcomes for children involved
Consistent poor practice – will influence outcomes for children involved
5. Impact on rating
Where the experiences of a child or group of children indicate that a part of the service is not meeting the NQS for one or more standards, then authorised officers should consider whether the service is operating at the NQS.
Limited impact on overall rating
Will influence the overall rating

7. WAIVERS

The impact of waivers on the assessment and rating process

A service granted a waiver can still achieve ratings of Meeting National Quality Standard and Exceeding National Quality Standard. For the purposes of an assessment, the service is either taken to comply or not required to comply with the requirements of the National Regulations and elements of the NQS that are covered by the waiver (see *Applications and Approvals*).

8. EVIDENCE OF NON-COMPLIANCE

Compliance issues identified through the assessment and rating process

In some cases where an element is not met, this may relate to non-compliance with the National Law and Regulations. The identified compliance issues may be reflected in the assessment and rating report and compliance action may be taken in parallel to the assessment and rating process (see *Regulatory Authority Powers*).

9. SIGNIFICANT IMPROVEMENT REQUIRED

National Regulations

Regulation 59

A rating of Significant Improvement Required can be applied at standard and quality area level. If a rating of Significant Improvement Required is given for any standard or quality area, the overall service rating is Significant Improvement Required.

Using the Significant Improvement Required rating

The Significant Improvement Required rating may be given when an authorised officer (in consultation with their manager) is satisfied that the service does not meet a standard, quality area, or relevant regulation for that quality area in a way that poses: 'a significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service' (regulation 59).

A significant risk is more likely to arise when there is non-compliance with the physical environment, children's health and safety, or staffing requirements, but it could arise in other parts of the NQS. For example, poor educational programming requirements could pose a significant risk to the wellbeing of a child or children given the implications for children's learning and development.

Determining 'significant risk' to a child or children

Authorised officers must always make a case-by-case assessment (in consultation with their manager) of whether there is a 'significant risk to a child or children. Authorised officers may draw on a risk matrix to assist in determining the level of risk present and the appropriate course of action to address the risk. Further guidance on assessing risk is available in *Good Regulatory Practice*.

Risk Matrix

Consequences \ Likelihood	Rare	Unlikely	Possible	Likely	Almost Certain
Major	Moderate	High	High	Critical	Critical
Significant	Moderate	Moderate	High	High	Critical
Moderate	Low	Moderate	Moderate	High	High
Minor	Very low	Low	Moderate	Moderate	Moderate
Insignificant	Very low	Very low	Low	Moderate	Moderate

If the authorised officer determines that a 'high' or 'critical' level of risk to the health, safety or wellbeing of children is present as a result of service practice in a particular standard, quality area, or relevant regulation for that quality area, it is likely that further action would be taken.

Where an authorised officer identifies an issue that constitutes a significant risk, the authorised officer (in consultation with their manager) will need to decide whether it is appropriate to continue the visit. In the case that the assessment and rating visit is stopped, the authorised officer should ensure the decision to stop the visit is documented. If the risk can be satisfactorily addressed at the time of the visit, the assessment and rating visit may continue. The regulatory authority may choose to give the Significant Improvement Required rating for the standard or quality area where the risk was identified.

In general, authorised officers should seek to complete assessment and rating visits to ensure that sufficient evidence is gathered to allow the service to be rated against every standard. This also ensures that all major compliance issues at the service are identified. Regulatory authorities are required to give a rating for every quality area, even if one quality area is rated as Significant Improvement Required.

The assessment and rating process may only be suspended if the regulatory authority decides to take one of the actions outlined under section 137 of the National Law.

Suspending a rating assessment

National Law

Section 137

The assessment and rating process can only be suspended if the regulatory authority decides to take one of the following actions:

- suspend or cancel the service approval or provider approval
- issue a compliance notice to the approved provider in respect of the service
- issue an emergency action notice to the approved provider in respect of the service
- remove or cause the removal of a child or children from the service (emergency removal).

National Law

Sections 136, 137

Unless one of the actions listed in section 137 is taken, the rating must be determined within 60 days of the completion of the assessment and rating visit to the education and care service premises.

If one of the actions is taken, the regulatory authority must give the approved provider a written notice which states that the provider will be given the outcome of the rating assessment within 60 days after the end of the final period of review for the compliance action, or if a review is sought, the determination of the review. Emergency action notices and emergency removal of children are actions listed under section 137 which are not reviewable decisions and therefore do not have a period of review available. In these cases, the provider will be given the outcome of the rating assessment within 60 days of the emergency action notice being given or the emergency removal of children being undertaken.

If the service or provider approval is cancelled, the regulatory authority cannot give a rating for the service. If the service or provider approval is suspended, the rating assessment recommences once the suspension expires.

Other compliance actions

While there are other compliance actions which regulatory authorities might take in response to identifying an issue during an assessment and rating visit, only the actions listed under section 137 have the effect of suspending the assessment and rating timeframe. In all other cases, the regulatory authority must still determine the rating within 60 days of the assessment and rating visit.

When a rating of Significant Improvement Required is given

Regulatory authorities should reassess services which have been rated as Significant Improvement Required as soon as practicable. The reassessment is an opportunity to check the service is meeting minimum requirements to ensure the health, safety and wellbeing of children in attendance.

Actions that can cause the suspension of the assessment and rating process
The provider approval or the service approval for the service is suspended or cancelled
A compliance notice has been given to the approved provider in respect of the service
A notice has been given under section 179 in respect of the service (emergency action notices)
An action has been taken under section 189 in respect of a child or children being educated and cared for by the service (emergency removal of children).

If the rating is suspended, the regulatory authority must give written notice to the approved provider. The notice must state that the service rating will be given under section 136 within 60 days after:

- the end of the final period for review of the decision or action that has resulted in the suspension of the rating assessment, or
- if a review has been sought, the determination of the review of the decision or action that has resulted in the suspension of the rating assessment.

Additional guidance

If a compliance notice is issued, the approved provider has 14 days to request a review of the notice. If the approved provider does not request a review, the 60 days to issue a service rating begins at the end of the 14 day period. If the approved provider does request a review of the notice, the 60 day period does not begin until the date of the review decision.

For example, the rating visit is day one. A compliance notice is issued on the sixth day. The provider has 14 days to request a review of the notice. If the provider does not request a review, the regulatory authority has 60 days from the end of the 14 days to issue the rating. The total time taken is 80 days.

If the compliance notice is issued on day six and the provider requests a review of the notice on day 15, and the regulatory authority makes a decision on review request on day 28, the regulatory authority has 60 days from the date of review decision to issue the rating. The total time is 88 days.

The regulatory authority may need to determine the rating for the service before the period for complying with the compliance notice has expired, for example if the regulatory authority gives the provider 90 days to comply with the compliance notice.

10. REASSESSMENT AND RE-RATING AT REQUEST OF THE APPROVED PROVIDER

National Law

Sections 138–139

An approved provider may apply to the regulatory authority to have a service (including any aspect or element of the service) reassessed and re-rated against the NQS.

While a provider indicates the element(s), standard(s) and quality area(s) they are requesting reassessment on, the regulatory authority may extend the scope of the reassessment beyond those requested by the provider. For example, regulatory authorities may reassess and re-rate the entire quality area when a provider requests a reassessment of part of that quality area.

Application for reassessment and re-rating

An application for reassessment and re-rating can only be made once every two (2) years unless the regulatory authority agrees otherwise.

An application for reassessment and re-rating must be in writing, include the prescribed information and include payment of the prescribed fee.

A regulatory authority may reassess a service or any aspect or element of a service at any time.

National Regulations

Regulation 66

Information that must be included in an application for reassessment and re-rating
The name of the education and care service
The service approval number
The name and contact details of the contact person for the purposes of the application
The nature of the reassessment sought including: application for reassessment of the service, or application for reassessment of one or more aspects or elements of the service
If the application is for reassessment of an aspect or element of the service, the particular aspects or elements and quality areas in the NQS for which reassessment is sought
A statement setting out the reasons why reassessment is sought.

Timeframe for conducting the reassessment and re-rating

There is no specific timeframe in which the regulatory authority must reassess and re-rate a service.

Given the reassessment is at the request of the approved provider, the standard timeline for assessment and rating may not need to be applied e.g. the regulatory authority may not need to give the provider as much notice of the assessment visit. However, the provider should be notified as soon as possible. The service may be reassessed sooner if circumstances permit, for example, if the application for reassessment is for one quality area.

Similarly, the regulatory authority may not need to give the provider the standard three weeks to submit the QIP as it is likely the plan will have been updated.

Identifying issues during reassessment

During the visit, the authorised officer may note an issue which was not the subject of the reassessment request. This will require case-by-case consideration, but may require the authorised officer to apply the principles of risk assessment to determine the appropriate course of action.

Where an issue is minor and unlikely to change the service's current rating for that quality area, the regulatory authority may decide not to reassess the area but take some low-level compliance action to address the issue.

Where an issue is more significant and more likely to affect the quality of the service, the regulatory authority may reassess other quality areas or all rooms within the service. As this will be a significant change to the scope of the reassessment, the authorised officer may advise the approved provider of this change.

Regulatory authorities need to decide how they will report on the reassessment. For example, the initial report may be amended with respect to the new ratings, or a new report may be issued with only the reassessed elements of the NQS and ratings.

Factors that influence reassessment and re-rating

In most cases, as part of the continuous quality improvement process that is integral to the NQF, the quality of services would be expected to improve. However, the regulatory authority may decide to reassess a service if it is concerned the quality of a service may have declined over time, or if other risk factors are present. Changes at the service, for example, may result in the decline of a service's quality. In this case, the regulatory authority may want to reassess and re-rate the service to ensure the rating level of the service accurately reflects the service quality. A regulatory authority may also decide to reassess and re-rate a service if an investigation or other compliance action has taken place.

To amend a rating level, the regulatory authority must undertake an assessment and rating of the service.

11. FIRST TIER REVIEW

National Law

Sections 141–143, 190–191

Under the National Law and Regulations an approved provider can request a review of the service's rating if the provider disagrees with the rating given.

This review of ratings by the regulatory authority is referred to as a first tier review.

How to apply

An approved provider can apply to the regulatory authority for a first tier review of the service's quality ratings. The application must:

- be submitted within 14 calendar days of receiving the final assessment and rating report
- be in writing to the regulatory authority which gave the rating
- identify on what grounds the review is being sought and include information set out in the National Regulations (see table)
- be submitted through the National Quality Agenda IT System.

National Regulations

Regulation 68

Information that must be included in an application for first tier review
The name of the education and care service
The service approval number
The name and contact details of the contact person for the purposes of the request
The quality areas to which the grounds for review relate.

The National Law and Regulations do not specify particular grounds for first tier review. Possible grounds might include situations where a provider:

- disagrees with a rating based on the evidence described in the final report
- has additional contextual information about the evidence described in the final report
- believes the authorised officer(s) did not take into account all of the relevant evidence available at the time
- believes the service was not given adequate opportunity to demonstrate how it meets an element or standard.

Matters that do not materially affect the service's rating are less appropriate grounds for first tier review. This means that the matter must be significant enough to warrant a reconsideration of the service's rating.

Sometimes approved providers will have concerns that are better handled through, for example, the regulatory authority's complaints process, or through seeking a reassessment of a service's ratings.

Timeframe for conducting first tier review

National Law

Sections 142(4)(a), (b), (c)

The regulatory authority must conduct a first tier review within 30 calendar days of receiving the request. The timeframe may be extended by up to 30 calendar days by agreement between the approved provider and the regulatory authority, or if the regulatory authority requests further information.

The regulatory authority may decide to extend the timeframe by up to 60 calendar days where it considers there are special circumstances.

'Special circumstances' is not defined in the National Law. Relevant case law indicates that 'what is special is that which is not general in character'.[1] The phrase is deliberately flexible and designed to cover circumstances that might not be easily anticipated. Special circumstances may be circumstances that are unusual, uncommon or exceptional. This will depend on the context in which they occur. For example, flooding or natural disasters may be unusual in one location and common or seasonal in another.

Special circumstances can vary on a case by case basis. Without being prescriptive, possible examples where the regulatory authority may decide to extend the timeframe by up to 60 calendar days might include:

- an unexpected event that prevents the reviewer from reaching a decision within the legislated timeframe, for example an illness
- an unexpected event affecting the gathering of or availability of information required for the first tier review, for example a natural disaster or unavailability of key personnel due to illness
- an issue arising during the first tier review that requires investigation.

Conducting the first tier review

Information considered at the first tier review

- A first tier review is a review of the initial 'point-in-time' assessment of the service against the NQS; it is not a reassessment of the service. The regulatory authority can take into account new information during a first tier review, but that information must relate to the facts at the point in time when the assessment was conducted. Any changes made at the service since the ratings assessment, which may have improved the service's quality, cannot be taken into account at first tier review.
- If changes have been made at the service since the ratings assessment that might improve the service's quality and therefore rating levels, the provider should not apply for a first tier review. Instead, the provider should consider whether to apply for a reassessment and re-rating under section 139 of the National Law. During a reassessment and re-rating, the regulatory authority can take into account changes made after the initial ratings assessment. These changes cannot be taken into account during a first tier review.

1. *Mann v Medical Practitioners Board of Victoria* [2002] VSC 256

How a review is conducted

The National Law does not prescribe how the first tier review must be conducted. The regulatory authority can decide how the first tier review is conducted, for example:

- an individual officer or a panel may conduct the review and make the decision
- an individual officer or a panel may conduct the review and make the recommendation to a delegated officer to make the final decision.

If a person was involved in the assessment and rating under review, for example, they conducted the original assessment or were the delegate who determined or approved the final rating, they cannot be involved in the first tier review.

Key requirements and skills for person(s) determining first tier review applications:

Person(s) determining first tier reviews
Should have access to all of the relevant information (including information submitted by the approved provider in its request for a first tier review, and all information used by the regulatory authority to determine the original rating)
Should have relevant knowledge of the NQF, NQS and assessment and rating process, including administrative processes and requirements
Should have knowledge of the relevant legislation
Should have effective communication and conflict resolution skills.

Process which regulatory authorities may follow when conducting a first tier review.

First tier review process
Receive request for review.
Register request for review on National Quality Agenda Information Technology System (NQA IT System).
Acknowledge receipt of application.
Identify person(s) within the regulatory authority involved in the original assessment and/or rating under review to ensure they are not involved in the first tier review.
Assign request for review to an individual officer or a panel.
Validate and review application: this process involves ensuring that the application form is complete and all supporting documentation referenced in the application has been included.
Seek further information if required, for example: • information from the approved provider to support grounds for requesting review, excluding information that was not available to the original decision maker at the time of the ratings assessment • notes, evidence or any other information (e.g. assessment and rating instrument) considered in original determination of rating • comment from those involved in the assessment and rating of the service on the grounds of the request for review of rating • any other relevant information from individual persons • a visit to the service to collect or assess relevant information.
Assess application and determine what the correct rating levels should be based on the evidence provided. The regulatory authority may seek legal advice about a first tier review if required.
Individual officer or panel recommends the rating levels and/or the overall rating is confirmed or amended.
Individual officer or panel prepares a statement of reason(s). This statement will include the recommendation for each relevant element, standard or quality area, including the information taken into account when making the recommendation.
Regulatory authority staff member delegated first tier review decision-making powers confirms or amends the rating levels for the service.
Notify relevant regulatory authority staff, including original decision maker, of the grounds for review and outcome of the review.
Notify approved provider of the outcome of the review for each rating level, including reasons for the decision. The decision notification should also include information about further review rights.
Update the NQA IT System with the outcome of the first tier review application.
Identify any opportunities for the regulatory authority to improve the assessment and rating process.

Determining a first tier review

The regulatory authority may confirm or amend the rating levels under review 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.

A first tier review decision notice should contain a sufficient level of detail for the approved provider to understand the regulatory authority's reason(s) to amend or confirm the relevant element(s), standard(s) or quality area(s). This includes specifying the evidence the regulatory authority considered in relation to the relevant element, standard or quality area, its analysis of this evidence and its conclusion based on this analysis.

The regulatory authority must advise the approved provider of the outcome of the review in writing. This decision notice must:

- set out the rating levels for the service
- explain the reasons the decision was made.

Ensuring the decision notice provides sufficient detail supports procedural fairness. It also reduces the likelihood of a second tier review application.

Appeals

A decision to confirm or amend the rating levels of a service may be reviewed by a ratings review panel in a second tier review.

After the first tier review has been determined

ACECQA will publish the rating levels determined by the regulatory authority at first tier review 14 days after the decision, unless an application for second tier review is made. If an application for second tier review is made, ACECQA will publish the rating levels determined by the ratings review panel after the second tier review.

12. SECOND TIER REVIEW

National Law & Regulations

Sections 144–151, Regulation 69

Under the National Law and Regulations an approved provider can request a review of the service's rating if the provider disagrees with the rating given. This review of ratings by the regulatory authority is referred to as a first tier review. If the approved provider is still not satisfied after the first tier review, they may apply to ACECQA for a further review (a 'second tier review') by a ratings review panel.

Who can apply?

National Regulations

Regulation 68

An approved provider can only apply to ACECQA for a second tier review if the regulatory authority has conducted a first tier review. The application must:

- be submitted to ACECQA within 14 calendar days of receiving the notice of the outcome of the first tier review
- identify on what grounds the review is being sought and include information set out in the National Regulations (see table)
- be made using the application form on the ACECQA website which sets out the information applications must provide.

An approved provider can only apply for a second tier review on the grounds that the regulatory authority:

- failed to take into account or give sufficient weight to special circumstances existing or facts existing at the time of the rating assessment, or
- did not appropriately apply the prescribed processes for determining a rating level.

Information that must be included in an application for second first tier review
The name of the education and care service
The service approval number
The name and contact details of the contact person for the purposes of the application
A statement setting out the grounds on which the provider seeks review of the decision of the regulatory authority and the quality areas to which the grounds for review relate.

National Law

Sections 139, 145

An application must not include information or evidence that was not given to the regulatory authority as part of an initial assessment and rating, reassessment and re-rating, or first tier review.

If a service has made changes since its ratings assessment that it believes will improve the service's ratings levels, it should not apply for a review of ratings. Instead, it should consider whether to apply for a reassessment and re-rating. Changes to a service cannot be taken into account during first and second tier reviews.

Timeframe for conducting a second tier review

ACECQA must give written notice to the regulatory authority that a second tier review application has been received within seven days of receipt. The second tier review panel must make a decision to confirm or amend the rating levels within 60 calendar days of the application for review being made (section 151(2)).

ACECQA must give the approved provider and the regulatory authority written notice of the decision on the review and the reason for the decision within 14 calendar days of the decision being made (section 151(5)).

The chairperson of the panel may extend the period for decision-making if the chairperson considers there are special circumstances that warrant that extension, or by agreement between the chairperson and the approved provider.

National Law

Section 151

Conducting the second tier review

ACECQA must invite the regulatory authority to make submissions to the review.

ACECQA must establish a ratings review panel to conduct the review.

Ratings review panels are responsible for confirming or amending the rating levels given to education and care services by regulatory authorities. ACECQA will establish a ratings review panel for each review. Members for the ratings review panel are drawn from the ratings review panel pool.

National Law & Regulations

Sections 146–151
Regulation 70

Persons approved as members of the panel must have expertise or expert knowledge in:

- early learning and development research or practice
- law
- a prescribed area, such as the assessment of quality in education and care services or other relevant services
- best practice regulation.

The National Law sets out what the ratings review panel may consider when conducting the review.

National Law

Sections 150

What a ratings review panel may consider when conducting a second tier review
Documents, information, plans, photographs, video or other evidence available to the regulatory authority in carrying out the rating assessment
The approved provider's and service's history of compliance with the National Law
Any submissions made by the approved provider as part of the first tier review
The outcome of the first tier review
Any submissions made by the approved provider as part of the second tier review
Any submissions made by the regulatory authority as part of the second tier review.

The ratings review panel is not required to hold an oral hearing for a review. The ratings review panel may request written information from the regulatory authority or approved provider.

If the regulatory authority provides any documents, information or evidence to the ratings review panel, ACECQA will provide the approved provider with a copy and give the provider an opportunity to respond in writing, as required under the National Law.

Determining the second tier review

In most cases, ratings review panels will conduct reviews via teleconference or other electronic means.

Panel members must act in all proceedings with fairness, equity and impartiality. They are required to adhere to the National Law and processes determined by ACECQA. Panels will be supported by a secretariat provided by ACECQA.

The ratings review panel will review all available evidence before confirming or amending the service's ratings levels. Minutes of the deliberations of the review will be kept and the panel will set out its decisions on the review.

The ratings review panel must make a decision within 60 days after the application for review was made. This period may be extended if the chairperson of the panel considers special circumstances warrant the extension or if the approved provider agrees.

Appeals

National Law
Section 151

Rating levels determined by a ratings review panel will be the rating levels for the service. The National Law does not provide a right of appeal against a decision of a panel. If an approved provider is dissatisfied with the rating levels determined by a panel, it may seek legal advice.

If an approved provider believes they have been unfairly treated by ACECQA, they may complain to the Education and Care Services Ombudsman.

After the second tier review has been determined

The ratings review panel may confirm the rating levels determined by the regulatory authority at first tier review, or amend the rating levels.

The rating level confirmed or amended by the panel will be the rating level for the service.

The panel must provide written notice of its decision, setting out the panel's findings on each review ground. ACECQA will send the decision notice to the approved provider and regulatory authority, on behalf of the panel, within 14 calendar days of the decision being made.

ACECQA will publish the rating levels determined by a ratings review panel. ACECQA also publishes de-identified summaries of second tier review decisions on its website.

4. OPERATIONAL REQUIREMENTS

Operational Requirements
Quality Areas 1 to 7

ICONS LEGEND

National Law and Regulations

Sections of the Education and Care Services National Law (National Law) or regulations from the Education and Care Services National Regulations (National Regulations).

Offence

Offences against the National Law that attract a penalty, for example a fine.

Sight

Authorised officers will sight documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

Centre-based service

An education and care service other than a family day care service which includes most long day care, preschool and outside school hours care services that are delivered at a centre.

Family day care service

An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences.

Observe

Authorised officers will observe what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions).

State icons

Information that is specific to a state or territory.

Birth to three

Children birth to three years of age.

School age children

Includes children attending school in the year before grade 1, and above.

Discuss

Authorised officers will discuss why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members.

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OPERATIONAL REQUIREMENTS

This chapter sets out the requirements for operating an education and care service, including the responsibilities of approved providers, nominated supervisors, and family day care educators. It also includes guidance for regulatory authorities to help determine whether operational requirements are being complied with.

QUALITY AREA 1
EDUCATIONAL PROGRAM AND PRACTICE

1.1 APPROVED LEARNING FRAMEWORKS

National Law
Section 168

The approved provider and nominated supervisor of an approved service must ensure that a program is delivered to all children being educated and cared for by the service that:

- is based on an approved learning framework
- is delivered in accordance with that approved learning framework
- is based on the developmental needs, interests and experiences of each child
- is designed to take into account the individual differences of each child.

National Regulations
Regulation 73

An educational program is to contribute to the following outcomes for each child:

- the child will have a strong sense of identity
- the child will be connected with and contribute to his or her world
- the child will have a strong sense of wellbeing
- the child will be a confident and involved learner
- the child will be an effective communicator.

National Regulations
Regulation 254

There are two national approved learning frameworks that recognise children learn from birth, linked to the National Quality Standard (NQS). These are:

- *Belonging, Being and Becoming: The Early Years Learning Framework for Australia* ('Early Years Learning Framework')
- *My Time, Our Place: Framework for School Age Care in Australia* ('Framework for School Age Care').

There is also an approved learning framework specific to Victoria:

- *Victorian Early Years Learning and Development Framework, Department of Education and Victorian Curriculum and Assessment Authority*

The approved learning frameworks include principles, practices and learning outcomes that guide educational leaders and educators in their curriculum decision-making, and assist them in planning, delivering and evaluating quality programs in early and middle childhood settings.

The ages of children who attend an education and care service should determine which of the two national approved learning frameworks is used, rather than the service type or setting.

If children preschool age or under and children over preschool age regularly attend a service, educators are expected to use both frameworks as the basis for the educational program. This does not necessarily require that separate experiences or programs be offered; rather that consideration is given to the features of the frameworks in the implementation of the educational program.

For example, if one or more preschool age children regularly attend a service for school age children, the approved provider and nominated supervisor must ensure the *Early Years Learning Framework*, or relevant parts of a jurisdiction-specific approved learning framework, form the foundation for the interactions and environments provided for those preschool age children and their families.

In developing the program it is important to gather, analyse and interpret information about children that is:

- meaningful and relevant to children as individuals and in groups
- capturing an understanding of their identity, knowledge, strengths, ideas, culture (including popular culture), abilities and interests
- descriptive of what children are investigating and exploring
- an authentic example of what children know, can do and understand
- focused on learning, progress and achievements.

Authorised officers consider a range of factors when determining if a service meets the NQS and the National Law and Regulations, such as:

- how educators collect and interpret information about children for program development
- how services develop programs that are responsive to and promote children's wellbeing, development and learning
- how educators critically think about what is offered and why
- how documentation or information about the development of the program shows an ongoing cycle of planning and evaluation, informing children's experiences in the program.

1.2 INFORMATION TO BE KEPT AND AVAILABLE

National Regulations

Regulation 75

Information about educational program to be kept available

Information about the contents and operation of the educational program must be displayed at the education and care service premises at a place that is accessible to parents and families.

A copy of the educational program must be available at the following places for inspection on request:

- for a centre-based service, at the education and care service premises
- for a family day care service, at each family day care residence or venue.

Information about educational program to be given to parents

National Regulations
Regulation 76

The following information must be given to the parent of a child on request:

- information about 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.

1.3 DOCUMENTATION

Documenting of child assessments or evaluations for delivery of educational program

National Regulations
Regulation 74

For a child of preschool age or under, this documentation must include:

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

For a child over preschool age, this documentation must include:

- evaluations of the child's wellbeing, development and learning.

The following apply in place of 74(1)(b)

NT Regulation 289A
NSW Regulation 274A
QLD Regulation 298A

Services in the Northern Territory, NSW and Queensland are not required to keep documentation of individual evaluations of school age children. To meet requirements the approved provider must ensure that, for the purposes of the educational program for a child over preschool age, evidence about the development of the program is documented.

In preparing the documentation, the approved provider must:

- consider the period of time that the child is being educated and cared for by the service
- consider how the documentation will be used by the educators at the service
- prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

The approved learning frameworks state that, in the early childhood context, *assessment* for children's learning refers to the process of gathering and analysing information as evidence about what children know, can do and understand (*Early Years Learning Framework*, p. 17). For school age children, *evaluation* for wellbeing and learning refers to processes such as scanning, monitoring, gathering and analysing information about how children feel and what children know, can do and understand (*Framework for School Age Care*, p. 16).

Educators can also use assessment and evaluation information to critically reflect on their own values, beliefs and teaching practices, and to communicate about children's learning with children and their families.

Type and amount of documentation to be kept

There is no prescribed method in the National Law or Regulations for documenting the educational program, assessments or evaluations. There are many different electronic, visual and paper based ways to document. A service can explore a range of styles and methods to determine what works best for their children, families and educators.

The National Law and Regulations do not prescribe how much documentation is needed for the educational program or for individual child assessments or evaluations over a set period of time. This will be influenced by the number, ages and capabilities of children and how often they attend the service, among other things.

Authorised officers consider a range of factors when determining if a service meets the NQS and regulation 74, with a focus on how the documentation is used to support the delivery of the educational program and quality outcomes for children, rather than the amount or type of documentation.

Authorised officers may discuss with the service:

- the phases of program planning and the information and documentation gathered at each phase and how it is used
- how the service decided what form of documentation is appropriate, and how the documentation is readily understood by families
- how educators draw upon various theoretical influences and perspectives to inform the program and maximise opportunities for all children to engage and participate
- how educators use the documentation to plan for each child's learning and to support quality outcomes for children
- how children are involved in documenting their own wellbeing, development and learning, and contribute to the development of the program.

Examples of educational program and assessment and evaluation documentation for all service types

There are many electronic, visual and paper based ways to document the educational program and assessments or evaluations, including individual and group observations. Some ideas:

- enrolment information and input from families
- details on children's strengths, ideas, abilities and interests along with ongoing evidence of children's engagement and participation in the program
- learning stories or narratives of key events
- photographs with captions, photographic sequences, video or audio recordings
- observations such as jottings, anecdotes or running records
- learning and/or reflective journals
- surveys and feedback forms
- notes from meetings or conversations with children, families, staff colleagues and other professionals
- communication or floor books

- portfolios or scrap books including samples of children's work, artwork and writings
- collection of children's feedback, ideas and suggestions including children's own documentation on the program
- visual displays including mind maps, diagrams, sketches and curriculum pathways
- quality improvement plans
- electronic records or Apps
- language transcripts and notes
- feedback from families and educators on the program and practice.

For more information, download the fact sheet *Documenting programs for school age children* from the ACECQA website at www.acecqa.gov.au.

ACT SA TAS VIC WA

Documentation proportionate to a child's pattern of attendance for school age children in ACT, South Australia, Tasmania, Victoria and Western Australia

In school age care services the focus is on children's wellbeing as well as recreation and leisure time. Educators collaborate with children to provide play and leisure opportunities that are meaningful to children and support their wellbeing, learning and development.

Documenting evaluations of a child's wellbeing, development and learning can be impacted by varying (and sometimes infrequent) attendance patterns of school age children in comparison to other service types.

Evaluation documentation can be collected proportionate to a child's pattern of attendance at the service.

Authorised officers consider a range of factors when determining if a service meets the NQS and regulation 74, including:

- children attending the service frequently, such as children who attend regular mornings and afternoons each week will have more information collected and used to inform curriculum decision-making and the program over the course of a year
- children attending the service infrequently, such as ad hoc days during school term or vacation care, or for short periods of time, will have less information collected and used to inform curriculum decision-making and the program.

National Regulations

NT Regulation 289A

NSW Regulation 274A

QLD Regulation 298A

Documentation for school age children in Northern Territory, NSW and Queensland

Services in the Northern Territory, NSW and Queensland are not required to keep documentation of individual evaluations of school age children. To meet requirements the approved provider must ensure that, for the purposes of the educational program for a child over preschool age, evidence about the development of the program is documented.

Services with a mix of school age children and children preschool age or under are still required to document individual child assessments for the children preschool age or under.

QUALITY AREA 2
CHILDREN'S HEALTH AND SAFETY

2.1 ADEQUATE SUPERVISION

National Law

Section 165

The approved provider, nominated supervisor and family day care educator must ensure all children being educated and cared for by the service are adequately supervised at all times.

Educator-to-child ratios alone do not achieve adequate supervision. Supervision is critical to the safety of children and helps to protect children from harm or hazards that may arise in their play and daily routines.

Adequate supervision means:

- that an educator can respond immediately, particularly when a child is distressed or in a hazardous situation
- knowing where children are at all times and monitoring their activities actively and diligently.

Educators should balance supervision and engagement by drawing on a range of skills such as positioning, using peripheral vision and monitoring changes in noise and stress levels.

Children of different ages and abilities need different levels of supervision. In general, the younger the children are, the more they need an adult close by to support and help them.

centre-based service

Examples of adequate supervision of children in a centre-based service include:

- birth to three – educators can see and hear the children at all times, especially if sleeping
- young children – educators remain in close proximity to the children
- preschool age children – educators actively supervise indoor and outdoor environments
- over preschool age children – educators know where each child is and in a position to respond if necessary.

family day care

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 adequately supervised.

Consideration should be given to whether the age and developmental needs of individual children would allow them to play in areas of the family day care residence or venue where they are not directly supervised.

Factors affecting adequate supervision

Authorised officers may consider the following factors when considering the adequacy of supervision.

Factors affecting adequate supervision
Number, ages, abilities and individual needs of children
Number and positioning of educators
Each child's current activity
Areas where children are playing, in particular their visibility and accessibility
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
In family day care, particular consideration should be given to the layout of the areas of care, the number of children attending, and supervision during periods of rest and in toileting/nappy change areas.

An authorised officer may discuss with the approved provider or nominated supervisor the importance of teamwork and good communication among staff for ensuring adequate supervision. 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. The approved provider could develop a handover routine for changing shifts, which may include using a diary or communication book.

family day care

When visiting or assessing family day care services, authorised officers may discuss with the approved provider how supervision is considered in risk assessments of family day care residences and venues, and how they work with educators in each residence or venue to ensure supervision is adequate and appropriate for the ages and needs of the children attending.

Key times of the day and year

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 when the child arrives and departs. This might be used in combination with sign in/out records. 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.

family day care

In family day care this may also include having a supervision strategy for the arrival and departure of children to and from the residence or venue depending on the nature of the residence and any concerns with access to and from the residence.

At times it may be appropriate 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. This could assist educators to respond to children's needs and foster children's sense of security and belonging.

Consideration should also be given to ensuring children are adequately supervised when educators are performing other tasks such as cleaning after meal times and at rest time. Additional educators may be required to ensure children's needs for safety and supervision are met.

National Regulations

Regulation 100–101

Excursions

Undertaking a risk assessment is part of planning a regular outing or excursion. The risk assessment will need to take into account the levels of supervision and number of adults needed. Services might consider how attendance numbers will be verified at certain times during the excursion, such as when leaving the premises or travelling on public transport. For example, strategies might include head counts or allocating a group of children to a particular adult or educator (see more information about ***Excursions***, below).

A regular outing for a family day care service could include:

- going to or from a school to collect children who attend the service
- shopping
- visiting the local library
- attending a park or playground
- attending playgroup.

See more information about ***Excursions*** below.

Sleeping children

The circumstance and needs of each child should be considered to determine any risk factors that may impact on the adequate supervision of sleeping children. For example, babies or children with colds or chronic lung disorders 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 support adequate supervision of sleeping children. Supervision windows should be kept clear and not painted over or covered with curtains or posters.

family day care

A family day care service should have an agreed and documented practice for the supervision of sleeping children, tailored to the unique layout and safety considerations of each family day care residence or venue as well as the ages and development stages of the children in care. For example, the service should ensure that children are not placed in the educator's bedroom if they would have access to medication or other dangerous items.

For more information download the *Guidance Note: Safe sleep and rest practices for early childhood education and care services* available on the ACECQA website (www.acecqa.gov.au). Policies and procedures on sleep and rest must also be in place (see ***Sleep and rest***, below).

Nappy change

Preparing for a nappy change is essential to maintaining an adequate level of supervision. Educators should ensure 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.

Where older children with special needs require nappy changing the adequacy of supervision and the privacy needs of the child should be considered. The facilities that will be required to ensure hygienic practices of nappy changing areas should also be considered.

family day care

Family day care services should have clear guidelines to ensure hygienic practices in nappy changing areas and these should consider proximity to hand washing facilities and supervision of all children. This should be included or considered in the assessment of family day care residences.

2.2 HARM AND HAZARDS

National Law

Section 167

Every reasonable precaution must be taken to protect children from harm and from hazards likely to cause injury.

The age of the children, their developmental needs and the way in which they are being supervised may impact on the level of harm posed by a risk or hazard.

Regular risk/benefit assessments should be conducted to identify and manage

potential hazards while children are being educated and cared for. Policies and procedures should be in place and kept up to date. The authorised officer may examine policies and procedures, particularly in relation to health and safety and providing a child safe environment (regulation 168(2)(a) and (h)).

Many factors may contribute to a hazard, such as a poor program, inadequate supervision and worn equipment. Approved providers, nominated supervisors and family day care educators should develop, implement and monitor procedures for identifying, mitigating and, where necessary, preventing hazards. For example, authorised officers may see the types of precautions outlined below being taken at the education and care service as evidence of meeting this requirement.

Approved providers, nominated supervisors and family day care educators:

- must be able to provide evidence to the authorised officer, that they have weighed the obligation to protect children from harm against the benefit of providing children with a stimulating play environment
- should show an ongoing awareness of safety and hazards and take reasonable steps to protect against these hazards as they arise.

Preventing harm and hazards
Daily safety checks of the environment and equipment
Secure storage of hazardous products including chemicals
An equipment maintenance schedule
Risk assessments, particularly for excursions
If staff consume hot drinks, they are made and consumed away from children
Equipment that meets Australian Standards – for example, cots and playground equipment and surfacing, and safety plugs in unused electrical outlets
Staff have current working with children checks or equivalent
Staff are given information and/or training about child protection law and any obligations they have under that law
Procedures for releasing children only into the care of authorised persons
In family day care residences and venues, an assessment or safety check of all indoor and outdoor equipment is regularly made, reviewed and monitored
Risk minimisation practices are in place for the management of medical conditions
Firearms and ammunition are stored securely and separately from each other
For family day care services, that there are adequate checks in place to ensure that each family day care residence and venue has a tailored evacuation plan specific to the residence type and that careful consideration has been given to the ability of the educator to evacuate all children in attendance at the residence at all times if alone
Hygiene, cleanliness and safety checks of furniture and equipment – for example, high chairs are clean and children are secured.

family day care

Firearms in family day care services

Some family day care residences or venues may have firearms on the premises, particularly in rural areas. Firearms are regulated at the state and territory level under a uniform national approach, which covers licensing, permits and safe storage. Each state and territory has their own firearms registry administered by their police force.

Authorised officers visiting a residence or venue should sight the following to ensure the health, safety and wellbeing of children:

- the firearms licence
- that firearms and ammunition are securely stored separately from each other
- that firearms and ammunition are inaccessible to children and is not used in the presence of children.

More information on the regulation of firearms is available from the state or territory police force, and the National Firearms Safety Code produced by the Commonwealth Attorney–General's Department.

Safety measures should align with advice from recognised authorities such as Standards Australia, and with local government, state, and territory compliance agencies.

For information on how to help keep children safe visit Kidsafe at www.kidsafe.com.au and contact the state or territory child protection authority for best practice information – see *Children's health and safety* for a list of contacts.

2.3 HEALTH, HYGIENE AND SAFE FOOD PRACTICES

National Regulations

Regulations 77, 168

Adequate health and hygiene practices and safe practices for handling, preparing and storing food must be implemented at the service.

The approved provider is responsible for ensuring the nominated supervisor, staff members and volunteers at the service implement these practices. The nominated supervisor is also responsible for ensuring implementation by staff and volunteers.

A family day care educator must implement adequate health and hygiene practices and safe practices for handling, preparing and storing food.

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

The approved provider must ensure policies and procedures are in place in relation to health and safety.

Authorised officers may do the following to ensure adequate practices:

- Observe hand washing, toileting, nappy changing, cleaning equipment and storing and reheating food are appropriate.
- Examine the policies and procedures in relation to health, hygiene and food safety practices. This can help the authorised officer determine whether the problem relates to implementing good practice, or whether there are broader issues with awareness and understanding of the requirement.

- Discuss strategies that are in place at the service to ensure practices are adequate and consistently implemented.

More information

The National Law and Regulations do not require providers to use any particular guideline or standard in relation to health, hygiene and food safety practices.

Download the National Health and Medical Research Council (NHMRC) publication Staying Healthy: Preventing infectious diseases in early childhood education and care services (latest edition available at www.nhmrc.gov.au) for advice about health, hygiene and food safety practices.

Other rules apply to approved providers in relation to food safety, including the Food Safety Standards developed by Food Standards Australia and New Zealand (FSANZ) (available at www.foodstandards.gov.au). Food safety legislation for all states and territories references the Food Safety Standards and details the responsibilities of food handlers. Food authorities in each state or territory monitor compliance with the Food Safety Standards. Food authorities in some jurisdictions also require providers that supply food and beverages to register as a food business. Contact details for food authorities in each state and territory are provided at the end of *Children's health and safety*.

National Regulations

Regulations 78–79, 168

Food and beverages

The approved provider, nominated supervisor and family day care educator must ensure that children have access to safe drinking water at all times and are offered food and beverages on a regular basis throughout the day. Food and beverages must be appropriate to the needs of each child.

If food or beverages are provided at the service, they 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. This does not apply to food and beverages provided by a family for their child.

The approved provider must ensure policies and procedures are in place in relation to nutrition, food and beverages and dietary requirements.

The regulatory authority may examine these policies and procedures if they have concerns about the appropriateness of food and beverages provided. This can help the officer to determine whether the problems relate to implementing good practice, or whether there are broader issues with awareness and understanding of the requirement.

The National Law and Regulations do not require providers to use any particular food and beverage guideline or standard.

For advice about diet and nutrition for children, download the *Australian Dietary Guidelines* (www.eatforhealth.gov.au), the Get Up & Grow: Healthy eating and physical activity for early childhood resources (www.health.gov.au) and the Physical Activity and Nutrition Outside School Hours (www.health.qld.gov.au).

National Regulations

Regulation 80

Weekly menu

The approved provider, nominated supervisor and family day care educator must ensure that if the service provides food and beverages (other than water), a weekly menu that accurately describes the food and beverages is provided by the service each day is displayed where parents can access it.

The menu should include enough detail to inform parents about what food and beverages will be offered. 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. For example, this might be done through a note on a whiteboard, daily journal, communication book or via email.

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

National Regulations

Regulations 81, 168

Sleep and rest

The approved provider, nominated supervisor and family day care educator must take reasonable steps to ensure children's needs for sleep and rest are met, having regard to each child's age, developmental stages and needs.

The approved provider must ensure policies and procedures are in place in relation to sleep and rest practices for children and infants, based on current recommended evidence-based guidelines.

Planned 'rest periods' for young children are often implemented at services, however, routines and the physical environment should also be flexible enough to support children who do not require a sleep and to ensure opportunities are provided for rest and relaxation throughout the day as needed.

Authorised officers may look for indications that sleepy children are offered an opportunity to rest, whether by sleeping or just sitting quietly. Where a planned rest period is implemented and not all children are sleeping, authorised officers may look to see if children who appear to be alert and restless are offered appropriate alternatives while others sleep.

The requirement to take reasonable steps to ensure children's needs for sleep and rest are met does not mean children should be required to sleep. If an authorised officer has concerns about a service meeting children's individual needs for sleep and rest, they may check whether policies and procedures are in place about sleep and rest (required under regulation 168).

Consideration should also be given to the hygienic handling of linen used in the provision of sleep and rest (including cushion covers).

More information

Visit the Red Nose website (www.rednose.com.au) for free safe sleeping resources or to purchase the Infant Safe Sleeping Child Care Kit for early childhood education and care services, to inform the development of sleep and rest policies and procedures.

For more information about recommended evidence-based guidelines, and developing sleep and rest policies and procedures, refer to the Guidance Note: Safe sleep and rest practices for early childhood education and care services available on the ACECQA website (www.acecqa.gov.au).

National Law & Regulations

Section 167
Regulations 82–83

Tobacco, drug and alcohol-free environment

The approved provider and family day care educator must ensure the environment is free from the use of tobacco, illicit drugs and alcohol.

The approved provider must ensure that the nominated supervisor, staff members and volunteers at the service are not affected by alcohol or drugs (including prescription medication) that may impair their capacity to supervise or provide education and care to children at the service.

The nominated supervisor and family day care educator 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 service.

These requirements only apply to the service premises or family day care residence when the service is providing education and care to children.

The requirements about use of prescription medications do not mean that educators, staff or volunteers who require prescription medication must be excluded, but rather that consideration be given to whether that medication affects the person's capacity to provide education and care to children.

Any alcohol, tobacco or drugs on the service premises should be kept out of reach of children.

Authorised officers may talk to family day care educators about developing strategies to ensure that the educator's home is a safe place for children, while recognising the rights of the educator's family. The service's Code of Conduct might include details identifying areas suitable for smoking within the family residence.

Other state or territory-specific legislative requirements may apply regarding tobacco use around children.

2.4 CHILD PROTECTION

National Law & Regulations

Sections 162A, 166
Regulations 84, 168

The approved provider must ensure:

- each nominated supervisor and person in day-to-day charge of the service has successfully completed the child protection training (if any) required in their state or territory – child protection training may be required under a state or territory law, a government protocol or under another instrument such as a state government memorandum of understanding
- the nominated supervisors and staff members at the service who work with children are advised of the existence and application of the current child protection law in the relevant jurisdiction and understand their obligations under that law
- policies and procedures are in place in relation to providing a child safe environment.

To check the child protection training required, approved providers can contact the regulatory authority or child protection agency in the relevant state or territory listed at the end of ***Children's health and safety***.

Authorised officers may ask for evidence that child protection training has been completed, for example a course completion certificate.

Authorised officer may also ask the approved provider how they ensure educators and staff are aware of the current child protection law and their responsibilities, such as by attending regular refresher training or in-house workshops, completing online training, or by other ways. Formal child protection training is not available in all states and territories, so approved providers may use other methods to meet this requirement, such as distributing information to staff and discussing obligations.

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.

See ***Governance and leadership*** for information on reporting to the Regulatory Authority, including physical and sexual abuse.

2.5 INCIDENTS, INJURY, TRAUMA AND ILLNESS

National Regulations

Regulation 85

Policies and procedures

The service's incident, injury, trauma and illness policies and procedures must include procedures to be followed by nominated supervisors, staff members and volunteers at the service in the event that a child is injured, becomes ill, or suffers a trauma.

See ***Governance and leadership*** for more information on serious incidents.

National Regulations
Regulation 86

Notifying parents

A parent must be notified as soon as practicable, but not later than 24 hours after the occurrence, if the child is involved in any incident, injury, trauma or illness while the child is being educated and cared for by the service.

See *Governance and leadership* for more information.

National Regulations
Regulations 87, 183

Records

Approved providers and family day care educators must keep an incident, injury, trauma and illness record. The information must be included in the record as soon as practicable, but not later than 24 hours after the incident, injury, trauma or onset of illness.

The incident, injury, trauma and illness record must be kept confidential and stored until the child is 25 years old. See *Governance and leadership* for more information about record keeping obligations.

The incident, injury, trauma and illness record must include the information set out below.

Information that must be included in an incident, injury, trauma or illness record
Details of any incident, injury, trauma or illness, including: • the name and age of the child • the circumstances leading to the incident, injury, trauma or illness and any apparent symptoms • the time and date the incident, injury, trauma or illness occurred
Details of any action taken by the service, including: • any medication administered or first aid provided • any medical personnel contacted
Details of any witnesses
The name of any person the service notified or attempted to notify, and the time and date of the notifications
The name and signature of the person making an entry in the record, and the time and date that the entry was made.

Authorised officers may examine the policies and procedures required under regulation 168. Authorised officers may also check the service records related to incidents, illness, injury or trauma for details of notifications.

Information about the requirement to notify the regulatory authority is included in *Governance and leadership*.

Incident, injury, trauma and illness records do not have to be written in any particular format. Visit the ACECQA website for an (optional) template at www.acecqa.gov.au.

Healthdirect Australia (www.healthdirect.org.au) provides information on what action could be taken in the event of an incident.

2.6 INFECTIOUS DISEASES

National Regulations

Regulations 88, 168

The approved provider must take reasonable steps to prevent the spread of infectious diseases at the service, and ensure the parent or authorised emergency contact of each child enrolled at the service is notified of the occurrence of an infectious disease as soon as practicable.

For family day care services, the approved provider must ensure that the parent or emergency contact of each child being educated and cared for at the affected residence or venue is notified.

The approved provider must ensure policies and procedures are in place in relation to dealing with infectious diseases.

Authorised officers may examine the policies and procedures in relation to dealing with infectious disease required under regulation 168 and discuss with educators.

Download the National Health and Medical Research Council (NHMRC) publication Staying Healthy: Preventing infectious diseases in early childhood education and care services (www.nhmrc.gov.au) for information about infectious diseases which must be notified to the local public health department and exclusion periods for infectious diseases.

family day care

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 has been 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.

In the case of a family day care service this might be done by displaying a notice at the residence or venue where there has been an outbreak of an infectious disease, stating that there has been an occurrence of an infectious disease.

2.7 FIRST AID KITS

National Regulations

Regulations 89, 168

The approved provider must ensure an appropriate number of first aid kits are kept, and that these are suitably equipped relative to the number of children being educated and cared for at the service. The first aid kits must be easily recognisable and readily accessible to adults from all areas within the service. The service must have policies and procedures about the administration of first aid to children at the service.

First aid kits should also be taken when leaving the service premises for excursions, regular outings or emergency evacuations. A belt bag is one way of taking a modified first aid kit to an outdoor play space.

- A suitably equipped first aid kit should be fully stocked, with no expired products, and should be checked regularly to ensure this. 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. Authorised officers may refer approved providers or family day care educators to seek guidance from a reputable organisation such as St John Ambulance on first aid kit contents.
- 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 or seek guidance from first aid training providers to determine the appropriate locations for first aid kits.

2.8 MEDICAL CONDITIONS POLICY

National Regulations

Regulations 90, 168(2)(d)

The approved provider must ensure policies are in place for managing children's medical conditions. The policies must include practices which address the issues listed in the table below.

Medical conditions policy content
The management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis
Informing the nominated supervisor, staff and volunteers at the service, and family day care educators in relation to managing medical conditions
The requirements arising if a child enrolled at the service has a specific health care need, allergy or relevant medical condition including: • requiring a parent to provide a medical management plan for the child • requiring the plan to be followed in the event of an incident relating to the child's specific health care need, allergy or relevant medical condition • requiring the development of a risk minimisation plan in consultation with the parents of a child: – to ensure that the risks relating to the child's specific health care need, allergy or relevant medical condition are assessed and minimised – if relevant, that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented – if relevant, practices and procedures are developed and implemented ensuring that the child does not attend the service without medication prescribed by the child's medical practitioner. – that practices and procedures ensuring that all staff members and volunteers can identify the child, the child's medical management plan and the location of the child's medication are developed and implemented – if relevant, that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child's medical practitioner in relation to the child's specific health care need, allergy or relevant medical condition are developed and implemented • requiring the development of a communication plan to ensure that – relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child – a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child and setting out how that communication can occur.

The responsibilities of providers in relation to regulation 90 are set out in the table below, including:

- communication with parents of children enrolled or enrolling at the service
- individual medical management plans for children enrolled who have a specific health care need, allergy or relevant medical condition.

Individual medical management plans can be provided by a child's parents, and may be required by the service before the child is enrolled. It is best practice for parents to consult with the child's registered medical practitioner in the development of the plan and for the medical practitioner's advice to be documented.

Responsibilities for managing medical conditions

Who	What	When
Service	Have a medical conditions policy in place that meets the requirements of regulation 90.	Ongoing
Service	Ensure a communications plan is in place to inform all staff members of the medical conditions policy.	At all times the service is in operation, with updates made whenever required (i.e. when a new child enrols at the service with a specific health care need, allergy or relevant medical condition or when changes are required to existing medical management and risk minimisation plans)
Service	Ensure all staff members, including new staff members, are made aware of any children with a health care need, allergy or relevant medical condition.	Induction Ongoing
Service	Seek information from parents about any specific health care need, allergy or medical condition, including whether a medical practitioner has been consulted in relation to a specific health care need, allergy or relevant medical condition. Ensure the medical management plan has been provided and that the risk minimisation plan has been developed and both documents are kept in the child's enrolment records.	Before a child starts at the service
Parents	Inform the service of any specific health care need, allergy or relevant medication condition for their child.	Before a child starts at the service Ongoing while the child attends the service
Service	Monitor the safety, health and wellbeing of all children being educated and cared for.	Ongoing
Service	Ensure parents are regularly asked if their child has developed a specific health care need, allergy or medical condition. And, if so, ensure relevant information is sought from parents and recorded in enrolment records.	Ongoing

Responsibilities for managing medical conditions		
Who	**What**	**When**
Service	Develop a risk minimisation plan in relation to the child, in consultation with the parents of the child.	Before the child starts at the service
Service	Ensure relevant authorisations for the administration of medication are recorded on the enrolment record.	Before the child starts at the service
Parents	Provide a medical management plan to the service for their child.	Before the child starts at the service
Parents	Participate in the development of a risk minimisation plan in relation to their child's specific health care need, allergy or relevant medical condition.	Before the child starts at the service
Service	Monitor the safety, health and wellbeing of the child and, where an incident occurs relating to a child's specific health care need, allergy or relevant medical condition, ensure the medical management plan is followed.	While the child attends the service
Service	Regularly review the risk minimisation plan for the child.	While the child attends the service
Service	Ensure parents are asked to provide any updated information relating to the nature or management of their child's specific health care need, allergies or relevant medical condition, including an updated medical management plan, if required.	While the child attends the service
Parents	Inform the service of any relevant changes relating to the nature or management of the child's specific health care need, allergy or relevant medical condition.	While the child attends the service
Parents	Provide an updated medical management plan for the child.	While the child attends the service

National Regulations

Regulation 91

If a child enrolled at the service has a specific health care need, allergy or other relevant medical condition, the parent of a child must be provided with a copy of the service's medical conditions policy.

A 'medical condition' is a condition that has been diagnosed by a registered medical practitioner (a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student). The Australian Health Practitioner Regulation Agency keeps national registers of practitioners on its website at www.ahpra.gov.au.

2.9 ADMINISTRATION OF MEDICATION

National Regulations

Regulation 93

The approved provider, nominated supervisor and family day care educator must ensure that medication is not administered to a child at a service unless it is authorised and administered in accordance with the requirements of regulations 95 or 96.

Administration of medication to a child is authorised when it is recorded in the medication record for the child, or when verbal authorisation is given in an emergency (see below).

Medication record for the child

National Regulations

Regulation 92

The approved provider and family day care educator must keep a medication record for each child who has received, or will receive, medication administered by the service. This record must include authorisation to administer medication, as well as the information set out in the table below.

Medication record content
The name of the child
Authorisation to administer medication (including, if applicable, self-administration), signed by a parent or person named in the child's enrolment record as authorised to consent to administration of medication
The name of the medication to be administered
The time and date the medication was last administered
The time and date, or the circumstances under which, the medication should next be administered
The dosage of the medication to be administered
The manner in which the medication is to be administered
If the medication is administered to the child: • the dosage that was administered • the manner in which the medication was administered • the time and date the medication was administered • the name and signature of the person who administered the medication • the name and signature of the person who checked the dosage and administration (except in the case of a family day care service or service permitted to have only one educator).

Authorised administration with verbal consent

National Regulations

Regulation 93

In case of an emergency, administration of medication is authorised if verbal consent is obtained from a parent or person named in the child's enrolment record as authorised to consent to administration of medication. If this person cannot be contacted, a registered medical practitioner or medical emergency services can provide verbal consent.

If medication is administered to a child based on verbal consent from a registered

medical practitioner or medical emergency services, the approved provider must ensure written notice is given to a parent or other family member as soon as practicable.

Exception to the authorisation requirement – anaphylaxis or asthma emergency

National Regulations

Regulation 94

Medication may be administered to a child without an authorisation in the case of an anaphylaxis or asthma emergency. If this occurs, the approved provider, nominated supervisor or family day care educator must notify the parent of the child and emergency services as soon as practicable.

Procedures for administration and self-administration of medication

National Regulations

Regulation 95

Medication can only be administered:

- if it has been prescribed by a registered medical practitioner, from its original container with the original label including the name of the child for whom it is prescribed, before the expiry or use-by date, or
- from its original container, with the original label and instructions and before the expiry or use-by date, and in accordance with any instructions attached to the medication or provided by a registered medical practitioner, either verbally or in writing.

A second person must check the dosage of the medication, the identity of the child receiving the medication and witness its administration, except in the case of a family day care service or another service that is permitted to have only one educator.

Details of the administration must be recorded in the medication record.

Visit the ACECQA website at www.acecqa.gov.au for an (optional) template medication record.

National Regulations

Regulation 96

An approved provider may permit a child over preschool age to self-administer medication if:

- an authorisation for the child to self-administer medication is recorded in the medication record for the child, and
- the medical conditions policy of the service sets out practices in relation to self-administration of medication by children over preschool age.

Medication includes prescription, over-the-counter and complementary medicines. A service may have in place policies that restrict the types of medication that will be administered at the service.

If an authorised officer has concerns about how medication is administered at the service, they may discuss the ways in which staff are informed of procedures for administering medication, including what to do in the case of an emergency.

Approved providers can also contact their local public health department to check specific additional requirements in relation to prescribed medication that may apply in their state or territory (for example, in relation to the administration and storage of particular types of medication).

2.10 EMERGENCIES AND COMMUNICATION

National Regulations

Regulations 97, 168

Approved providers must ensure:

- policies and procedures are in place for dealing with emergencies and evacuations – the procedures must set out instructions for what must be done in the event of an emergency and an emergency and evacuation floor plan
- a risk assessment is conducted to identify potential emergencies relevant to the service
- a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the premises.
- (for centre-based services) emergency and evacuation procedures are rehearsed every three months the service is operating – all children, volunteers and staff members present including the responsible person must participate at the time of the rehearsal
- (for family day care services) each family day care educator rehearses every three months the service is operating, with the children present on that day.

'Emergency' refers to all situations or events posing an imminent or severe risk to those present at an education and care service premises. For example, an emergency could include a fire, flood or threat that requires a service to be locked down.

Approved providers may seek advice from their local fire brigade or emergency services authority for advice about evacuation plans and emergency exits.

Authorised officers may check compliance with the requirement to rehearse emergency and evacuation procedures by checking the service records. If the service has more than one emergency and evacuation procedure, all procedures must be rehearsed every three months.

Rehearsals should take place at various times of the day and week to ensure that everyone at the service gets the opportunity to rehearse. Services with children over preschool age should plan rehearsals to cover before and after school sessions, and vacation care.

Rehearsals must be documented. Documenting the rehearsal allows the service to reflect on its procedures and identify necessary adjustments. Records can show who has been involved in emergency rehearsals, to help ensure everyone participates regularly.

family day care

In family day care services, this could be demonstrated by the family day care educator recording that they advised the service the rehearsals were completed and issues identified have been addressed. For example, if the educator cares for a number of infants and the residence is in a multi-storey dwelling, how this is managed.

2.11 TELEPHONE OR OTHER COMMUNICATION EQUIPMENT

National Regulations

Regulation 98

The nominated supervisor and staff members must have ready access to an operating telephone or other similar means of communication to enable immediate communication to and from parents and emergency services. This requirement continues to apply when children are on an excursion or regular outing.

The communication device must be capable of making and receiving calls without interruption or delay and can include fixed-line telephone, mobile phone, satellite phone, two-way radio, or video conferencing equipment.

Where a fixed-line telephone or mobile phone is used, a direct number to and from the service must be available to parents and emergency services for immediate contact at all times that children are attending the service. Telephone numbers of emergency services should also be placed near each means of communications. The approved provider should consider how educators can access the means of communications without having to leave children unsupervised.

2.12 COLLECTION OF CHILDREN FROM PREMISES

National Law & Regulations

Sections 165, 167
Regulations 99, 161

The approved provider, nominated supervisor and family day care educator must make sure that a child being educated and cared for by the service does not leave the premises except where the child:

- is given into the care of a parent, an authorised nominee named in the child's enrolment record or a person authorised by a parent or authorised nominee, or
- leaves in accordance with the written authorisation of the child's parent or authorised nominee, or
- is taken on an excursion with written authorisation from a parent or authorised nominee, or
- is given into the care of a person or taken outside the premises because the child requires medical, hospital or ambulance care or treatment, or because of another emergency.

'Parent' includes a guardian of the child and a person who has parental responsibility for a child under a decision or order of a court. It does not include a parent prohibited by a court order from having contact with the child.

An approved provider can restrict a nominated person from collecting a child, for example if the service's policy does not allow children to be collected by a person under 16 of age.

Where authorised officers are concerned there may be non-compliance with this requirement, they should consider the policies and procedures in place at the service in relation to the delivery and collection of children, and the acceptance and refusal of authorisations required under regulation 168. This can assist the authorised officer determine whether the problem relates to implementing good practice, or whether there are broader issues with awareness and understanding of the requirement.

2.13 EXCURSIONS

National Law & Regulations

Section 167
Regulations 99–100

Approved providers, nominated supervisors and family day care educators must ensure a risk assessment is carried out before children are taken on an excursion. Authorisation must also be obtained from parents and authorised nominees.

A risk assessment is not required if the excursion is a regular outing and a risk assessment was conducted less than 12 months before the excursion takes place, and there has been no change in circumstances.

family day care

A change in circumstance in a family day care service for example, could be when additional children attend, or there is a change in the location. Risks should be evaluated for each of the excursion to consider all relevant risks and how they are minimised. A risk assessment should not be completed for school runs, parks and the local library all at once.

Ratios need to be considered across the group of children and educators attending the excursion. If two educators are going to the same destination at the same time with FDC children and have named the other educator as a support person, the ratio of all children attending needs to be considered in the risk assessments submitted by each educator.

An excursion does not include an outing organised by a service on a school site if the children leave the premises in the company of an educator and do not leave the school site. For example, a preschool group visiting the library within their school site, is not considered an excursion or regular outing.

Ratios and maximum number of children

An approved provider must ensure the maximum number of children is not exceeded during excursions.

Although the National Regulations does not specify a higher educator to child ratio for excursions, children must be adequately supervised at all time. A thorough risk assessment should determine whether the minimum ratios are sufficient to provide adequate supervision while attending an excursion.

Risk assessment

National Regulations

Regulation 101

Risk assessments must identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child taken on the excursion, and specify how the identified risks will be managed and minimised. A risk assessment must include assessment of the matters set out below.

Matters that must be considered in a risk assessment
The proposed route and destination for the excursion
Any water hazards
Risks associated with water-based activities
Transport to and from the destination
The number of adults and children involved in the excursion
The number of educators or other responsible adults appropriate to provide supervision and whether any adults with specialised skills are required
Proposed activities
Proposed duration of the excursion
The items that should be taken on the excursion.

National Regulations

Regulations 102, 161

Authorisation for excursions

Authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise taking the child outside the premises. The authorisation must state the information listed below.

If the excursion is a regular outing, the authorisation is only required to be obtained once in a 12 month period. Authorisations need to be kept on the child's enrolment record.

Information that must be included in an authorisation for an excursion
The child's name
The reason the child is to be taken outside the premises
The date the child is to be taken on the excursion (unless the excursion is a regular outing)
A description of the proposed destination for the excursion
The method of transport to be used for the excursion
The proposed activities to be undertaken by the child during the excursion
The period the child will be away from the premises
The anticipated number of children likely to be attending the excursion
The anticipated educator-to-child ratio for the excursion
The anticipated number of staff members and any other adults who will accompany and supervise the children on the excursion
That a risk assessment has been prepared and is available at the service.

Visit the ACECQA website for an optional excursion risk management plan template at www.acecqa.gov.au.

Visiting the proposed excursion destination may assist in identifying availability of toilets, hand washing, drinking and shade facilities, mobile phone coverage and access for emergency services.

2.14 RESPONSIBILITIES OF THE APPROVED PROVIDER, NOMINATED SUPERVISOR AND FAMILY DAY CARE EDUCATOR

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver*
Precautions to be taken to protect children from harm or hazards (section 167)	✔	✔	✔	✔			
Health, hygiene and safe food practices (regulation 77)	✔	✔	✔	✔		✔	
Food and beverages (regulation 78)	✔	✔	✔	✔		✔	
Service providing food and beverages (regulation 79)	✔	✔	✔	✔		✔	
Weekly menu (regulation 80)	✔	✔	✔	✔		✔	
Sleep and rest (regulation 81)	✔	✔	✔	✔		✔	
Tobacco, drug and alcohol free environment (regulation 82)	✔		✔	✔		✔	
Staff members and family day care educators not to be affected by alcohol or drugs (regulation 83)	✔	✔	✔	✔		✔	
Awareness of child protection law (regulation 84)	✔			✔		✔	
Incident, injury, trauma and illness policies and procedures (regulation 85)	✔						
Notification to parents of incident, injury, trauma and illness (regulation 86)	✔			✔			
Incident, injury, trauma and illness record (regulation 87)	✔		✔				
Infectious diseases (regulation 88)	✔			✔			
First aid kits (regulation 89)	✔		✔	✔		✔	
Medical conditions policy (regulation 90)	✔						
Medical conditions policy to be provided to parents (regulation 91)	✔					✔	
Medication record (regulation 92)	✔		✔				

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver*
Administration of medication (regulation 93)	✔	✔	✔	✔			
Exception to authorisation requirement – anaphylaxis or asthma emergency (regulation 94)	✔	✔	✔				
Procedure for administration of medication (regulation 95)	✔						
Self-administration of medication (regulation 96)	✔						
Emergency and evacuation procedures (regulation 97)	✔			✔		✔	
Telephone or other communication equipment (regulation 98)	✔			✔		✔	
Children leaving the education and care service premises (regulation 99)	✔	✔	✔	✔			
Risk assessment must be conducted before excursion (regulation 100)	✔	✔	✔	✔			
Conduct of risk assessment for excursion (regulation 101)	✔	✔	✔				
Authorisation for excursions (regulation 102)	✔	✔	✔	✔			

* Waivers do not apply to any of these requirements.

2.15 USEFUL CONTACTS

Food authorities		
State or territory	**Authority**	**Website**
Australian Capital Territory	ACT Health Health Protection Service	health.act.gov.au
New South Wales	NSW Food Authority	foodauthority.nsw.gov.au
Northern Territory	NT Department of Health Environmental Health	health.nt.gov.au
Queensland	Qld Health Food Safety Policy and Regulation Unit	health.qld.gov.au
South Australia	Department of Health Food Policy and Programs Branch	sahealth.sa.gov.au
Tasmania	Department of Health and Human Services Food Unit	dhhs.tas.gov.au
Victoria	Food Safety and Regulation	health.vic.gov.au (Note: providers in Victoria need to contact their local council for food business registration)
Western Australia	WA Department of Health Environmental Health, Food Unit	public.health.wa.gov.au

Public health units		
State or territory	**Authority**	**Website**
Australian Capital Territory	ACT Health Health Protection Service, Communicable Disease Control	health.act.gov.au
New South Wales	NSW Health – Public Health Division	health.nsw.gov.au
Northern Territory	NT Department of Health Centre for Disease Control	health.nt.gov.au
Queensland	Qld Health – Communicable Diseases Branch	health.qld.gov.au
South Australia	SA Health – Communicable Disease Control Branch	sahealth.sa.gov.au
Tasmania	Department of Health and Human Services Public and Environmental Health Service	dhhs.tas.gov.au
Victoria	Vic Department of Health, Communicable Disease and Prevention Unit	health.vic.gov.au
Western Australia	WA Department of Health, Communicable Disease Control Directorate	public.health.wa.gov.au

State and territory working with children screening units		
State or territory	**Authority**	**Website**
Australian Capital Territory	ACT Chief Minister, Treasury and Economic Development Directorate	accesscanberra.act.gov.au
New South Wales	New South Wales Office of the Children's Guardian	kidsguardian.nsw.gov.au
Northern Territory	Northern Territory Government	nt.gov.au/emergency/community-safety
Queensland	Queensland Blue Card Services	bluecard.qld.gov.au
South Australia	South Australia Screening Unit of the Department for Communities and Social Inclusion (DCSI)	screening.dcsi.sa.gov.au
Tasmania	Tasmania Department of Justice	www.justice.tas.gov.au/working_with_children
Victoria	Victoria Justice and Regulation	workingwithchildren.vic.gov.au
Western Australia	Western Australia Department of Communities	workingwithchildren.wa.gov.au

QUALITY AREA 3
PHYSICAL ENVIRONMENT

3.1 HARM AND HAZARDS

National Law

Section 167

Every reasonable precaution must be taken to protect children from harm or hazards that could cause an injury.

This section provides information about the types of things authorised officers may consider when examining whether every reasonable precaution has been taken to protect children from harm and hazards. It is not an exhaustive list, and should be treated as guidance only.

Protecting children is relevant to every aspect of the service, not just the physical environment.

3.2 OUTDOOR SPACE REQUIREMENTS

National Regulations

Regulation 108

Minimum outdoor space calculations

Note: This regulation only applies to centre-based services and family day care venues (not residences).

The service premises must have at least seven (7) square metres of unencumbered outdoor space for each child being educated and cared for at the service.

Areas such as pathways, thoroughfares, car parks and storage sheds or any other space that is not suitable for children cannot be counted as outdoor space.

The area of a verandah included in calculating the area of indoor space cannot be included in calculating the area of outdoor space.

An area of unencumbered indoor space may be included in calculating the outdoor space of a service that provides education and care to children over preschool age if the regulatory authority has given written approval and this space has not already been included in calculating the indoor space – that is, it cannot be counted twice.

Outdoor space requirements do not apply to a child or children being educated and cared for by the service in the case of an emergency.

Authorised officers may check:

- that outdoor space is usable by children and does not include areas that, if used, would pose an unacceptable risk of harm to children
- that the outdoor space reflects the building plans when visiting the service.

See ***Applications and Approvals*** for information about approval of indoor space to be included as outdoor space.

3.3 SWIMMING POOLS AND OTHER WATER HAZARDS

National Regulations

Regulations 25–26, 116

NSW TAS

Centre-based services: A copy of the service's proposed water safety policy must be included in the application for service approval if there is a swimming pool or other water hazard.

Family day care residences or venues: A copy of the service's proposed water safety policy must be included in the application for service approval if the approved provider permits a residence or venue with a swimming pool or something that may constitute a water hazard.

The existence of any water hazards, water features or swimming pool at or near the residence or venue needs to be considered as part of the assessment of each residence and approved family day care venue, prior to education and care being provided and at least annually.

Authorised officers may look at what reasonable precautions are taken to protect children from harm and hazard posed by a swimming pool on the service premises. Authorised officers are not responsible for ensuring state and territory legislation in respect of swimming pools and pool fencing is complied with, but may request information about this from the approved provider.

3.4 FENCING

National Regulations

Regulation 104

Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children of preschool age or under cannot go through, over or under. Fencing requirements do not apply to centre-based services that primarily educate and care for children over preschool age. Fencing requirements also do not apply to family day care residences or venues if all the children being educated and cared for at that residence or venue are over preschool age.

When considering whether the service 'primarily' educates and cares for children over preschool age, authorised officers may consider the following factors:

- the percentage of children who are enrolled and, if the information is available, who attend, the education and care service who are over preschool age
- the operating hours of the service – operating mostly or solely out of school hours may indicate the service 'primarily' educates and cares for school age children
- service advertising – advertising education and care for school age children may indicate the service primarily provides education and care to school age children.

Authorised officers may:

- discuss with the approved provider the design of the fence. Where possible, fencing should allow children to view the outside world but ensure a child's safety by reducing opportunities to escape. Allowing children to see the outside world enables children to make connections with the activities of their local community. It also supports the development of long-range vision.

- consider the height and design of the fence does not allow children preschool age or under to scale the fence, burrow under it, or squeeze through any gaps.
- look at the design and maintenance of the fence in relation to outdoor play equipment and other materials in the environment to ensure that children are unable to get a foothold and climb over the fence. For example, an overhanging tree or tree stump may be used as leverage to get over the fence.

Approved providers may refer to the Australian Standards about fencing and seek advice from their local fire services authority about emergency exits.

General transitional provisions – fencing

National Regulations

Regulations 248–250

Centre-based services

Regulation 104 does not apply:

- to a centre-based service delivering a preschool program in a school and in a class where a full-time education program is also being delivered to school children
- to a declared approved service, if the service did not comply with regulation 104 on 1 January 2012 (1 August 2012 in WA) and was not required to comply with a similar requirement immediately before that day.

Regulation 104 applies:

- to a declared approved service when the premises are renovated or the service approval is transferred under section 58 of the National Law.

Family day care

Regulation 104 does not apply:

- to a declared approved family day care service if the family care residence or declared approved family day care venue did not comply with regulation 104 on 1 January 2012 (1 August 2012 in WA) and was not required to comply with a similar requirement immediately before that day.

Regulation 104 applies:

- to the declared approved family day care service in respect of a family day care residence or approved family day care venue once the premises are renovated or the family day care educator is no long registered or engaged by the service.

3.5 NATURAL ENVIRONMENT

National Regulations

Regulation 113

Outdoor spaces must allow children to explore and experience the natural environment. The outdoor space may include gardens, sandpits and dirt patches, pebble/gravel pits, edible plants, shady trees, worm farms, compost areas, and water play areas. Approved providers may bring in logs, rocks, hay bales, tree stumps and potted plants to achieve natural environment requirements. This does not mean that all artificial grass and artificial features are unsuitable, rather that there is appropriate access for children to interact with the natural environment and natural vegetation.

Authorised officers may talk to the approved provider about using natural elements that reflect the local natural environment. Allergies and other health and safety issues should be considered by the approved provider when creating and maintaining the natural environment.

3.6 SHADE

The approved provider must ensure adequate shading over areas for both active and passive outdoor play. Shade may be provided by large trees, heavy shade cloths and solid roofs.

National Regulations

Regulation 168

In determining what level of shade is 'adequate', authorised officers will consider whether there is enough shade for the number of children at the service.

The approved provider must ensure policies and procedures are in place in relation to sun protection.

National Regulations

Regulations 248, 249

General transitional provisions – shade

Regulation 114 does not apply:

- to a centre-based service delivering a preschool program in a school and in a class where a full-time education program is also being delivered to school children
- to a declared approved service, if the service did not comply with regulation 114 on 1 January 2012 (1 August 2012 in WA) and was not required to comply with a similar requirement immediately before that day.

Regulation 114 applies:

- to a declared approved service once the premises are renovated or the service approval is transferred under section 58 of the National Law.

Visit Cancer Council Australia for advice on natural and constructed share options specific to each state and territory, and recommended sun protection policies and practices at www.cancer.org.au.

National Regulations

Regulation 115

Premises designed to enable supervision

The approved provider of a centre-based service must ensure that the premises (including toilets and nappy change facilities) are designed and maintained in a way that enable supervision of children at all times they are being educated and cared for, having regard to the need to maintain the rights and dignity of the children.

Authorised officers may look at all design elements, including the use of windows and partitions. For example, low toilet partitions in bathrooms used by young children will maintain privacy while allowing supervision to be maintained.

In services that educate and care for children over preschool age, it is not intended that educators be able to view children while they are using the toilet.

For sleep rooms, supervision windows should be kept clear and not painted over or covered with curtains or posters.

If the authorised officer has concerns about the design of the premises, they may discuss with the approved provider what strategies are in place to work around design issues and to ensure adequate supervision is maintained at all times.

Authorised officers may talk to the approved provider about how the design of the premises guides educators in deciding where to position themselves to ensure their ability to supervise children.

General transitional provisions – supervision

National Regulations

Regulations 248, 249

Regulation 115 does not apply to a centre-based service delivering a preschool program in a school and in a class where a full-time education program is also being delivered to school children.

Centre-based services

Regulation 115 does not apply:

- to a centre-based service delivering a preschool program in a school and in a class where a full-time education program is also being delivered to school children
- to a declared approved service, if the service did not comply with regulation 115 on 1 January 2012 (1 August 2012 in WA) and was not required to comply with a similar requirement immediately before that day.

Regulation 115 applies:

- to declared approved services when the premises are renovated or the service approval is transferred under section 58 of the National Law.

It does not apply if the renovation is in an area not being used for the education and care of children, whether or not it is used to operate the service.

3.7 INDOOR SPACE REQUIREMENTS

National Regulations

Regulation 107

NSW WA SA TAS

Note: This regulation only applies to centre-based services and family day care venues (not residences).

The 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.

Areas such as passageways, bathrooms and nappy change areas, bottle 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 an educational program.

The area of a verandah may be included in calculating the area of indoor space with the written approval of the regulatory authority (see *Applications and Approvals*). A verandah that is included in calculating the area of outdoor space cannot be included in calculating the area of indoor space.

Indoor space requirements do not apply to centre-based services with respect to a child or children who are being educated and cared for in an emergency (see *Operational Requirements – Staffing arrangements*).

Indoor space must be exclusively available to the education and care service at the time it is operating – not shared with other ad hoc care facilities or schools, if it is included in the required indoor space.

Where authorised officers are trying to determine whether the kitchen is primarily used by children as part of an educational program, they may consider the following factors:

- Is the kitchen established as an educational space, i.e. is it set up with educational equipment suitable for children?
- Is the kitchen safe for use by children, i.e. are knives and electrical equipment out of reach of children?
- Is the kitchen used to prepare food for children, i.e. is a cook using the kitchen to prepare children's meals?
- What proportion of the operating hours of the service is the kitchen used in delivering the educational program, i.e. is the kitchen used every day or for one hour a week?

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 and are moveable.

Indoor space is calculated on total unencumbered space available, not room by room.

3.8 VENTILATION AND NATURAL LIGHT

National Regulations

Regulation 110

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

Natural ventilation can be provided by open windows and doors. If natural ventilation is insufficient or not possible, indoor space may be ventilated with an air conditioning system. Natural light may be let in through windows, doors and skylights.

Indoor temperatures should be maintained at levels that keep children visibly comfortable. Consideration should be given to ambient temperatures and children and educator response to the temperature. Children are more likely to show signs of distress at high temperatures rather than low ones.

Visit RedNose for information on the appropriateness of temperatures for sleeping rooms at www.rednose.com.au.

3.9 GLASS

National Regulations

Regulation 117

If a glazed area of a family day care residence or approved venue is accessible to children and situated at or below the height specified by Australian Standard 1288-2006, 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.

For residences or venues approved before 1 June 2014, the above requirements apply where the glazed area is situated 0.75 metres or less above floor level.

Visit Kid Safe Australia for more information on safety at www.kidsafe.com.au.

3.10 ADMINISTRATIVE SPACE

National Regulations

Regulation 111

The approved provider of a centre-based service must ensure that there is adequate administrative space to conduct the administrative functions of the service, consult with parents, and conduct private conversations.

A separate room is not required, but space must be set aside for administrative purposes.

Authorised officers may talk to the approved provider about providing areas for the preparation of educational programs and educator, other staff, and volunteer breaks. This is not a legislative requirement under the National Law and Regulations but it is recommended. There are industrial conditions about break areas in some states and territories. Authorised officers are not responsible for checking compliance with industrial conditions.

3.11 TOILET AND HYGIENE FACILITIES

National Regulations

Regulation 109

The approved provider must take reasonable steps to ensure that the service provides education and care to children in a way that maintains at all times, the dignity and rights of each child (see regulation 155). This includes when children are using toilets.

Adequate, developmentally and age-appropriate toilet, washing and drying facilities must be provided. The location and design of the toilet, washing and drying facilities must enable safe use and convenient access by children.

When considering whether the facilities enable convenient access by children, authorised officers may look at whether:

- fixtures and joinery (for example, taps) can be comfortably reached and used by children
- there are enough toilets for the number of children at the service (children should not be required to wait, more than occasionally, to use the toilet)
- children can get to a toilet from both inside and outside the service reasonably quickly.

In some services catering for children preschool age or under, a potty or over-toilet seat may be appropriate. If the toilets and hand washing facilities are not designed for use by young children, there should be appropriate mechanisms in place to support children's access to toilet and hand washing, for example, stable steps.

If potties are used, see the National Health and Medical Research Council (NHMRC) publication *Staying Health: Preventing infectious diseases in early childhood education and care services* for best practice information at www.nhmrc.gov.au.

3.12 NAPPY CHANGE FACILITIES

National Regulations

Regulation 112

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

Adequate and appropriate facilities must be provided for safe and hygienic changing and disposal of nappies.

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

Adequate hand cleansing facilities for adults must be available in the vicinity of the nappy change area.

Nappy change facilities must be designed, located and maintained in a way that prevents unsupervised access by children. A half door or child-proof gate may be used to prevent unsupervised access.

In checking whether there is an adequate number of nappy change tables, authorised officers may consider the number of children wearing nappies. There

should be a sufficient number to ensure children's needs are being met in a respectful, appropriate and timely manner.

See the National Health and Medical Research Council (NHMRC) publication *Staying Health: Preventing infectious diseases in early childhood education and care services* for information on hygienic nappy change and hand washing practices at www.nhmrc.gov.au.

3.13 LAUNDRY AND HYGIENE FACILITIES

National Regulations

Regulation 106

Services must have, or have access to, laundry facilities or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering, that are adequate and appropriate for the needs of the service. The laundry and hygiene facilities must be located and maintained in a way that does not pose a risk to children.

If there is no laundry on the service premises, authorised officers may look at whether arrangements are in place at the service for dealing with soiled clothing, nappies and linen.

See the National Health and Medical Research Council (NHMRC) publication *Staying Health: Preventing infectious diseases in early childhood education and care services* for information on hygienic nappy change and hand washing practices at www.nhmrc.gov.au.

3.14 PREMISES, FURNITURE, MATERIALS AND EQUIPMENT

National Regulations

Regulation 103

Safe, clean and in good repair

The premises and all equipment and furniture used in providing the education and care service must be safe, clean and in good repair. This requirement only applies to the part of a family day care service that is used to provide education and care.

When looking at family day care services, authorised officers will only examine the part of a family day care residence or venue that is used for education and care, including looking at how the approved provider ensures children are prevented from accessing other areas of the premises.

Authorised officers may talk to approved providers about using appropriate furniture to assist in minimising accidents and enhance the development of independence, confidence and self-esteem in children. They may suggest approved providers consider 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.

Use of soft fall under equipment

Any impact-absorbing surface provided under or around equipment for children's use should comply with relevant Australian/New Zealand Standards relating to playground surfacing specifications.

There is no one ideal impact absorbing surface. Authorised officers with concerns may talk to the approved provider about how they chose the soft fall material. The approved provider should be able to demonstrate the fall height, geographical and climatic conditions and maintenance were considered.

Approved providers should be able to obtain information from the supplier of the equipment or surfacing material about compliance with Australian/New Zealand Standards.

National Regulations

Regulation 106

Storage of any harmful cleaning or similar products

Laundry or hygiene facilities on the service 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, the authorised officer may discuss with the approved provider what steps are being taken at the service to keep hazardous materials out of reach of children. For example chemicals, soiled clothing, nappies, and linen should be stored where children cannot access them. This also applies to the laundry of a family day care residence which may be a thoroughfare to the backyard.

Visit the Children's Hospital at Westmead Kids Health webpage for fact sheets on children's safety (www.kidshealth.schn.health.nsw.gov.au).

3.15 SUFFICIENT FURNITURE, MATERIALS AND EQUIPMENT

National Regulations

Regulation 105

Each child must have access to sufficient furniture, materials and developmentally appropriate equipment suitable for the education and care of that child.

Sufficient furniture, materials and appropriate equipment must be available to meet the range of interests, ages and abilities of all children, to avoid overcrowding and ensure children do not have to wait for long periods to participate. There should be sufficient resources to support the implementation of the educational program and the participation of all children in the program.

Authorised officers may also consider whether there are enough cots or other appropriate bedding to cater for young children attending the service; suitable storage, play mats, soft toys, and changing tables.

3.16 ASSESSMENTS OF FAMILY DAY CARE RESIDENCES AND APPROVED FAMILY DAY CARE VENUES

National Law & Regulations

Section 47
Regulation 116

The approved provider of a family day care service must conduct an assessment (including a risk assessment) of each proposed residence and approved family day care venue of the service before education and care is provided to children at the residence or venue, to ensure that the health, safety and wellbeing of children is protected. This initial assessment is conducted before the approved provider applies for a service approval.

If the application for service approval or amendment of service approval includes a request for approval of a proposed venue, the approved provider must include their initial assessment as part of the application. Regulatory authorities must have regard to the suitability of the proposed venue, and the site and location of those premises, when determining an application for service approval for a venue. Regulatory authorities may also have regard to the suitability of the proposed venue when determining an application for amendment of service approval.

In addition, when determining a request for approval of a proposed venue, regulatory authorities consider whether exceptional circumstances exist for the family day care service to operate at the venue (see *Applications for service approval including request for approval of a family day care venue*).

After the initial assessment, the approved provider must conduct assessments at least annually. Failure to conduct a required assessment attracts a penalty of $2000.

The matters listed below must also be considered as part of an assessment.

Matters that must be considered in an assessment of a family day care residence or venue
The safety, cleanliness and repair of premises, furniture and equipment
Fencing
The sufficiency of furniture, materials and equipment
Adequate laundry facilities or other arrangements for dealing with soiled clothing, nappies and linen
Adequacy of toilet, washing and drying facilities
Adequacy of ventilation, 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
Any risk posed by animals
Space requirements (3.25m² of indoor space and 7m² of outdoor space for each child) – venues only.

The approved provider must require each family day care educator to advise them of:

- any proposed renovations to the residence or venue
- any changes in their residence or venue that may affect the matters considered as part of the assessment of the premises
- 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.

Under the National Law, a family day care residence is a residence at which children are educated and cared for by a family day care educator as part of a family day care service. A residence is defined as the habitable areas of a dwelling.

The approved provider must also have a policy and procedure on the assessment of proposed family day care venues and residences, as well as reassessment of approved venues and residences (regulation 169), that ensures that venues are suitable for the education and care of children and support their safety, health and wellbeing.

Assessing the suitability of a family day care venue

In addition to the matters that must be considered as part of an assessment (listed in the table above), the approved provider should have regard to the following additional matters when considering the suitability of a proposed venue:

- whether the venue meets the operational requirements under the National Law and National Regulations
- whether the venue:
  - ensures the safety, health and wellbeing of children attending the service
  - promotes the rights and best interests of each child
  - improves the educational and developmental outcomes for children attending the service (as per objectives and guiding principles of the National Law, section 3)
- any relevant local planning, development and building laws (administered by the local authority).

Consideration of local planning, development and building laws

Any building proposed to be used as a family day care venue must comply with relevant planning and development requirements imposed by the local authority (for example, local council). Requirements can depend on the local authority but typical considerations may include matters not set out in the National Regulations, such as:

- specific ratios for car spaces
- maximum land lot sizes
- maximum allowable occupancy rates
- hours and days of operation.

The approved provider should contact their local authority for information about any requirements that may apply to the building they are seeking to use as a family day care venue, including for example, classification of buildings under the *Building Code of Australia*.

3.17 RESPONSIBILITIES OF THE APPROVED PROVIDER, NOMINATED SUPERVISOR AND FAMILY DAY CARE EDUCATOR

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver
Premises, furniture and equipment to be safe, clean and in good repair (regulation 103)	✔			✔		✔	
Fencing (regulation 104)	✔			✔		✔	✔
Access to sufficient furniture, materials and developmentally appropriate equipment (regulation 105)	✔					✔	
Laundry and hygiene facilities (regulation 106)	✔					✔	
Space requirements – indoor space (regulation 107)	✔			✔		✔	✔
Space requirements – outdoor space (regulation 108)	✔			✔		✔	✔
Toilet and hygiene facilities (regulation 109)	✔						
Ventilation and natural light (regulation 110)	✔			✔		✔	✔
Administrative space (regulation 111)	✔					✔	✔
Nappy change facilities (regulation 112)	✔			✔		✔	✔
Outdoor space – natural environment (regulation 113)	✔					✔	✔
Outdoor space – shade (regulation 114)	✔			✔		✔	✔
Premises designed to facilitate supervision (regulation 115)	✔					✔	✔
Assessments of family day care residences and approved family day care venues (regulation 116)	✔			✔		✔	
Glass (regulation 117)	✔					✔	✔

QUALITY AREA 4
STAFFING ARRANGEMENTS

The approved provider and nominated supervisor have responsibilities under the National Law and Regulations to ensure the service meets minimum staffing arrangements including:

- a responsible person – appointed to oversee the day-to-day operation of a service
- qualifications – staffing arranged to meet early childhood teaching, diploma and certificate III qualifications, school age care qualifications, as well as first aid, anaphylaxis and emergency asthma management training and child protection
- educator to child ratios – minimum number of educators working directly with children
- an educational leader – suitably qualified and experienced educational leader/s to lead the implementation of the educational program
- a family day care co-ordinator – suitably qualified person to support family day care educators.

See a summary of responsibilities and qualification and ratio requirements at the end of this chapter.

4.1 RESPONSIBLE PERSON

4.1.1 RESPONSIBLE PERSON

National Law

Sections 161, 162, 164

The approved provider must ensure that a responsible person is present at a centre-based service all times that the service is educating and caring for children. A responsible person is:

- the approved provider or a person with management or control
- a nominated supervisor
- a person in day-to-day charge of the service.

In a family day care service, the responsible person must be available to provide support to family day care educators. This includes being available to be contacted by telephone to provide advice and assistance to a family day care educator.

The approved provider may nominate a person to be a nominated supervisor if they meet certain requirements (see *Responsibilities of the approved provider in nominating a nominated supervisor*, below).

The approved provider or a nominated supervisor may appoint a person to be in day-to-day charge of a service if they meet certain requirements (see *Person in day-to-day charge of a service* below).

4.1.2 RESPONSIBILITIES OF THE APPROVED PROVIDER IN NOMINATING A NOMINATED SUPERVISOR

National Law & Regulations

Sections 161, 161A
Regulation 117C

An approved service must have at least one nominated supervisor. The nominated supervisor must provide written consent to the nominated supervisor nomination. For more information on nominated supervisor requirements, see *Applications and Approvals – Application for service approval*.

It is an offence for an approved provider to nominate a person to be a nominated supervisor if they do not meet prescribed minimum requirements.

From 1 October 2017, current nominated supervisors who have previously consented to the role and been notified to the regulatory authority, do not need to provide consent again to continue in this role if the approved provider considers they continue to be suitable.

Minimum requirements to be a nominated supervisor

National Regulations

Regulation 117C

To be a nominated supervisor the person must:

- be at least 18 years of age
- have adequate knowledge and understanding of the provision of education and care to children
- have the ability to effectively supervise and manage an education and care service.

In determining whether to nominate a person as the nominated supervisor, the approved provider must consider:

- the history of the person's compliance with:
  - the National Law
  - a former education and care services law
  - a children's services law
  - an education law
- any decision under the National Law, or any other children's services or education law, to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person.

Guidance for approved providers in nominating a nominated supervisor

An approved provider must assess if a person meets the minimum requirements (above) before they nominate the person to be a nominated supervisor.

The approved provider should also consider if the person has adequate knowledge and understanding of the provision of education and care and the ability to effectively supervise and manage a service (see below).

Adequate knowledge and understanding

The approved provider should consider the person's qualifications, skills and work experience in determining if the person has adequate knowledge and understanding of the provision of education and care of children.

The approved provider may consider the following types of evidence against this requirement:

- a supervisor certificate previously issued to the person under the National Law, including any conditions which were imposed on the supervisor certificate
- a resumé detailing the person's position, duties, duration of employment and their employer's details
- a written reference from an employer that addresses the person's knowledge and understanding of the provision of education and care to children
- transcripts demonstrating completion of an education and care qualification. For example, evidence of completing an approved diploma level education and care qualification may indicate that the person has adequate knowledge and understanding of the provision of education and care to children.

Approved providers may also consider any other type of evidence that satisfies them of the person's adequate knowledge and understanding of the provision of education and care to children.

Ability to effectively supervise and manage an education and care service

Under the National Regulations a nominated supervisor must have the ability to effectively supervise and manage a service. A person may meet the requirement even if they do not have experience managing a service. For example, the approved provider may

determine the person has the required ability if they have management experience at other service types, or in related sectors.

The approved provider should consider how a person's skills and experience contribute to their ability to manage a service in accordance with the National Law and Regulations. This may include consideration of a person's:

- knowledge of, and ability to apply, practices that help ensure the education and care needs of children are met
- knowledge of, and ability to apply, practices that help ensure a service complies with the National Law and Regulations
- skills in managing relationships with staff and families at the service.

Approved providers may consider the following types of evidence for this requirement, as well as any other type of evidence of a person's management ability:

- a supervisor certificate previously issued to the person under the National Law and any conditions which were imposed on the certificate
- a resumé detailing their position, duties, duration of employment and their employer's details
- a written reference from an employer that addresses the person's management ability
- transcripts or a certificate of attainment, demonstrating completion of units of study or professional development that are relevant to supervising or managing an education and care service. For example, courses or units that relate to staff management or managing an education and care service in accordance with the National Law and Regulations.

Child protection

Each nominated supervisor and person in day-to-day charge must have completed the child protection training (if any) required in their state or territory.

See *Quality Area 2 – Children's Health and Safety* for more information on child protection training.

Record keeping

Information used to assess a person's suitability to be a nominated supervisor should be kept as evidence on file. This may include records of reference checks, declarations, copies of qualifications or course completion certificates.

If the prospective nominated supervisor is a new employee to the service, the provider should conduct thorough checks of the person's references, including their current and previous employers. Each referee should be asked if they are aware of any compliance action under the National Law or any other law in relation to the candidate. Referee responses should be recorded and kept on file.

This evidence will help demonstrate the approved provider has taken reasonable steps to comply with requirements under the National Law. This evidence does not need to be submitted to the regulatory authority.

A template declaration form that prospective nominated supervisors can complete to help gather information about these matters is available at *Appendix B* in *Operational Requirements*. A template prohibition notice declaration for prospective staff members is also available at *Appendix A*. Visit the ACECQA website to download these forms (www.acecqa.gov.au).

After the nomination

If the approved provider becomes aware of a matter or incident which affects the ability of the nominated supervisor to meet the minimum requirements for that position, they should consider if it is appropriate to remove the person from their position as nominated supervisor.

For example, if the provider becomes aware the nominated supervisor has had compliance action against them, they should reassess if that person is still suitable to be in the position.

See *Governance and leadership* for more information on notifying the regulatory authority about changes to nominated supervisors or persons in day-to-day charge.

4.1.3 PERSON IN DAY-TO-DAY CHARGE OF A SERVICE

National Law & Regulations

Sections 5(1), 162
Regulation 117A. 117B

The approved provider or a nominated supervisor may place a person in day-to-day charge (PIDTDC) of a service. A PIDTDC of the service is the point of contact for parents and staff and must meet minimum requirements to be appointed to the role (see below).

The person must give written consent to being a PIDTDC.

If a person was previously a certified supervisor, and they provided their written consent to be in day to day charge of a service, they can be taken to have provided written consent to being a PIDTDC. In this instance, the person does not need to provide written consent to being a PIDTDC, unless the person stopped being a certified supervisor in day to day charge of the service before supervisor certificates were removed from the National Law and Regulations on 1 October 2017.

A PIDTDC is a responsible person under section 162 of the Law. A service does not need to have a PIDTDC if a nominated supervisor or approved provider is the responsible person at the service (see *Responsible person*).

Being in day-to-day charge of a service does not place any additional legal responsibilities on a person under the National Law. For example, where an educator becomes a PIDTDC, the responsibilities relevant to educators under the National Law continue to apply. A person's legal responsibilities do not increase because they consent to being a PIDTDC.

National Regulations

Regulation 117B

Minimum requirements for person in day-to-day charge

A person must be at least 18 years of age to be placed in day-to-day charge of a service.

Before placing a person in day-to-day charge, the approved provider or a nominated supervisor must take reasonable steps to ensure that the person:

- has adequate knowledge and understanding of the provision of education and care to children
- has the ability to effectively supervise and manage an education and care service

The approved provider or the nominated supervisor must have regard to:

- has a satisfactory history of compliance with—
  - the National Law
  - a former education and care services law
  - a children's services law
  - an education law
- any decision under the National Law, or any other children's services or education law, to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person.

Guidance for approved providers and nominated supervisors for placing a person in day-to-day charge

An approved provider must assess if a person meets the minimum requirements (above) before they place the person in day-to-day charge.

The approved provider should also consider if the person has adequate knowledge and understanding of the provision of education and care and the ability to effectively supervise and manage a service (see below).

Adequate knowledge and understanding

The approved provider should consider the person's qualifications, skills, work experience and familiarity with the service in determining if the person has adequate knowledge and understanding of the provision of education and care of children.

The approved provider may consider the following types of evidence against this requirement:

- a supervisor certificate previously issued to the person under the National Law including any conditions which were imposed on the supervisor certificate
- a resumé detailing the person's position, duties, duration of employment and their employer's details
- a written reference from an employer/s that addresses the person's knowledge and understanding of the provision of education and care to children
- transcripts demonstrating completion of an education and care qualification. For example, evidence of completing an approved diploma level education

and care qualification may satisfy the provider or nominated supervisor that the person has adequate knowledge and understanding of the provision of education and care to children

- other types of evidence that demonstrate adequate knowledge and understanding.

Ability to effectively supervise and manage an education and care service

Under the National Regulations a person in day-to-day-charge must have the ability to effectively supervise and manage a service. A person may meet the requirement even if they do not have experience managing a service. For example, the approved provider or nominated supervisor may determine the person has the required ability if they have management experience at other service types, or in related sectors.

The approved provider or nominated supervisor should consider how a person's skills and experience contribute to their ability to manage a service in accordance with the National Law and Regulations. This may include consideration of a person's:

- knowledge of, and ability to apply, practices that help ensure the education and care needs of children are met
- knowledge of, and ability to apply, practices that help ensure a service complies with the National Law and Regulations
- skills in managing relationships with staff and families at the service.

Approved providers and nominated supervisors may consider the following types of evidence for this requirement, as well as any other type of evidence that satisfies them of a person's management ability:

- a supervisor certificate previously issued to the person under the National Law and any conditions which were imposed on the certificate
- a resumé detailing their position, duties, duration of employment and their employer's details
- a written reference from an employer that addresses the person's supervision and management abilities
- transcripts or a certificate of attainment, demonstrating completion of units of study or professional development that are relevant to supervising or managing an education and care service. For example, courses or units that relate to staff management or managing an education and care service in accordance with the National Law and Regulations.

Child protection

Each nominated supervisor and person in day-to-day charge must have completed the child protection training (if any) required in their state or territory.

See *Quality Area 2 – Children's Health and Safety* for more information on child protection training.

Record keeping

Information used to assess a person's suitability to be placed in day-to-day charge should be kept as evidence on file. This may include records of reference checks, declarations, copies of qualifications or course completion certificates.

If the prospective person in day-to-day charge is a new employee to the service, the provider should conduct thorough checks of the person's references, including their current and previous employers. Each referee should be asked if they are aware of any compliance action under the National Law or any other law in relation to the candidate. Referee responses should be recorded and kept on file.

This evidence will help demonstrate that the approved provider has taken reasonable steps to comply with requirements under the National Law. This evidence does not need to be submitted to the regulatory authority.

Visit the ACECQA website (www.acecqa.gov.au) to download a template declaration form that prospective persons in day-to-day charge can complete to help gather information about these matters.

A template prohibition notice declaration for prospective staff members is also available on the ACECQA website.

After placing a person in day-to-day charge

Approved providers and nominated supervisors should consider any changes to a person's circumstances which affect their suitability to be a person in day-to-day charge. If the approved provider or nominated supervisor becomes aware of a matter or incident which affects the ability of the person in day-to-day charge to meet the minimum requirements for that position, they should consider if it is appropriate to remove the person from this position.

For example, if the provider becomes aware the person has had compliance action against them, they should reassess if that person is still suitable to be in charge.

4.2 EDUCATOR QUALIFICATIONS

4.2.1 QUALIFICATION REQUIREMENTS FOR CENTRE-BASED SERVICES WITH CHILDREN PRESCHOOL AGE OR UNDER

National Law

Section 169

The approved provider and nominated supervisor must ensure the service is meeting the minimum qualification requirements for:

- Early childhood teacher
- Diploma
- Certificate III

4.2.2 EARLY CHILDHOOD TEACHER REQUIREMENTS

National Regulations

Regulations 129–135

Centre-based services with children who are pre-school age or younger, must have access to or attendance of an early childhood teacher. The requirements are based on the number of children at the service (see the table below).

Each jurisdiction has requirements which modify these regulations for specific services. State and territory regulatory authorities will provide information specific to their jurisdiction.

These regulations do not apply if the main purpose of the centre-based service is to provide education and care to children over preschool age.

When considering whether the 'main purpose' of the service is to educate and care for children over preschool age, authorised officers may consider the following factors:

- the percentage of children who are enrolled and, if the information is available, who attend, the education and care service who are over preschool age – for example 60 per cent is a persuasive factor, 70 per cent would be more persuasive whereas 51 per cent would be less so
- the operating hours of the service – operating mostly or solely out of school hours may indicate the main purpose of the service is to provide education and care for school age children, and
- service advertising – advertising education and care for school age children may indicate the main purpose of the service is to provide education and care to school age children.

Services with fewer than 25 approved places or fewer than 25 children in attendance

The service must have access to an early childhood teacher for at least 20 per cent of the time that the service provides education and care.

Access to an early childhood teacher may be through information communication technology, such as video conferencing, and the access may be calculated on a quarterly basis.

A record must be kept of the period that the early childhood teacher is working directly with children and not working directly with children (regulation 152).

Services with 25 or more children

An early childhood teacher must 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.

A record must be kept of the period that the early childhood teacher is in attendance at the service (regulation 152).

A reference to the number of children being educated and cared for at a centre-based service, for the purpose of calculating early childhood teacher requirements, does not include a child being educated and cared for in an emergency under regulation 123 (5).

Visit the ACECQA website at www.acecqa.gov.au/qualifications for a list of approved qualifications, including approved early childhood teaching qualifications.

National Regulations

Regulation 239A

NT NSW QLD SA TAS WA

Centre-based services located in remote or very remote areas in the Northern Territory, NSW, Queensland, South Australia, Tasmania and Western Australia are meeting regulations 132, 133 and 134 for attendance of an early childhood teacher if the service has access to an early childhood teacher who works with the service at least 20 per cent of the time, calculated quarterly. The early childhood teacher may be working with the service through information communication technology.

This transitional provision is scheduled to expire in the ACT, NSW, Queensland, South Australia and Tasmania on ***31 December 2021***, and in the Northern Territory and Western Australia on ***31 December 2023***.

See the end of this section for a summary of the staffing requirements for centre-based and family day care services.

Who is an early childhood teacher?

National Regulations

Regulations 137, 139, 241

A person can be counted as an early childhood teacher if they:

- hold an approved early childhood teaching qualification that is published on ACECQA's approved qualifications lists. This includes current approved early childhood teacher qualifications, and former approved early childhood teaching qualifications commenced before 1 January 2012
- hold a qualification that ACECQA has recognised to be an equivalent early childhood teacher qualification
- are taken to hold an approved early childhood teaching qualification under

regulation 241 and approved under former state and territory laws in place before the National Law.

See *General saving and transitional provisions* below for more information.

Registration is not a requirement for early childhood teachers under the NQF but it is a requirement under some state and territory legislation.

Visit the ACECQA website for the lists of approved qualifications and teacher registration or accreditation requirements in each state or territory at *www.acecqa.gov.au/qualifications*.

National Regulations

Regulation 241

General saving and transitional provisions

Persons taken to hold an approved early childhood teaching qualification

A person is taken to hold an approved early childhood teaching qualification if, immediately before 1 January 2012 (1 August 2012 in WA), the person belonged to one of the below groups.

Person taken to hold an approved early childhood teaching qualification
The person was recognised under the former education and care services law, or for the purposes of a preschool funding program, of any participating jurisdiction as an early childhood teacher, and was employed or engaged in a declared approved service as an early childhood teacher
The person held a qualification on the list of former approved early childhood teaching qualifications or was enrolled in a qualification on the list of former approved early childhood teaching qualifications and has since completed the qualification
The person was registered or accredited as an early childhood teacher in accordance with the requirements of any participating jurisdiction (this sub-regulation does not apply if immediately before 1 January 2012 (1 August 2012 in WA) the person was registered or accredited as an early childhood teacher or equivalent on the basis that the person was working towards an early childhood teaching qualification or equivalent)
The person was employed to deliver a pre-preparatory learning program in Queensland under the *Education (General Provisions) Act 2006* (i.e. teachers in *Bound for Success* services)
The person was registered as a teacher under the *Teachers Registration and Standards Act 2004* of South Australia and was employed to deliver a preschool program
The person was registered as a teacher under the *Teachers Registration Act 2000* of Tasmania and was employed to deliver a preschool program at a school established or registered under the *Education Act 2016* of Tasmania
The person was registered as a teacher under the *Education (Queensland College of Teachers) Act 2005* of Queensland and held a qualification on the list of former approved diploma level education and care qualifications or on the list of approved certificate III and diploma level education and care qualifications for Queensland (international). Or, the person was registered as a teacher in Queensland and enrolled in one of these qualifications and is actively working towards the qualification or has completed the qualification. Or, the person was registered as a teacher in Queensland and enrolled in an approved diploma qualification on or before 31 December 2013 and is actively working towards the qualification or has completed the qualification.

If any restrictions applied to a person's recognition as an early childhood teacher before 1 January 2012 (1 August 2012 in WA), the person is taken to be an early childhood teacher with those same restrictions.

Recognition as an 'equivalent early childhood teacher'

National Regulations

Regulation 137(3)

ACECQA has determined that a person who holds ALL of the following is recognised as equivalent to an early childhood teacher:

- a primary teaching qualification that includes at least a focus on children aged 5 to 8 years old (for example, a qualification with a focus on children aged 3 to 8 or 5 to 12) AND
- teacher registration in Australia (called 'accreditation' in New South Wales) AND
- an ACECQA approved diploma level (or higher) education and care qualification.

This transitional measure was most recently reviewed by the ACECQA Board in June 2019 when the Board decided to extend the measure until ***31 December 2021***. After the end of 2021, this transitional measure is scheduled to cease, however educators who had obtained this combination of qualifications before the end of 2021 will continue to be recognised under this provision.

Persons taken to be an early childhood teacher

National Regulations

Regulation 242

ACT NSW NT QLD SA TAS WA

In June 2019, the Education Council agreed to extend regulation 242 of the National Regulations. Under regulation 242, you are 'taken to be an ECT' if you:

- are enrolled in an ACECQA approved early childhood teaching qualification AND
- can provide evidence that you:
  - are making satisfactory progress towards completing the course AND
  - hold an approved diploma level educator qualification, or have completed at least 50 per cent of the course.

Regulation 242 does not apply in Victoria or if you are working in a centre-based service educating and caring for 30 or more children preschool age or under in NSW.

Regulation 242 is scheduled to expire in the ACT, NSW, Queensland, South Australia and Tasmania on ***31 December 2021***, and in the Northern Territory and Western Australia on ***31 December 2023***.

Once regulation 242 expires, an educator will need to have completed their ECT qualification to be considered a qualified ECT. However, educators 'actively working towards' an approved ECT qualification may still be counted as a certificate III or diploma level educator, depending on how much of the approved ECT qualification they have completed.

Early childhood teacher illness or absence

National Regulations

Regulation 135

If an early childhood teacher is absent from a centre-based service educating and caring for 25 or more children who are preschool age or under because of short-term illness or leave, the teacher may be replaced by an educator who holds:

- an approved diploma level education and care qualification, or
- a qualification in primary teaching.

This regulation does not apply:

- if the service employs or engages early childhood teacher/s on a full-time, or full-time equivalent basis.

For services where the regulation does apply, early childhood teachers can only be replaced for a combined total of no more than 60 days in any 12 month period. This limit applies to the combined periods of absence taken by all early childhood teachers at the service. It is not intended to apply to each individual early childhood teacher engaged at the service.

The 12 month period does not have a set commencement date and is not based on a calendar year. Instead, it is determined by looking at the 12 month period immediately prior to the day an early childhood teacher is replaced, and calculating whether or not the 60 day maximum has been exceeded during that period. If the service has not exceeded the 60 day limit, it can replace an early childhood teacher with one of the persons specified in regulation 135(1) (see above).

For example, Sam, an early childhood teacher intends to take a day of leave on 1 February 2019. To determine whether Sam can be replaced with a person specified under regulation 135(1), the service would look back 12 months to 1 February 2018 and calculate the total amount of days that its early childhood teachers had been replaced in that period. If the combined total between 1 February 2018 and 31 January 2019 exceeds 60 days, regulation 135 would not apply and the service cannot replace Sam with a person specified in regulation 135(1).

Authorised officers may check if a person is registered as a primary school teacher in Australia (referred to as accredited in NSW) to verify whether a person has a qualification in primary teaching.

ACT QLD TAS WA

In the ACT, Queensland, Tasmania and Western Australia, an early childhood teacher may be replaced by one of the persons specified in regulation 135(1) if the teacher is absent because of short-term illness or leave OR if the teacher has resigned.

The other requirements of regulation 135 – including the combined limit of 60 days (of absences) over a 12 month period – apply.

National Regulations

Regulation 272

Regulation 272 applies to centre-based services in NSW that educate and care for 30 or more children preschool age or under and requires that these services have early childhood teachers in attendance at all times:

NSW

- 30–39 children preschool age or under – one early childhood teacher
- 40–59 children preschool age or under – two early childhood teachers

- 60–79 children preschool age or under – three early childhood teachers
- More than 80 children preschool age or under – four early childhood teachers.

4.2.3 DIPLOMA AND CERTIFICATE III QUALIFICATION REQUIREMENTS FOR CENTRE-BASED SERVICES WITH CHILDREN PRESCHOOL AGE OR UNDER

The National Regulations set the minimum educator to child ratios.

General qualification requirements

At least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have (or be actively working towards) at least an approved diploma level education and care qualification.

All other educators who are required to meet ratio requirements must have (or be actively working towards) at least an approved certificate III level education and care qualification.

Working without a qualification

National Regulations

Regulation 126

ACT NT TAS QLD VIC WA

A three (3) month probationary period applies to new educators working without an approved qualification in VIC, QLD, WA, ACT, NT and TAS. New educators can be counted as a Certificate III qualified educator for ratio purposes for up to 3 months (from the date they commence in the service) before they need to start actively working towards their qualification. The probationary period is linked to the approved provider which means the probationary period is not extended if the educator moves to another service operated by the same approved provider. If the educator is employed by a different approved provider, they are eligible for another three month probationary period.

If an approved provider chooses have more educators than required under the ratios, the additional educators are not required to meet qualification requirements. For example, if a centre-based service requires ten educators to meet the minimum prescribed ratios at a particular time, and 12 educators are educating and caring for children at that time, the eleventh and twelfth educators are not required to hold an approved qualification.

Early childhood teachers

A person with an approved early childhood teaching qualification can be counted as if they hold an approved diploma level education and care qualification.

Actively working towards an ECT qualification

A person who is actively working towards an approved early childhood teaching qualification may be counted (for ratio purposes) as if they are actively working towards

- an approved certificate III level education and care qualification, or

- an approved diploma level education and care qualification if they:
  - hold an approved certificate III level education and care qualification, or
  - have completed the approved components of a certificate III (see the definition of 'actively working towards' in the *Glossary*), or
  - have completed 30% of the units in an approved early childhood teaching qualification.

To check whether general educator qualification requirements are being met, authorised officers may ask to see the record of educators working directly with children (centre-based services) or the record of staff, family day care co-ordinators and family day care educator assistants (for family day care services) required under regulation 177. Staff records should include evidence of any relevant qualification held by the staff members, or that the staff member is actively working towards a qualification.

Some staff may be taken to hold a qualification under a transitional or saving provision.

More information on qualification requirements is available on the ACECQA website at www.acecqa.gov.au/qualifications.

National Regulations

Regulation 239

General saving provisions

Regulations 126 and 123 (and any regulation that applies in the place of those regulations) do not apply to a centre-based service that delivers a preschool program in a school in a class or classes where a full-time education program is also being delivered to school children (a composite class). The service is taken to comply with these regulations for the purposes of assessment and rating.

National Regulations

Regulation 240

QLD SA TAS WA

Remote or very remote areas

An educator at a centre-based service in a remote or a very remote area in Queensland, South Australia, Tasmania and Western Australia can be included to meet educator to child ratios without holding (or 'actively working towards') a certificate III level education and care qualification if the educator:

- has been continuously employed as an educator in an education and care service or a children's service for at least 15 years up to immediately before 1 January 2012 (1 August 2012 in WA) AND
- is employed by the same provider as employed the educator immediately before 1 January 2012 (1 August 2012 in WA).

This transitional provision is scheduled to expire in Queensland, South Australia and Tasmania on ***31 December 2021***, and Western Australia on ***31 December 2023***.

4.2.4 QUALIFICATION REQUIREMENTS FOR CENTRE-BASED SERVICES WITH CHILDREN OVER PRESCHOOL AGE

centre-based services

There are no national qualification requirements for educators at centre-based services educating and caring for children over preschool age. The following states and territories have qualification requirements:

- Australian Capital Territory
- Queensland
- South Australia
- Victoria
- Western Australia.

There are some jurisdiction-specific and transitional and savings provisions in relation to qualification requirements. Regulatory authorities in these states and territories will provide information specific to their jurisdiction.

More information on qualification requirements is available on the ACECQA website at www.acecqa.gov.au/qualifications.

4.2.5 QUALIFICATION REQUIREMENTS FOR FAMILY DAY CARE SERVICES

National Law & Regulations

Section 51, 169
Regulation 127

Family day care educator qualifications

A family day care educator must have (or be actively working towards) at least an approved certificate III level education and care qualification.

See *Actively working towards an approved qualification* for information about educators who meet this requirement. Family day care educators in South Australia must hold at least an approved certificate III (regulation 325).

National Regulations

Regulations 143A

Minimum requirements for family day care educator

Before registering or engaging a person as a family day care educator, an approved provider of a family day care service must:

- take reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children
- consider the person's history of compliance with:
  - the National Law
  - a former education and care services law
  - a children's services law
  - an education law
- consider any decision under the National Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under:
  - the National Law
  - a former education and care services law
  - a children's services law
  - an education law.

Failure to comply with these requirements is an offence with a penalty of $2000.

Registering or engaging family day care educators

Approved providers must take reasonable steps when registering or engaging family day care educators to ensure that they have adequate knowledge and understanding of the provision of education and care to children. 'Reasonable steps' is not defined in the National Law or Regulations.

Consistent with the approach taken to other guidance in this publication, the information below is guidance only. The steps that approved providers take to comply with this requirement will depend on the circumstances of each case, as well as the information available to the approved provider at the time.

Approved providers must also have regard to a candidate's history of compliance with relevant laws that would make them suitable to be a family day care educator.

A robust selection process involves gathering information from the candidate and from other sources to verify the accuracy of the candidate's claims. Recording this information and keeping it on file can help a provider show that they have taken reasonable steps to comply with their regulatory obligations.

Compliance and enforcement history checks

When registering or engaging family day care educators, the approved provider must have regard to the candidate's history of compliance with relevant laws and any enforcement action previously taken against the candidate. To ensure they are registering or engaging a suitable person, approved providers could consider the following actions:

- ask the candidate to declare in writing:
  - information about any compliance or disciplinary action under the National Law, or any other children's services or education law
  - whether they have been subject to a prohibition notice under the National Law
  - whether they have held or applied for a licence, approval, registration, certification or other authorisation under the National Law (or any other children's services or education law), which a regulatory authority refused, refused to renew, suspended or cancelled
- keep the candidate's declaration on file (see optional form at ***Appendix C – Compliance history statement*** for prospective family day care educators in ***Operational Requirements***. This form is also available on the ACECQA website (www.acecqa.gov.au)
- conduct thorough checks of the candidate's references, including their current and previous employers
- when undertaking reference checks, ask each referee if they are aware of any enforcement action or non-compliance under the National Law or any other children's services or education law in relation to the candidate
- consider the reasons the candidate left their previous role, particularly if they were formerly registered with another approved provider
- record referee responses and keep this information on file.

Approved providers may wish to take extra measures to determine a candidate's suitability if they learn something adverse about the person's history of compliance. These measures could include but are not limited to:

- considering if the compliance issue is serious, how long ago it was and the person's compliance history since then
- giving the person an opportunity to explain the circumstances of the issue
- seeking further references.

National Law & Regulations

Section 272
Regulation 153

If after taking the above suggested steps the approved provider still has concerns about the candidate's compliance history, they may contact the regulatory authority to enquire whether the person has been suspended or prohibited.

Approved providers are also required to keep a record of each educator's working with children or working with vulnerable people check. See ***Register of family day care educators, co-ordinators and assistants*** for more information on the types of records the approved provider must keep.

Adequate knowledge and understanding

When registering or engaging a family day care educator, the approved provider should consider the person's qualifications, skills and work experience in determining if the person has adequate knowledge and understanding of the provision of education and care to children. For example, this could include the person's knowledge of the National Law and Regulations, National Quality Standard, professional standards such as Early Childhood Australia's *Code of Ethics* (2016), and how all these guide their professional conduct in decision-making, relationships and practice.

In addition, qualification requirements apply to family day care educators (see ***Qualification requirements for family day care services***) and current first aid, anaphylaxis management and emergency asthma management training (see ***Register of family day care educators, co-ordinators and assistants***).

Reasonable steps to ensure the prospective educator has adequate knowledge and understanding may include, but are not limited to, considering:

- a resumé detailing the person's employment history
- references from current and previous employers or practicum supervisors that address the person's knowledge and understanding of the provision of education and care to children
- an interview with the person to help assess their knowledge, understanding, and decision-making capabilities
- transcripts demonstrating completion of an approved certificate III (or higher) education and care qualification, or evidence demonstrating that the person is actively working towards this (this does not apply in South Australia). See ***Qualification requirements for family day care services*** and ***Actively working towards an approved qualification*** for information.

Approved providers may also consider any other information or evidence that satisfies them that the person has an adequate knowledge and understanding of the provision of education and care to children.

Requirements for ongoing management of family day care educators

National Regulations

Regulation 143B

While a family day care educator is registered or engaged with a family day care service, the approved provider must take reasonable steps to ensure that:

- the educator maintains an adequate knowledge and understanding of the provision of education and care to children
- any serious incident that occurs while a child is being educated and cared for by the educator as part of the service is adequately addressed
- any complaints alleging the National Law has been contravened or that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the educator is adequately addressed.

Failure to comply with these requirements is an offence with a penalty of $2000.

Ongoing management of family day care educators

Approved providers must take reasonable steps to ensure that each family day care educator maintains adequate knowledge and understanding of the provision of education and care to children, and that serious incidents and complaints are adequately addressed. Good record keeping by both the educator and the approved provider can show the steps that approved providers have taken to meet these requirements. These obligations link to the National Quality Standard, in particular, *Elements 7.1.2* and *7.2.3* which are about professional development and management systems.

'Reasonable steps' is not defined in the National Law or Regulations. Consistent with the approach taken to other guidance in this publication, the information below is guidance only. The steps that approved providers take to comply with the minimum requirements will depend on the circumstances of each case, as well as the information available to the approved provider at the time.

Maintaining adequate knowledge and understanding of the provision of education and care

To support the ongoing maintenance of each educator's professional knowledge and understanding, approved providers could use the service's regular performance review cycle to evaluate staff performance and identify individual learning and development goals. Performance planning and evaluation can help ensure that the knowledge, skills and practices of educators are up to date, and that areas requiring further development are identified and addressed.

Reasonable steps an approved provider may take to ensure educators maintain adequate knowledge and understanding include, but are not limited to:

- regularly reviewing each educator's performance to identify areas for development and training
- developing and updating individual learning and development plans in consultation with each educator
- providing regular opportunities for each educator to provide feedback on professional development, including the effectiveness of support provided by their co-ordinator
- sharing current knowledge, theories and practices with and between educators.

In family day care services, co-ordinators are engaged to monitor and support educators. Approved providers should consider the role co-ordinators may play in meeting these regulatory requirements, and provide appropriate leadership and support as needed.

Adequately addressing complaints and serious incidents

It is important that family day care services have effective systems to manage and address serious incidents and complaints that occur while a child is being educated and cared for by an educator. Under the National Law and Regulations, approved providers and educators must meet various notification obligations when serious incidents occur or complaints are raised. In addition, approved providers must take reasonable steps to ensure that these incidents and complaints are adequately addressed.

Reasonable steps an approved provider may take to ensure serious incidents and complaints are adequately addressed include, but are not limited to:

- monitoring, following up on and investigating complaints or serious incidents raised by families, educators, children and others, and documenting these actions on file in a timely manner
- following documented procedures to report serious incidents and complaints to the regulatory authority as required
- regularly reviewing the service's procedures for handling serious incidents and complaints to ensure serious incidents and complaints are investigated promptly, fairly and thoroughly, and that the service learns from these to improve the quality of education and care
- being able to show how the provider has addressed complaints and serious incidents, as well as feedback from families, educators and staff, to amend policies and procedures as required.

Approved providers should consider any other steps that might be necessary to ensure serious incidents and complaints are adequately addressed.

See ***Governance and leadership*** for more information on serious incidents, complaints and reporting obligations to regulatory authorities.

Family day care co-ordinator

National Law & Regulations

Section 51
Regulation 128

A family day care co-ordinator must have an approved diploma level education and care qualification or higher. A list of approved qualifications is published on the ACECQA website at www.acecqa.gov.au.

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. Refer to *Applications and Approvals*.

Approved providers must ensure family day care co-ordinator to educator ratios are met to provide support and assistance to educators and to monitor each educator's compliance with the National Law and Regulations.

See *National ratios for family day care co-ordinators* for more information.

4.2.6 FAMILY DAY CARE EDUCATOR ASSISTANTS

National Regulations

Regulation 163(2)

A family day care educator assistant is a person engaged by or registered with a family day care service to assist family day care educators (regulation 4).

A family day care educator assistant must:

- be at least 18 years of age (regulation 119)
- hold a current approved first aid qualification, have undertaken current approved anaphylaxis management training and have undertaken current approved emergency asthma management training (regulation 136).

The approved provider of a family day care service must take reasonable steps to ensure that a person who is a family day care educator assistant is a fit and proper person to be in the company of children (see *Quality Area 7 – Residents and family day care educator assistants to be fit and proper*).

The family day care educator assistant is not required to hold, or be actively working towards, a certificate III level education and care qualification. See *Family day care educator assistant* and *First aid qualifications and training*.

4.3 CENTRE-BASED AND FAMILY DAY CARE

4.3.1 DIPLOMA LEVEL EDUCATION AND CARE QUALIFICATIONS

National Regulations

Regulation 137

A list of approved diploma level education and care qualifications can be found on the ACECQA website at www.acecqa.gov.au.

ACECQA has also published a list of former approved diploma level education and care qualifications. A person who held a former approved diploma level education and care qualification before 1 January 2012 (1 August 2012 in WA) is taken to hold an approved diploma level qualification.

General saving provision

National Regulations

Regulations 243, 243A

Persons taken to hold approved diploma level education and care qualifications

A person is taken to hold an approved diploma level education and care qualification if, immediately before 1 January 2012 (1 August 2012 in WA), the person:

- was recognised under the former education and care services law of any state or territory as a diploma level educator and employed or engaged in a declared approved service, or
- held a qualification on the published list of former approved diploma level education and care qualifications, or
- in Queensland, held a diploma level qualification on the list of former approved certificate III and diploma level education and care qualifications for Queensland (international).

A person is taken to hold an approved diploma level education and care qualification for the purposes of regulation 128 (family day care co-ordinator qualifications) if immediately before 1 January 2012, the person held a qualification on the list of qualifications and former approved qualifications for family day care co-ordinators.

Certificate III level education and care qualifications

National Regulations

Regulation 137

A list of approved certificate III level education and care qualifications can be found on the ACECQA website at www.acecqa.gov.au.

ACECQA has also published a list of former approved certificate III level education and care qualifications. A person who held a former approved certificate III level education and care qualification before 1 January 2012 (1 August 2012 in WA) is taken to hold an approved certificate III level qualification.

National Regulations

Regulation 244

General saving provision

Persons taken to hold approved certificate III level education and care qualification

A person is taken to hold an approved certificate lll level education and care qualification if, immediately before 1 January 2012 (1 August 2012 in WA), the person:

- was recognised under the former education and care services law of any participating jurisdiction as a certificate lll level educator and was employed or engaged in a declared approved service, or
- held a qualification on the list of former approved certificate lll level education and care qualifications, or
- in Queensland, held a qualification on the list of approved certificate III and diploma level education and care qualifications for Queensland (international).

National Regulations

Regulation 10

Actively working towards an approved qualification

The National Regulations include provisions to recognise a person who is 'actively working towards' an approved qualification. 'Actively working towards' is defined at regulation 10. The requirements for different qualification levels are set out below.

Qualification level	Requirement for 'actively working towards'
Certificate III	A person is 'actively working towards' at least an approved certificate III level qualification if they: • are enrolled in a course for an approved certificate III, diploma or early childhood teaching qualification, **and** • give the approved provider documentary evidence from the course provider that they: – have commenced the course, **and** – are making satisfactory progress towards completing the course, **and** – are meeting the requirements for maintaining the enrolment.
Diploma	A person is 'actively working towards' at least an approved diploma level qualification if they: • are enrolled in a course for an approved diploma level or early childhood teaching qualification, **and** • give the approved provider documentary evidence from the course provider that they: – have started the course, **and** – are making satisfactory progress towards completing the course, **and** – are meeting the requirements for maintaining the enrolment, **and** – have an approved certificate III level education and care qualification, **or** – have completed the prescribed units of study in an approved certificate III level education and care qualification as determined by ACECQA*, **or** – have completed the percentage of total units of study required for completion of an approved early childhood teaching qualification, as determined by ACECQA**.
Actively working towards an approved ECT qualification (regulation 242)	
Early childhood teacher	A person is 'taken to be an early childhood teacher' if they: • are enrolled in a course for an approved early childhood teaching qualification, **and** • give the approved provider documentary evidence from the course provider that they: – have started the course, **and** – are making satisfactory progress towards completing the course, **and** – are meeting the requirements for maintaining the enrolment, **and** – hold an approved diploma level educator qualification, or have completed at least 50 per cent of the course*.

* The prescribed units include a list of competencies from the approved certificate III qualifications.

** The percentage determined by ACECQA is '30% or more of the total units required to complete any approved early childhood teaching qualification'.

4.4 EDUCATOR TO CHILD RATIOS

National Law

Section 169

The approved provider, nominated supervisor and family day care educator must ensure the required educator to child ratios are met at all times.

4.4.1 RATIOS FOR CENTRE-BASED SERVICES

National Regulations

Regulations 122–123

Calculating ratios

The table below summarises the national educator to child ratios for centre-based services.

Educators must be working directly with children at the service to be counted in the educator to child ratios.

National ratios for centre-based services		
Age of children	**Educator to child ratio**	**Date requirement applies from**
Birth to 24 months	1:4	In all states and territories
Over 24 months and less than 36 months	1:5	In all states and territories Saving provision applies in VIC
Over 36 months up to and including preschool age	1:11	In all states and territories Saving provision applies in NSW, SA, TAS, WA
Over preschool age	1:15	In all states and territories Saving provisions apply in ACT and WA

New national ratios are being implemented between 2017 and 2020. Higher ratios in some states and territories may continue to apply in place of the national educator to child ratios (saving provisions).

Maximum number of children

A centre-based service approval states the maximum number of children that may be educated and cared for at any one time (section 51). The approved provider must ensure this number is not exceeded except for children being educated and cared for in an emergency under regulation 123:

- One or more children from the same family can be educated and cared for at a centre-based service in an emergency, for example, a child is in need of protection under a child protection order or the parent of a child needs urgent health care that prevents them caring for the child, for a maximum

period of two consecutive days. These children do not need to be included in calculating the educator to child ratio.

- An approved provider can only permit additional children to be educated and cared for in an emergency if satisfied on reasonable grounds that it will not affect the health, safety and wellbeing of all the children attending the service.

An approved provider must also ensure the maximum number of children is not exceeded during events held within the service's usual operating hours and 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. For events held outside the usual operating hours, the approved provider should make sure that families are invited on the condition that children remain in their care, and are not being educated and cared for as part of a service.

WA

In Western Australia, the maximum number of children may be exceeded because a child or children are being educated and cared for in an emergency. There is no requirement that, where two or more children are being educated and cared for, they need to be from the same family.

Mixed age ratios in centre-based services

Educator to child ratios are calculated across the service (not by individual rooms) and are based on the youngest child in care. This approach provides flexibility to more effectively respond to the needs of children.

Maintaining the ratio for each age range of children in the mixed age group does not mean the educator to child ratio for the youngest age range must be applied to all children in an older age range. In a mixed age group of children, an educator who is caring for one age range of children can also be counted against another age range of children, as long as the ratio for each age range is maintained and adequate supervision is maintained at all times.

Refer to the example in the table below.

Example 1: In this example, no jurisdictional specific ratios apply.

Mixed age ratios in centre-based services

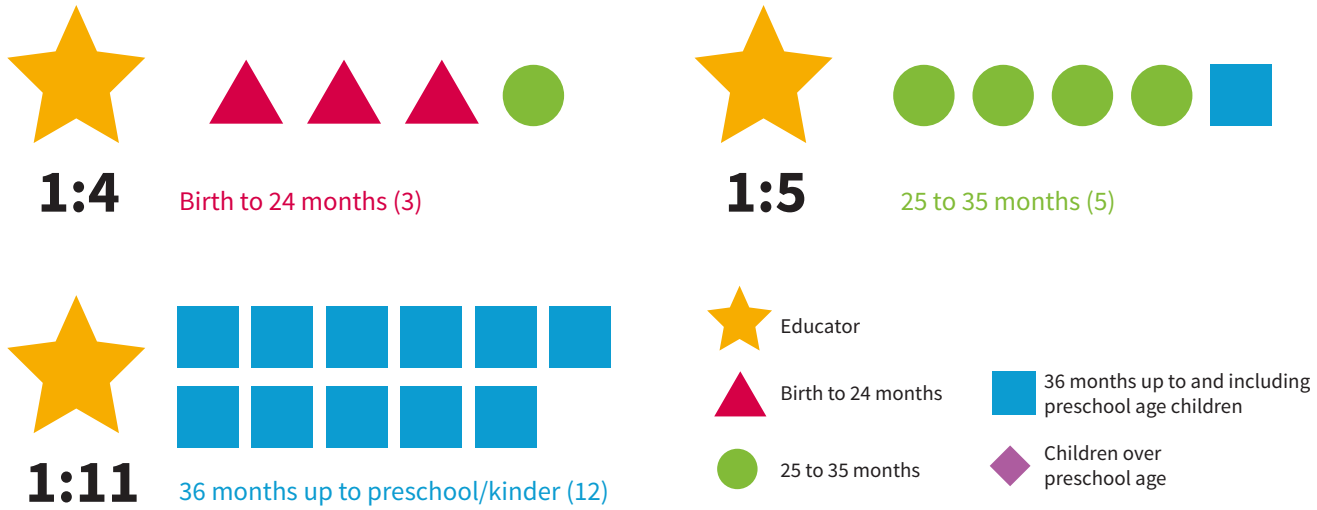
Age	Ratio	Number of children	Minimum educators required
Birth to 24 months	1:4	3	3
25 to 35 months	1:5	5	
36 months to preschool age	1:11	12	
TOTAL	–	20	

The number of educators required for this group is three. This is because the educator who is caring for the three children aged 0 to 24 months can also care for one child aged over 24 months and less than 36 months without exceeding the ratio of 1:4.

This then requires a second educator for the remaining four children aged over 24 months and less than 36 months, who can also care for one child aged 36 months to preschool age.

A third educator is required for the remaining 11 children aged 36 months to preschool age (1:11).

The diagram below demonstrates this same principle.



The first step is to determine the number of educators needed for the youngest age range of children in the group. Once that ratio is met, an educator can also supervise children in another age range, provided the youngest age range is still maintained.

The above example also shows how an educator may be deployed across more than one age range, while maintaining the required ratio for each age range.

Example 2: In this example, no jurisdictional specific ratios apply.

Mixed age ratios in centre-based services

Age	Ratio	Number of children	Minimum educators required
36 months to preschool age	1:11	5	2
Over preschool age	1:15	19	
TOTAL	–	24	

The number of educators required for this group is two (2). This is because the educator who is caring for the five children aged 36 months to preschool age can also care for four children aged over preschool age without exceeding the ratio of 1:11.

This then requires a second educator for the remaining fifteen children aged over preschool age.

The diagram above demonstrates this same principle.

QLD WA TAS SA

Breaks

The National Regulations require the educator-to-child ratio to be maintained at all times no matter what activity the children or the educators at the service are undertaking. Some jurisdictions have specific provisions which modify these ratio requirements when educators are taking short breaks and are not working directly with children (Queensland, Tasmania, South Australia and Western Australia). Services should check if specific provisions apply and contact the regulatory authority for advice about jurisdiction specific regulations or guidance.

4.4.2 RATIOS FOR FAMILY DAY CARE SERVICES

National Regulations

Regulation 124

A family day care educator must not educate and care for more than seven (7) children at a family day care residence or approved family day care venue 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 must 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 those children.

The number of educators at a residence cannot be increased in order to increase the number of children that can be educated and cared for.

This requirement does not apply if children are visiting another family day care residence or an approved family day care venue, with their educator, as part of an excursion. A visiting family day care educator must do a risk assessment for the excursion under regulation 100.

Educator to child ratios for family day care services		
Age	**Educator to child ratio**	
All children	1:7, with no more than four children preschool age or under	

Maximum number of children

In exceptional circumstances, the approved provider of the family day care service may approve, in writing, a family day care educator to care for more than seven children, or more than four children who are preschool age or under, when:

- all the children being educated and cared for by the family day care educator are siblings in the same family, or
- a child is in need of protection under child protection law and the family day care educator is the best person to educate and care for the child, or
- the family day care residence or approved family day care venue is in a rural or remote location and no alternative care is available.

Authorised officers may discuss with the approved provider what led them to decide to approve an educator to educate and care for more children.

The approved provider may need to apply for a waiver if the exceptional circumstances are ongoing.

Time limit on 'exceptional circumstances'

There is no limit on how long the approved provider can approve a family day care educator to care for more than seven children in exceptional circumstances. The authorised officer may want to discuss with the approved provider, whether the exceptional circumstances that justified the provider's decision to allow more children still exists.

National Regulations

Regulation 124

The approved provider must consider the individual circumstances each time the family day care educator seeks approval to educate and care for more than seven (7) children. This means that the approved provider must approve each individual additional child, and cannot give 'blanket approval' to a family day care educator to educate and care for more than seven children.

Rural and remote

The Accessibility/Remoteness Index of Australia (ARIA+) may be used to help determine whether the family day care educator is in a remote or rural area.

There are five categories of remoteness:

1. Major cities
2. Inner regional
3. Outer regional – areas where geographic distance imposes a moderate restriction on accessibility to the widest range of goods, services and opportunities for social interaction
4. Remote – areas where geographic distance imposes a high restriction
5. Very remote – areas where geographic distance imposes the highest restriction.

Services in a 'remote', 'very remote' or 'outer regional area' under ARIA may be considered rural or remote. In some cases, a postcode may be classified as both 'inner regional' and 'outer regional'. Where this arises, the regulatory authority may consider a family day care educator operating within this postcode as being in a rural or remote area for the purposes of regulation 124.

To establish whether the approved provider checked if alternative education and care was available, authorised officers may talk to the approved provider about what they took into consideration, for example socio-economic and geographic factors, as well as the transport links and capacity of nearby services to provide the education and care required.

4.5 OTHER STAFFING ARRANGEMENTS FOR CENTRE-BASED AND FAMILY DAY CARE SERVICES

4.5.1 FAMILY DAY CARE CO-ORDINATOR TO FAMILY DAY CARE EDUCATOR RATIOS

Approved providers of a family day care service must have a minimum full time equivalent (FTE) family day care co-ordinator for:

- every 15 educators (ratio of 1:15) for the first 12 months of operation, with immediate effect for any new services
- every 25 educators (ratio of 1:25) after 12 months of operation.

The table below summarises these national requirements set out in regulation 123A.

National ratios for family day care co-ordinators		
Operation of service	**Co-ordinator – family day care educator ratio**	**Comments**
12 months or less	1:15	
More than 12 months	1:25	The regulatory authority may impose the higher ratio of 1:15 at any time after the first 12 months of operation if the regulatory authority has taken into account the approved provider's capability and compliance with the National Law and considers the FDC educators are not adequately monitored and supported by a FDC co-ordinator.

Non-compliance with these requirements is an offence with penalty ($5000 individuals; $25,000 others).

These requirements recognise that new family day care services are likely to have a higher proportion of new educators who benefit from greater co-ordinator support.

After the first year of operation of a family day care service the regulatory authority may impose a condition on a family day care service approval requiring the approved provider to ensure there is a minimum of one qualified person employed or engaged as a family day care co-ordinator for each 15 family day care educators engaged by or registered with the service.

National Law

Section 55A

A condition may only be imposed if:

- the family day care service has been operating for more than 12 months
- the regulatory authority
  - has taken into account the approved provider's capability and compliance with the National Law in respect of the family day care service
  - considers that family day care educators are not adequately monitored and supported by a family day care co-ordinator.

WA

Existing conditions of service approval continue to apply for services that already had a co-ordinator to educator ratio on 1 October 2018.

For services without a ratio at 1 October 2018, the legislation includes a saving provision that allows the service to continue to operate until 1 October 2019, after which the 1:25 ratio will apply.

4.5.2 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.

Written consent must also be provided by the parents of each child.

Circumstances in which a family day care assistant may educate and care for children
Transporting a child between the family day care residence or approved family day care venue and • a school • another education and care service or children's service • the child's home
Providing education and care to a child in emergency situations, including when the family day care educator requires urgent medical care or treatment
Providing education and care to a child when the family day care educator is absent to attend an appointment (other than a regular appointment) in unforseen or exceptional circumstances if • the absence is less than four hours • the approved provider of the family day care service has approved the absence • notice of the absence has been given to the parents of the child(ren).

National Law

Section 164A

The approved provider and family day care educator must ensure that any child being educated and cared for at the service is only educated and cared for by the family day care educator, unless otherwise prescribed under regulation 144.

The family day care educator assistant is not required to hold, or be actively working towards, a certificate III level education and care qualification.

See *Quality Area 4 – Family day care educator assistants*, *Quality Area 7 – Residents and family day care educator assistants to be fit and proper* and *First aid qualifications and training*.

Centre-based and family day care educator supervision requirements

National Regulations

Regulations 119–120

A family day care educator and family day care educator 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 18 years of age or over.

To check these requirements are being complied with, authorised officers may ask to see:

- staff rosters demonstrating that educators at centre-based services under 18 years of age are rostered with an educator who is 18 years of age or over
- the register of family day care educators and/or the staff record, which includes record of date of birth
- policies and procedures in relation to staff or the engagement or registration of family day care educators and family day care educator assistants.

4.5.3 EDUCATIONAL LEADER (CENTRE-BASED AND FAMILY DAY CARE)

National Regulations

Regulation 118

An educator, co-ordinator or other individual who is suitably qualified and experienced must be designated to lead the development and implementation of the educational program (or curriculum) 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.

The educational leader may be the approved provider, a nominated supervisor or person with management or control (who has suitable experience and qualifications), an early childhood teacher, or a diploma or certificate III 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.

Standard 7.2 includes the following element on Educational Leadership, '*The educational leader is supported and leads the development and implementation of the educational program and the assessment and planning cycle*'.

4.5.4 FIRST AID QUALIFICATIONS AND TRAINING

National Law & Regulations

Section 169
Regulation 136

Centre-based services

At all times and at any place that children are being educated and cared for by the service, the following person(s) must be in attendance and immediately available in an emergency:

- at least one staff member or one nominated supervisor of the service who holds a current approved first aid qualification, and
- at least one staff member or one nominated supervisor of the service who has undertaken current approved anaphylaxis management training, and
- at least one staff member or one nominated supervisor of the service who has undertaken current approved emergency asthma management training.

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

If the approved service is operating on a school site (for example, a government kindergarten or preschool), the requirements for regulation 136(2) can be met if one or more staff members of the school holding the relevant qualifications are in attendance at the school site and immediately available during the emergency.

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

A list of approved first aid qualifications is published on the ACECQA website (www.acecqa.gov.au).

family day care

Family day care services

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

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

Renewal of first aid qualifications

The Safe Work Australia **First Aid in the Workplace Code of Practice** recommends that persons required to maintain first aid qualifications should attend training on a regular basis to refresh their first aid knowledge and skills, and to confirm their competence to provide first aid. The Code of Practice also recommends that refresher training in CPR should be undertaken annually and first aid qualifications should be renewed every three years.

The certificate should state the date when the person completed the course, as well as the expiry date, which is typically three years from the date of completion. The certificate may include additional requirements, such as completing refresher training in CPR annually.

Excursions: The approved provider must ensure that a person(s) with first aid qualifications and training is in attendance on an excursion. If some children remain on the service premises, a person(s) with first aid qualifications and training must also remain on the premises.

4.5.5 APPROVAL AND DETERMINATION OF QUALIFICATIONS

National Law & Regulations

Section 169
Regulations 137–143

ACECQA determines the qualifications required to be held by educators.

The lists of qualifications and first aid training courses approved by ACECQA are published on the ACECQA website at www.acecqa.gov.au 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).

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.

Assessment of equivalent educator qualifications

If a qualification is not listed on the approved qualifications list (for example an overseas qualification), an educator can apply to ACECQA to have it/them assessed for equivalence. There is a fee for this application.

ACECQA will determine if the educator holds a qualification that is suitable, allowing them to be an educator in a service with children under school age or school age children.

Instructions on how to submit an application and guidance on the assessment process is available on the ACECQA website (www.acecqa.gov.au/qualifications).

Approval of a qualification or training course

If an organisation's qualification or training is not on this approved list, the provider can apply to ACECQA to have it assessed for inclusion on the 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.

Instructions on how to submit an application and guidance on the assessment process is available on the ACECQA website (www.acecqa.gov.au/qualifications).

Authorised officers can contact ACECQA for advice if unsure a person's qualification certificate is authentic.

4.5.6 RESPONSIBILITIES OF THE APPROVED PROVIDER, NOMINATED SUPERVISOR AND FAMILY DAY CARE EDUCATOR

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver
Educational leader (regulation 118)	✔					✔	
Family day care educator and educator assistants to be at least 18 years old (regulation 119)	✔			✔		✔	
Educators who are under 18 to be supervised (regulation 120)	✔			✔		✔	✔
Educators must be working directly with children to be included in ratios (regulation 122)	✔						
Educator to child ratios – centre-based services (regulation 123, section 169)	✔	✔		✔			✔
Educator to child ratios – family day care services (regulation 124, section 169)	✔	✔	✔	✔			✔
Centre-based services – general educator qualifications (regulation 126, section 169)	✔	✔		✔			✔
Family day care educator qualifications (regulation 127, section 169)	✔	✔		✔			✔
Family day care co-ordinator qualifications (regulation 128, section 163)	✔	✔		✔			✔
Requirements for educators who are early childhood teachers (regulation 130–134, section 169)	✔	✔		✔			✔
First aid qualifications (regulation 136, section 169)	✔			✔		✔	✔
Family day care educator assistant (regulation 144)	✔						
Staff and educator records – centre-based services (regulations 145–152) – See Quality Area 7	✔						
Register of family day care educators, co-ordinators and assistants and records of family day care service – See Quality Area 7 (section 269, regulations 153–154)	✔						

Summary of qualification and staffing requirements

Family day care service requirements

Educator qualification and staffing requirements	
Family day care co-ordinator	Co-ordinators must have an approved diploma level (or higher) education and care qualification.
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.

Educator to child ratios:	
Age range	**Ratio**
Mixed age group	1:7 Maximum of four children preschool age or under. Ratio includes the educator's own children younger than 13 years of age if there is no other adult to care for them.

Centre-based services with children preschool age and under (primarily long day care, preschool, kindergarten)

Early childhood teacher requirements from 1 January 2014	Fewer than 25 children	The service needs to have access to an early childhood teacher for at least 20 per cent of the time the service is operating. This may be achieved through an information communication technology solution.
	25 – 59 children*	The service must employ or engage a full-time or full time equivalent early childhood teacher, or have an early childhood teacher in attendance for: • 6 hours per day, when operating for 50 hours or more per week OR • 60 per cent of the operating hours of the service on that day, when operating for less than 50 hours a week.
	60 – 80 children*	The service must meet the above requirements for 25–59 children (until 2020 when this changes). Visit the ACECQA website at www.acecqa.gov.au/qualifications
	More than 80 children*	The service must meet the above requirements for 25–59 children (until 2020 when this changes). Visit the ACECQA website at www.acecqa.gov.au/qualifications
Diploma qualifications	At least 50 per cent of required educators must have (or be actively working towards) at least a diploma level education and care qualification.	
Certificate III qualifications	All other educators who are required to meet ratio requirements must hold or be actively working towards an approved certificate III level education and care qualification or higher. However, a probationary period applies to new educators working without an approved qualification in ACT, NT, QLD, TAS, VIC, WA. New educators can be counted as a Certificate III qualified educator for ratio purposes for up to three months before they need to start working towards their qualification.	

*Saving provisions apply in NSW

Centre-based services with children over preschool age (primarily outside school hours care) ACT, NT, QLD, SA, VIC, WA

There are no national qualification requirements for educators at centre-based services educating and caring for children who are over preschool age. State and territory qualification requirements (if applicable) continue to apply. See the lists of approved qualification requirements for children over preschool age on the ACECQA website at www.acecqa.gov.au/qualifications.

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.

APPENDIX A – PROHIBITION NOTICE DECLARATION FOR PROSPECTIVE STAFF MEMBERS

Visit the ACECQA website for an electronic copy of this (optional) form.

Prohibition notice declaration for prospective staff members

- The declaration may be completed by any prospective staff member seeking employment or engagement with an education and care service
- This form is designed to support approved providers to ensure they do not engage or employ a person who is prohibited from working in an education and care service, in line with Section 188 of the Education and Care Services National Law
- Completed forms should be retained and stored by the approved provider to support compliance with Section 188 of the Education and Care Services National Law
- **Please note this form does not need to be lodged with the regulatory authority**

Part A: **Personal details**

1. Please complete the following:

Title: ..... First name: .....

Last name: ..... Mobile number: .....

Phone number: ..... Date of birth: DD/MM/YYYY ...../...../.....

Email: .....

Address: .....

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Suburb/Town: .....

State/Territory: ..... Postcode: .....

2. Please provide details of any former names or other names you may be known by: _____

_____

_____

3. Are you currently subject to a prohibition notice under the Education and Care Services National Law? ☐ Yes ☐ No

Please note that under section 187 of the Education and Care Services National Law, a person who is subject to a prohibition notice is not allowed to work for or be engaged by an education and care service or carry out any other related activity.

☐ Yes ☐ No

4. Are you currently prohibited or restricted from working with children under any other law?

Part B: **Declaration**

I, ... [insert full name of person signing the declaration] declare that:

1. the information provided on this form is true, complete and correct
2. the approved provider or a representative of the approved provider is authorised to verify any information provided in this form
3. I am aware that under the Education and Care Services National Law penalties apply if false or misleading information is provided.

Signature of person making the declaration: .....

Signed at: ..... [place] on the ..... [date]

Signature of witness: _____ Name of witness: _____

APPENDIX B – COMPLIANCE HISTORY STATEMENT FOR A PERSON TO BE A PERSON IN DAY-TO-DAY CHARGE (PIDTDC) OR A NOMINATED SUPERVISOR

Visit the ACECQA website for an electronic copy of this (optional) form.

Compliance history statement for a person to be a person in day-to-day charge (PIDTDC) or a nominated supervisor

It is not mandatory to use this form.
This form may assist when determining a person's suitability to be the nominated supervisor or to be placed in day-to-day charge of a service. Completed forms should be retained and stored.

1. Please provide information about any compliance action or disciplinary proceedings to which you have been subject under:

- the *Education and Care Services National Law*, including the Education and Care Services National Regulations, and
- any of the laws listed at Table 1. below, in any Australian state or territory.

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2. Have you ever had a supervisor certificate that was subject to any conditions or suspended or cancelled by the regulatory authority?

☐ Yes – please provide details below ☐ No

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3. Are you or have you ever been subject to a prohibition notice under the Education and Care Services National Law?

☐ Yes – please provide details below ☐ No

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Compliance history statement for a person to be a person in day-to-day charge (PIDTDC) or a nominated supervisor

4. Have you ever held or applied for a licence, approval, registration, certification or other authorisation under the National Law which the regulatory authority refused, refused to renew, suspended or cancelled?

☐ Yes – please provide details below ☐ No

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I, [insert full name] .....

of [insert address] .....

and born on [insert date of birth] ..... declare that:

1. the information provided in this statement is true and complete, and
2. I am aware that I may be subject to penalties under a Commonwealth or State or Territory Act if I provide false or misleading information.

Signature of person making the declaration:

Signed: ..... Date ...../...../.....

Compliance history statement for a person to be a person in day-to-day charge (PIDTDC) or a nominated supervisor

Table 1	
Other relevant laws, including children's services laws, education laws, and former education and care services laws in any Australian state or territory	
Australian Capital Territory	*Children and Young People Act 2008* *Education Act 2004* *Working with Vulnerable People (Background Checking) Act 2011*
New South Wales	*Children and Young Persons (Care and Protection) Act 1998* *Education Act 1990* *Institute of Teachers Act 2004* *Teaching Service Act 1980* *Commission for Children and Young People Act 1998*
Northern Territory	*Care and Protection of Children Act* *Care and Protection of Children (Children's Services) Regulations* *Education Act* *Teacher Registration (Northern Territory) Act and Regulations*
Queensland	*Child Care Act 2002* *Child Care Act 1991* *Education (Accreditation of Non-State Schools) Act 2001* *Education (General Provisions) Act 2006* *Education (Overseas Students) Act 1996* *Education (Queensland College of Teachers) Act 2005* *Higher Education (General Provisions) Act 2008* *Family and Child Commission Act 2014*
South Australia	*Children's Protection Act 1993* *Children's Services Act 1985* *Education Act 1972*
Tasmania	*Child Care Act 2001* *Education Act 1994* *Children, Young Persons and their Families Act 1997* *Teacher's Registration Act 2000* *Registration to Work with Vulnerable People Act 2013*
Victoria	*Children's Services Act 1996* *Education and Training Reform Act 2006* *Working with Children Act 2005*
Western Australia	*Child Care Services Act 2007* *Child Care Services Regulations 2007* *School Education Act 1999* *Teacher Registration Act 2012* *Working with Children (Criminal Record Checking) Act 2004*

APPENDIX C – COMPLIANCE HISTORY STATEMENT FOR A PROSPECTIVE FAMILY DAY CARE EDUCATOR

Visit the ACECQA website for an electronic copy of this (optional) form.

Compliance history statement for a prospective family day care educator

It is not mandatory to use this form.

This form may assist when determining a person's suitability to be a family day care educator. Completed forms should be retained and stored.

1. Please provide information about any compliance action or disciplinary proceedings to which you have been subject under:

- the *Education and Care Services National Law*, including the Education and Care Services National Regulations, and
- any of the laws listed at Table 1 below, in any Australian state or territory.

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2. Are you or have you ever been subject to a prohibition or suspension notice under the *Education and Care Services National Law?*

☐ Yes – please provide details below ☐ No

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3. Have you ever held or applied for a licence, approval, registration, certification or other authorisation under the National Law which the regulatory authority refused, refused to renew, suspended or cancelled (for example as a nominated supervisor, a person in day to day charge, a person with management or control)?

☐ Yes – please provide details below ☐ No

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Compliance history statement for a prospective family day care educator

4. Were you formerly registered with another approved provider? If so, please list service details and the reason(s) you left your previous role.

☐ Yes – please provide details below ☐ No

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I, [insert full name] .....

of [insert address] .....

and born on [insert date of birth] ..... declare that:

1. the information provided in this statement is true and complete, and
2. I am aware that I may be subject to penalties under a Commonwealth or State or Territory Act if I provide false or misleading information.

Signature of person making the declaration:

Signed: ..... Date ...../...../.....

Compliance history statement for a prospective family day care educator

Table 1	
Other relevant laws, including children's services laws, education laws, and former education and care services laws in any Australian state or territory	
Australian Capital Territory	*Children and Young People Act 2008* *Education Act 2004* *Working with Vulnerable People (Background Checking) Act 2011*
New South Wales	*Children and Young Persons (Care and Protection) Act 1998* *Education Act 1990* *Institute of Teachers Act 2004* *Teaching Service Act 1980* *Commission for Children and Young People Act 1998*
Northern Territory	*Care and Protection of Children Act* *Care and Protection of Children (Children's Services) Regulations* *Education Act* *Teacher Registration (Northern Territory) Act and Regulations*
Queensland	*Child Care Act 2002* *Child Care Act 1991* *Education (Accreditation of Non-State Schools) Act 2001* *Education (General Provisions) Act 2006* *Education (Overseas Students) Act 1996* *Education (Queensland College of Teachers) Act 2005* *Higher Education (General Provisions) Act 2008* *Family and Child Commission Act 2014*
South Australia	*Children's Protection Act 1993* *Children's Services Act 1985* *Education Act 1972*
Tasmania	*Child Care Act 2001* *Education Act 1994* *Education Act 2016* *Teacher's Registration Act 2000* *Registration to Work with Vulnerable People Act 2013*
Victoria	*Children's Services Act 1996* *Education and Training Reform Act 2006* *Working with Children Act 2005*
Western Australia	*Child Care Services Act 2007* *Child Care Services Regulations 2007* *School Education Act 1999* *Teacher Registration Act 2012* *Working with Children (Criminal Record Checking) Act 2004*

QUALITY AREA 5
RELATIONSHIPS WITH CHILDREN

National Law

Section 166

Inappropriate discipline

Approved providers, nominated supervisors, staff members, volunteers and family day care educators must ensure that no child being educated and cared for by the service is subject to any form of corporal punishment, or any discipline that is unreasonable.

Authorised officers may discuss what measures are in place to ensure children at the service are not subject to any form of corporal punishment or unreasonable discipline. Compliance may be demonstrated by:

- regular staff awareness sessions
- a clear reporting structure for concerns
- a clear and comprehensive policy and procedure about staff interactions with children.

Authorised officers may also look at the policies and procedures in place regarding staff interactions with children which is a requirement under regulation 168.

National Regulations

Regulation 155

Interactions with children

An approved provider must take reasonable steps to ensure the service provides education and care in a way that:

- encourages children to express themselves and their opinions
- allows children to undertake experiences that develop self-reliance and self-esteem
- maintains the dignity and rights of each child at all times
- gives each child positive guidance and encouragement toward acceptable behaviour
- considers family and cultural values, age, physical and intellectual development and abilities of each child.

National Regulations

Regulation 156

Relationships in groups

The approved provider must take reasonable steps to ensure the service provides children with opportunities to interact and develop respectful and positive relationships with each other, staff members and volunteers at the service.

In doing so, the approved provider must consider the size and composition of the groups of children.

Authorised officers may consider:

- the service's policy on interactions with children (required under regulation 168)
- whether any attachment occurs between children and educators

- whether the service has implemented inclusive practices which allow all children to participate in the program, regardless of background or ability
- whether the environment and routines at the service assist children to manage their own behaviour and promote positive relationships
- whether group sizes take into account children's ages, development and individual needs.

Authorised officers may work with services to ensure group sizes achieve positive outcomes for each child by discussing what the approved provider considered in determining group sizes, for example:

- the physical environment
- service philosophy
- developmental needs of the children
- educators' qualifications and experience
- the operational requirements of the service.

Group size affects factors such as noise level, the amount of stimulation and level of engagement in an education and care setting.

Smaller groups enable children to form caring relationships with one another, engage in meaningful shared experiences and discovery through play. Larger groups can help foster a sense of community and assist in developing strong teamwork and social skills. It is important for educators to consider the context of the group to ensure its size will benefit the experience of each child.

Small groups are particularly important for infants. They are also associated with a lower risk of infection and appear to improve the safety of children.

Responsibilities of the approved provider, nominated supervisor and family day care educator

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver*
Interactions with children (Regulation 155)	✔						
Relationships in groups (Regulation 156)	✔					✔	
Inappropriate discipline (Section 166)**	✔	✔	✔	✔			

*Waivers do not apply to any of these requirements.

**This offence also applies to staff members and volunteers at the service.

QUALITY AREA 6
COLLABORATIVE PARTNERSHIPS WITH FAMILIES AND COMMUNITIES

National Regulations

Regulation 157

Access for parents

A parent of a child may enter a service's premises at any time the child is being educated and cared for by the service.

The approved provider, nominated supervisor or family day care educator is not required to allow a parent to enter the service premises if:

- permitting the parent's entry would pose a risk to the safety of the children and staff of the service
- permitting the parent's entry would conflict with any duty of the provider, supervisor or educator under the National Law
- they reasonably believe 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.

The regulatory authority may suspect an approved provider, nominated supervisor or family day care educator has failed to comply with this requirement if, for instance, they are notified of a complaint from a parent who has been refused access. In such cases, the regulatory authority may seek to establish whether entry was refused based on one of the three exceptions outlined above, by discussing the factors that informed the decision to refuse the parent entry.

For example, if the approved provider, nominated supervisor or family day care educator says the parent was denied access because an aggravated violence order is in place against the parent, the authorised officer may ask to see the child's enrolment record. This enrolment record must include details of any court orders, parenting orders or parenting plans in relation to the child or access to the child (regulation 160).

Where a decision to refuse access arose as a result of circumstances which posed a risk to the health, safety and wellbeing of children, the incident must be reported to the regulatory authority (regulation 175). Where this incident relates to a parent complaint, refer also to ***Governance and leadership***. The authorised officer may also request to see the policies and procedures about the delivery and collection of children (regulation 168).

Although it is not a requirement, approved providers may develop a policy about access to children to clarify for parents the circumstances in which they may be denied access, and keep a record of when these decisions are made.

Responsibilities of the approved provider, nominated supervisor and family day care educator

Requirement	Approved provider	Nominated supervisor	Family day care educator	Offence	Infringement notice	Compliance direction	Waiver*
Access for parents (Regulation 157)	✔	✔	✔	✔			
Offence relating to direction to exclude inappropriate persons (Section 171)	✔	✔	✔	✔			

*Waivers do not apply to any of these requirements.

QUALITY AREA 7
GOVERNANCE AND LEADERSHIP

7.1 POLICIES AND PROCEDURES

National Regulations

Regulation 168

The approved provider must ensure the service has policies and procedures in place in relation to the following.

Required policies and procedures for all service types
Health and safety, including: • sleep and rest (Regulation 168(2)(a)) • nutrition, food and beverages, dietary requirements (Standard 2.1) • sun protection (Standard 2.2) • water safety (Standard 2.2) • administration of first aid (Standard 2.1)
Incident, injury, trauma and illness procedures (Regulations 85, 168(2)(b), Standard 2.1)
Dealing with infectious diseases (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 2.2)
*Delivery to and collection of children from the education and care service (Regulation 99 and 168(2)(f). 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 National Law (WA).
Excursions (Regulations 100–102, 168(2)(g))
Providing a child safe environment (Regulation 168(2)(h), Standards 2.2, 7.1)
Staffing, including (Regulation 168(2)(i)): • professional standards / code of conduct for staff members (Standard 4.2) • determining the responsible person • participation of volunteers and students
Interactions with children (Regulations 155–156, 168(2)(j), Standards 5.1, 5.2)
Enrolment and orientation (Regulation 168(2)(k), Standard 6.1)
Governance and management of the service, including confidentiality of records (Regulation 168(2)(l), Standard 7.1)
Acceptance and refusal of authorisations (Regulation 168(2)(m))
Payment of fees and provision of a statement of fees (Regulation 168(2)(n), Standard 7.1)
Dealing with complaints (Regulation 168(2)(o), Standard 7.1).

*Approved providers may restrict who can be nominated to collect a child, for example by a person under the age of 16 years. This should be documented in the policy about collection of children. Authorised officers may talk to approved providers about whether they have taken into consideration that some parents may be less than 18 years of age.

National Regulations

Regulation 169

For a family day care service, the approved provider must also ensure the service has policies and procedures in place in relation to the matters below.

Additional policies and procedures for a family day care service
Assessment, approval and reassessment of family day care residences and assessment, including risk assessment of family day care venues (Regulations 116, 169(2)(a), Standard 3.1)
Engagement or registration of family day care educators (Regulation 169(2)(b), Standard 7.1)
Keeping a register of family day care educators, co-ordinators and assistants (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, family day care educator assistants and people living at family day care residences (Regulations 163, 169(2)(e), Standard 7.1)
Visitors to family day care residences and venues while children are being educated and cared for (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 or registration of family day care educator assistants (Regulations 154, 169(2)(h)).

National Regulations

Regulation 170

The approved provider must take reasonable steps to ensure the nominated supervisor, staff members and any volunteers at a centre-based service follow the policies and procedures required under regulation 168.

The approved provider of a family day care service must take reasonable steps to ensure the nominated supervisor, and the staff members and family day care educators engaged by or registered with the service, follow the policies and procedures required under regulations 168 and 169.

National Regulations

Regulation 171

The policies and procedures must be readily accessible to the nominated supervisor, staff members and volunteers.

The prescribed policies and procedures must be available for inspection at a centre-based service's premises and, for family day care services, at each family day care residence and approved venue, and any office of the family day care service. This requirement can be met through a paper copy or electronic version.

Policies should be informed by the service's philosophy statement, current research and contemporary views on best practice including Early Childhood Australia's *Code of Ethics* and advice from other recognised authorities.

Making changes to the policies and procedures

National Regulations

Regulation 172

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. For example, changes in legislation, or a serious incident at the service may trigger a review.

Authorised officers may discuss with the approved provider how policies are developed, maintained and informed by best practice from relevant, recognised authorities. For example, a sun protection policy may reference information from Cancer Council Australia.

The policies do not have to be in any particular style or format, and do not need to be titled to reflect the exact wording of the National Regulations.

Parents of children at the service must be notified at least 14 days before making any change to a policy or procedure required under regulations 168 and 169 if the change:

- may have a significant impact on the service's provision of education and care to any child enrolled at the service
- may have a significant impact on the family's ability to use the service, or
- will affect the fees charged or the way in which fees are collected.

The approved provider does not have to comply with the notice period if the provider considers it would pose a risk to the safety, health or wellbeing of any child at the service to do so. In that case the approved provider must notify parents as soon as practicable after making the change.

Policies on acceptance and refusal of authorisation

National Regulations

Regulations 92, 99, 102

Authorisation must be obtained for:

- administering medication to children
- children leaving the premises in the care of someone other than a parent
- children to be taken on excursions.

The service's 'acceptance and refusal of authorisations' policy should set out the circumstances the provider would accept (or refuse) an authorisation. For example, the policy may state authorisations must be in writing, signed and dated, and clearly state the name of the child to whom the authorisation relates.

7.2 INFORMATION TO BE DISPLAYED

National Law & Regulations

Section 172
Regulation 173

The approved provider must ensure the following information is clearly visible at the service premises in a place that is accessible to families.

Information to be displayed
The approved provider's name, approval number and any conditions on the provider approval
The approved service's name, approval number and any conditions on the service approval
The name of each nominated supervisor
The service's current ratings against each quality area and the overall rating
Whether a waiver is in force at the service and, if so, which NQS elements and/or Regulations have been waived, the duration of the waiver, and whether the waiver is a temporary or service waiver
The hours and days of operation of the service
The name and telephone number of a person to whom complaints can be addressed
The name and position of the responsible person at a centre-based service at any given time
The name of the educational leader
The contact details of the regulatory authority
If applicable, a notice stating a child who has been diagnosed as at risk of anaphylaxis is enrolled at the centre-based service. In the case of family day care residence or venue, a notice stating a child who has been diagnosed as at risk of anaphylaxis is enrolled or attends the family day care residence or venue
If applicable, a notice of an occurrence of an infectious disease at the premises for a centre-based service. In the case of a family day care residence or venue, a notice stating that there has been an occurrence of an infectious disease at the family day care residence or venue.

Prescribed information about anaphylaxis or infectious diseases should be displayed at a family day care residence or venue if applicable to a child who attends that specific family day care residence or venue. It should be displayed at the family day care office if children or parents regularly attend the office.

The National Law and Regulations do not prescribe how this information should be displayed. Some information could be permanently displayed as a laminated poster or framed certificate, while other information (such as information which is updated regularly) could be displayed on a whiteboard.

7.3 REPORTING INFORMATION TO THE REGULATORY AUTHORITY

National Law & Regulations

Sections 56, 173, 174
Regulations 174, 175, 176

Information about the approved provider and service

The approved provider must notify the regulatory authority that granted the provider approval if any of the events below occur in relation to the approved provider or each approved service.

Applications and notifications can be submitted online using the National Quality Agenda (NQA) IT System at www.acecqa.gov.au.

Circumstances that must be notified to the regulatory authority

Type of notification	Responsible	Timeframe	Reference
Death of approved provider	Nominated Supervisor or person in day to day control	Within 7 days of the death	Section 39(2)
Intention to transfer service approval	Transferring approved provider and receiving approved provider	At least 42 days before transfer	Section 59, Regulations 36 & 37
Change in name of approved provider	Approved provider	Within 14 days	Section 173(1)(a)
Any appointment or removal of a person with management or control of service	Approved provider	Within 14 days	Section 173(1)(b)
Failure to commence operating within 6 months (or within the time agreed with the regulatory authority) after being granted a service approval	Approved provider	Within 14 days	Section 173(1)(c)
The suspension or cancellation of a working with children card or teacher registration, or disciplinary proceedings under an education law of a participating jurisdiction in respect of a nominated supervisor engaged by the service.	Approved provider	Within 7 days of the approved provider being notified	Section 173(2)(a)
Addition of a new nominated supervisor	Approved provider	At least 7 days prior to commencement (or as soon as practicable but no more than 14 days after commencement)	Section 56
Nominated supervisor ceases to be employed or engaged at the service, is removed from the role, or withdraws consent to the nomination	Approved provider	Within 7 days	Section 173(2)(b)

Circumstances that must be notified to the regulatory authority			
Type of notification	**Responsible**	**Timeframe**	**Reference**
Any proposed change premises (other than a family day care residence)	Approved provider	Within 7 days	Section 173(2)(c)
Change of a nominated supervisor's name or contact details	Approved provider	Not specified	Section 56A
Ceasing to operate the education and care service	Approved provider	Within 7 days	Section 173(2)(d)
A change in the location of the principal office of a family day care service	Approved provider	At least 14 days before the change will occur	Section 173(2)(e)
Any change relevant to approved provider's fitness and propriety	Approved provider	Within 7 days	Section 174(1)(a)
Any change to the address of the approved provider, or the principal office of the approved provider, or the contact details of the approved provider	Approved provider	Within 7 days	Regulation 175(1)(a)
The appointment of receivers or liquidators or administrators to the approved provider or any matters that affect the financial viability and ongoing operation of the service	Approved provider	Within 7 days	Regulation 175(1)(b)
Any change to the hours and days of operation of the service	Approved provider	Within 7 days	Regulation 175(2)(a)

In general, the notification must be in writing to the regulatory authority in which the service approval was granted or, for a family day care service, the regulatory authority in each jurisdiction the family day care service operates.

Information about nominated supervisors the approved provider must notify to the regulatory authority

The approved provider must notify the regulatory authority if they add a new nominated supervisor of a service (section 56, regulation 35).

The provider must give written notice at least 7 days before the new nominated supervisor commences or if that is not possible in the circumstances, as soon as possible but not more than 14 days after the individual starts work as a nominated supervisor (section 56(2)(c)).

The notice to the regulatory authority must include written consent from the new nominated supervisor to the nomination. The only exception is if the approved provider is an individual and nominates themselves to be a nominated supervisor. In this case, the approved provider does not need to provide their own written consent to being a nominated supervisor (section 56(2)(a)).

The approved provider must also notify the regulatory authority in writing of any change to the name or contact details of any nominated supervisor (section 56A).

The approved provider must also notify the regulatory authority if a nominated supervisor is no longer employed or engaged by the service, if they are removed from the role of nominated supervisor, or if they withdraw their consent to be the nominated supervisor (section 173(2)(b)).

National Law & Regulations

Section 174
Regulations 12, 174–176

Serious incidents, change of circumstances and complaints

The approved provider must also notify the regulatory authority in writing of the following incidents, change of circumstances and complaints.

Applications and notifications can be submitted online using the National Quality Agenda (NQA) IT System at www.acecqa.gov.au.

Serious incidents, change of circumstances and complaints to notify

Type of notification	Responsible	Timeframe	Reference
Notification to regulatory authority			
Death of a child	Approved provider	As soon as practicable, but within 24 hours	Section 174(2)(a) Regulation 12 Regulation 176(2)(a)(i)
Any incident involving serious illness of a child while being educated and cared for which the child attended or ought reasonably to have attended a hospital	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12
Any incident involving serious injury or trauma to a child while being educated and cared for which the child attended or ought reasonably to have attended a hospital, or a reasonable person would consider that the child would require urgent attention from a registered medical practitioner	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12
Any emergency for which emergency services attended	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12
A child is missing or cannot be accounted for or appears to have been removed from the premises by a person not authorised by a parent	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12
A child is mistakenly locked in or out of the premises or any part of the premises	Approved provider	Within 24 hours of the incident	Section 174(2)(a) Regulation 12
Any incident that requires the provider to close or reduce the number of children attending	Approved provider	Within 24 hours of the incident	Section 174(2)(c) Regulation 175(2)(b)
Any complaint alleging that a serious incident has occurred or is occurring at an education and care service, or the National Law has been contravened (refer to Serious Incidents outlined in table above)	Approved provider	Within 24 hours of the complaint	Section 174(2)(b) Regulation 12

Serious incidents, change of circumstances and complaints to notify

Type of notification	Responsible	Timeframe	Reference
The centre-based service is educating and caring for extra child/ren due to an emergency	Approved provider	Within 24 hours	Section 174(2)(c) Regulation 175(2)(ca)
Any circumstance at the service that poses a 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)
Any incident where the provider reasonably believes that physical or sexual abuse of a child or children has occurred or is occurring while the child is being educated and cared for by the service	Approved provider	Within 7 days	Section 174(2)(c) Regulation 175 (2)(d)
Allegations that physical or sexual abuse of a child or children has occurred or is occurring while the child or children are being educated and cared for by the service	Approved provider	Within 7 days	Section 174(2)(c) Regulation 175 (2)(e)
Information for FDC Educators to report to their Approved Provider			
Any serious incident while a child is being educated and cared for by the educator (refer to *Serious Incidents* outlined in *Incidents and Complaints* table above)	FDC Educator	None specified	Section 174A Regulation 12
Any complaint alleging that a serious incident has occurred or the National Law has been contravened while a child was being educated and cared for (refer to *Serious Incidents* outlined in *Incidents and Complaints* table above)	FDC Educator	None specified	Section 174A Regulation 12
Any new person over 18 years who resides at the FDC residence and any circumstance relevant to whether a resident who is over 18 years is fit and proper	FDC Educator	None specified	Regulation 164
Renovations or other changes to the FDC residence or approved venue that create a serious risk to the health, safety and wellbeing of children attending the residence or venue	FDC Educator	None specified	Regulation 176A
Notification to parents			
Policies: parents of children enrolled at the service are notified before making any change to a policy or procedure that may have a significant impact on the service's provision of education and care to any child enrolled at the service; the family's ability to utilise the service; any change that will affect the fees charged or the way in which fees are collected.	Approved provider	At least 14 days prior unless a lesser period is necessary because of a risk	Regulation 172
Voluntary suspension of provider approval: approved provider must notify the parents of children enrolled at the services operated by the approved provider.	Approved provider	At least 14 days prior to application for suspension	Section 37(3)

Serious incidents, change of circumstances and complaints to notify			
Type of notification	**Responsible**	**Timeframe**	**Reference**
A parent of a child being educated and cared for by the service is to be notified if the child is involved in any incident, injury, trauma or illness while at the service.	Approved provider	As soon as practicable, no more than 24 hours	Regulation 86
If there is an occurrence of an infectious disease at a centre-based service, the approved provider of the service must ensure that a parent or an authorised emergency contact of each child is notified of the occurrence.	Approved provider	As soon as practicable	Regulation 88
If medication is administered in case of an anaphylaxis or asthma emergency, the approved provider or a nominated supervisor of the service or family day care educator must ensure that a parent and emergency services are notified.	Approved provider/ nominated supervisor/ educator	As soon as practicable	Regulation 94

See below for more information on serious incidents.

Providers can download an (optional) incident, injury, trauma and illness record template to record any supporting evidence of other (non-serious) incidents for example, bruises or scratches, from the ACECQA website (www.acecqa.gov.au).

There may be other reporting requirements for approved providers, educators and service staff under different state and territory laws, for example, child protection laws and requirement to meet Child Safe standards. Visit the Australian Government, Australian Institute of Family Studies website for Australian child protection legislation at www.aifs.gov.au.

The intent of the National Regulations is to ensure regulatory authorities are notified of serious incidents, complaints and circumstances where the health, safety or wellbeing of children may have been compromised so that it is able to take appropriate action.

National Regulations

Regulation 12

Serious incident

A serious incident (regulation 12) is defined as any of the following:

- the **death of a child** while being educated and cared for at the service or following an incident at the service
- any **incident involving a serious injury or trauma** while the child is being educated and cared for, which:
  - a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
  - the child attended or ought reasonably to have attended a hospital e.g. broken limb*

- any **incident involving serious illness of a child** while that child is being educated and cared for by a service for which the child attended, or ought reasonably to have attended, a hospital e.g. severe asthma attack, seizure or anaphylaxis*.
  - ***NOTE:** In some cases (for example rural and remote locations) a General Practitioner conducts consultations from the hospital site. Only treatment related to serious injury or illness or trauma are required to be notified, not other health matters.
- any emergency for which **emergency services** attended. **NOTE:** This means an incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person/s at an education and care service. It does not mean an incident where emergency services attended as a precaution.
- a child appears to be **missing or cannot be accounted** for at the service
- a child appears to have been **taken or removed** from the service in a manner that contravenes the National Regulations
- a child was mistakenly **locked in or locked out of the service** premises or any part of the premises.

Below are some examples of serious incidents to notify.

Examples of a serious incident
Amputation, for example, removal of fingers
Anaphylactic reaction requiring hospitalisation
Asthma requiring hospitalisation
Broken bone/fractures
Bronchiolitis
Burns
Diarrhoea requiring hospitalisation
Epileptic seizures
Head injuries
Measles
Meningococcal infection
Sexual assault
Witnessing violence or a frightening event

If the approved provider is not aware that the incident was serious until sometime after the incident, they must notify the regulatory authority within 24 hours of becoming aware that the incident was serious. For example, where a child hurts their arm at the service, but is in no obvious pain and continues to play. If the parent later advises that the child's symptoms had worsened and a fractured arm had been confirmed, then the approved provider should report the incident as a serious incident.

If it is not practicable to notify the regulatory authority through the National Quality Agenda IT System portal (because, for example, of the extreme urgency of the notification or difficulty getting the notification forms signed by the number of people indicated by the form) the notification can be made initially in whatever way is best in the circumstances. The important thing is for the notification to be made within 24 hours.

Notifying physical or sexual abuse to the Regulatory Authority

National Regulations

Regulations 175 (2) (d), (e)

The following guidance is for notifying physical and sexual abuse to the regulatory authority as required by the NQF. In addition to reporting an incident to the regulatory authority, it may be appropriate to report the matter under reportable conduct (e.g. Ombudsman), to child protection agencies or to the police. This is to meet other reporting requirements for approved providers, educators and service staff under different state and territory laws. For example, child protection laws or child safe standards may apply in your jurisdiction, in addition to your obligations under the National Quality Framework.

Notifications for the NQF can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website (www.acecqa.gov.au) and should include details of the reports made to child protection or other agencies.

National Regulation 175(2)(d) and (e) require the approved provider to notify the regulatory authority of any allegations or incidents where they reasonably believe physical or sexual abuse of a child or children is occurring, while they are at or being cared for by an education and care service. The intent of the National Regulation is to ensure incidents and allegations of physical or sexual abuse by a staff member or other adult at the service are reported.

Incidents that occur between children may be notifiable, such as cases where one child has power over the other because of physical stature or an age difference.

Regulation 175(2)(d) and (e) do not relate to incidents and allegations of physical or sexual abuse of a child or children when they are not being cared for by an education and care service.

The following definitions of physical and sexual abuse are adapted from the Australian Government, Australian Institute of Family Studies website (www.aifs.gov.au). Refer to this website for information on child abuse and neglect.

Definition of physical abuse

For the purposes of NQF notifications, child physical abuse refers to the non-accidental use of physical force against a child that results in harm to the child. Depending on the age and the nature of the behaviour, physical force that is likely to cause physical harm to the child may also be considered abusive. For example a situation in which a baby is shaken but not injured would still be considered physical abuse.

Definition of sexual abuse

For the purposes of NQF notifications, the definition of child sexual abuse varies depending on the relationship between the victim and the perpetrator. In the context of education and care, the definition of sexual abuse is any sexual behaviour, including grooming behaviour, between an adult and a child. Adults working in an education and care service are in a position of power or authority over children and any sexual behaviour by an adult towards a child is sexual abuse.

Note: Grooming behaviour is when an adult engages in inappropriate conduct towards a child that serves to increase the likelihood of future sexual abuse. This is done by gaining trust and compliance, and building a relationship with a child through premeditated behaviour and actions.

For adolescent or child perpetrators, sexual abuse is indicated when there is non-consensual sexual activity between minors, or any sexual behaviour between a child and another child or adolescent who – due to their age or stage of development – is in a position of power, trust or responsibility over the victim.

Other reporting obligations

Visit the Australian Government, Australian Institute of Family Studies website (www.aifs.gov.au) for further information relating to state and territory child protection legislation and child protection reporting requirements.

Timeframe for notifying

The timeframe for reporting any incident or allegation to the regulatory authority where the approved provider reasonably believes that physical or sexual abuse of a child (or children) has occurred (or is occurring) while the child is being educated and cared for by the service, is within seven (7) days of the incident.

If the incident or allegation of physical or sexual abuse also meets the criteria for a serious incident notify within 24 hours of the incident. For example if emergency services attend the education and care service in response to an incident of physical abuse.

Approved providers should submit notifications online using the National Quality Agenda IT System or by contacting the regulatory authority, within the appropriate timeframes.

The approved provider must ensure that a parent of a child being educated and cared for by the service is notified as soon as practicable, but not later than 24

hours after the occurrence, if the child is involved in any incident, injury, trauma or illness while the child is being educated and cared for by the education and care service.

Refer to the ACECQA website (www.acecqa.gov.au) for more information regarding notification types and timeframes and for further information on reporting requirements about children.

Matters which impact on day-to-day operation of the service or may pose a risk to children

The intent of the National Law is to ensure regulatory authorities are notified of circumstances that pose a risk or negatively impact on the operation of the service. This is separate from the requirement to notify a 'serious incident' involving a particular child.

Examples of circumstances that need to be notified:

- parents are unable to get to a service to collect their children because the service is in a flood affected area with the flood water rising
- land subsidence at the property adjoining a service. The service may be deemed structurally safe by experts and remain operational, but a large hole in the neighbouring property could potentially pose a risk to the health, safety and wellbeing of children.

These circumstances are more about situations that have happened to, or impacted on, the operation of the service, rather than an incident that has occurred directly to a child.

National Law & Regulations

Section 174A
Regulation 176(a)

Family day care educators to report to the approved provider

Family day care educators must notify the approved provider of:

- a serious incident (see below and defined in the National Regulations)
- any complaint alleging that a serious incident has occurred, or is occurring, while a child is being educated or cared for by the educator, or the National Law or Regulations have been contravened
- any renovations or other changes to the family day care residence or venue which may pose a serious risk to the health, safety and wellbeing of children attending, or likely to attend, the family day care residence or venue*
- any changes in the persons, 18 years or over, residing at the family day care residence (for example, a new partner of the family day care provider)
- any changes in the fitness and propriety of the persons, 18 years or over, residing at the family day care residence*
- any other prescribed information.

Failure to comply with these requirements is an offence with a penalty of $2,000.

Family day care educators must seek approval from the approval provider if they plan to use a family day care educator assistant to provide education and care

to children at the service. See ***Staffing Requirements*** and regulation 144 for what circumstances the assistant may be able to deliver education and care, including how much notice must be given to parents of children in attendance.

The requirement for educators to notify matters to the approved provider assists the approved provider to meet their obligations under the National Law.

National Regulations

Regulation 174(2)(c)

** It is expected that this information would then be notified by the approved provider to the regulatory authority as a circumstance arising at the service that poses a risk to the health, safety and wellbeing of children.*

7.4 MANAGEMENT OF RECORDS

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.

Under the National Regulations, approved providers must:

- keep and maintain certain records
- ensure confidentiality and secure storage of records
- have the records available for inspection by an authorised officer and, in some cases, parents of enrolled children.

Family day care educators are also responsible for the management of records.

Penalties apply if accurate records are not maintained.

What records must be kept

National Law & Regulations

Section 175
Regulations 177–179

The following table describes what records and documents must be kept and for how long. Any other records must be kept for three years after the record was made.

Reasonable steps must be taken to make sure the documents are accurate.

family day care

A family day care educator must:

- keep the below documents (identified as the responsibility of family day care educators) for each child being educated and cared for
- take reasonable steps to ensure the documents are accurate
- provide all documents listed below to the approved provider when the educator is no longer engaged by or registered with the service.

The approved provider does not need to keep a document if the equivalent is kept by the family day care educator (see below).

See *Confidentiality and storage of records* (below) for more information on record inspections and confidential storage.

Records and documents required to be kept at the service (Regulation 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	Ongoing Available for inspection at service premises or family day care office	Regulations 29, 30, 180
Quality improvement plan	Approved provider	Ongoing, to be revised annually	Regulations 31, 55, 56
Child assessments or evaluations for delivery of the educational program	Approved provider (Centre-based services) Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 74, 183, 177(1)(a) Regulation 178(1)(a)
Incident, injury, trauma and illness record	Approved provider Family day care educator	Until the child is 25 years old	Regulations 87, 183, 177(1)(b) Regulation 178(1)(b)
Medication record	Approved provider Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 92, 183, 177(1)(c) Regulation 178(1)(c)
Child attendance record	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, 183, 177(1)(k) Regulation 159; Regulation 178(1)(d)
Child enrolment record	Approved provider Family day care educator	Until the end of 3 years after the child's last attendance	Regulations 160, 183, 177(1)(l) Regulation 178(1)(e)
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(2)(c)
Record of service's compliance history	Approved provider	Until the end of 3 years after the approved provider operated the service	Regulations 167, 183(2)(e)

Records and documents required to be kept at the service (Regulation 183)			
Type of record	**Responsibility**	**Timeframe**	**Reference**
For centre-based services only			
Staff record	Approved provider	Until the end of 3 years after the staff member works for the service	Regulations 145, 183(2)(g)
Record of access to early childhood teachers	Approved provider	Until the end of 3 years after the staff member works for the service	Regulations 152, 183(2)(f)
Record of educators working directly with children	Approved provider	Until the end of 3 years after the staff member works for the service	Regulations 151, 183(2)(f)
Record of volunteers and students, contact details and days in attendance	Approved provider	Until the end of 3 years after the volunteer or student attended the service	Regulations 149, 183(2)(f)
Record of responsible person in day-to-day charge including nominated 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 145, 150, 177
For family day care services only			
Record of assessments of family day care residences and approved family day care venues	Approved provider	Until the end of 3 years after the record was made	Regulations 116, 183(2)(g)
Record of family day care staff (including educators, co-ordinators and assistants)	Approved provider	Until the end of 3 years after the staff member ceased working at the service	Regulations 154, 183(2)(f)
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	Regulations 165, 183(2)(g)
Register of family day care educators, co-ordinators and assistants engaged by, or registered with, the service	Approved provider	Must be kept until 3 years after the date on which the family day care educator or co-ordinator ceased to be employed or engaged by or registered with the service	Regulation 153

National Regulations

Regulations 145–152

Staff record – centre-based services

The staff record for a centre-based service must include the below information.

Information that must be included in a staff record (centre-based services)
Full name, address and date of birth of the nominated supervisor and each other staff member
Evidence of any relevant qualifications (or, if applicable, evidence the nominated supervisor or staff member is actively working towards that qualification) and approved training (including first aid training) held by the nominated supervisor and each other staff member
Record of evidence of fitness and propriety of staff members: • if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law, and the check's expiry date if applicable, **OR** • except in the case of NSW, Queensland and Tasmania, if the staff member has provided proof of their current teacher registration, a record of the identifying number of the staff member's teacher registration and the expiry date of that registration • in Tasmania, a record of the identifying number of the staff member's working with vulnerable people registration and the expiry date of that registration.
The name of the person designated as the educational leader
Full name, address and date of birth of each student or volunteer who participates, and the date and hours of participation
The name of the responsible person for each time that children are being educated and cared for by the service
The name of each educator who works directly with children, including the hours that each educator works directly with children
Record of access to early childhood teachers, including: • for services providing education and care to less than 25 children preschool age or under, the period that an early childhood teacher is working with the service, including when the teacher did and did not work directly with children • for services providing education and care to 25 or more children preschool age or under, the period that an early childhood teacher is in attendance at the service.

See *Quality Area 4: Staffing arrangements* for information on responsible persons and minimum requirements for nominated supervisors.

Visit the ACECQA website to download an optional staff record template at www.acecqa.gov.au.

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.

The requirement for approved providers to keep a record of educators working directly with children is intended to assist regulatory authorities to monitor compliance with educator to child ratio requirements and adequate supervision.

Regulation 151 does not dictate how the required information must be recorded. The provider may use a staff roster or time sheets to capture the required information, or an alternative method.

Authorised officers use a common sense approach. Authorised officers will not expect to see a record of breaks from working with the children if the breaks are short and are for matters such as going to the toilet, answering a phone call, talking to a parent or briefly checking paperwork. However, a record would need to be kept for rostered breaks, or if an educator is going into another room to do work away from the children for a longer period of time, for instance, preparing the programing for the next day.

Approved providers are encouraged to have a clear and accurate record of educators working directly with children to help demonstrate educator to child ratios are being met and children are adequately supervised at all times.

See *Quality Area 4: Staffing requirements* for information on educator to child ratios and *Quality Area 2: Children's health and safety* for information on adequate supervision.

National Regulations

Regulation 154

Records of family day care service staff

The approved provider must keep a record of staff other than family day care educators, co-ordinators and family day care educator assistants.

Information that must be included in the record of family day care service staff
The name of the person designated as the educational leader
The full name, address and date of birth of the nominated supervisor and each staff member
Evidence of any relevant qualifications (or if applicable, the staff member is actively working towards that qualification), approved training (including first aid qualifications and training) and working with children checks (including identifying number and expiry date) held by the nominated supervisor and each other staff member
Full name, address and date of birth of each student or volunteer who participates, and the date and hours of participation.

Visit the ACECQA website to download an optional template record of family day care staff at www.acecqa.gov.au. See example in the Appendix.

Children's attendance record

National Regulations

Regulations 158–159

The approved provider must ensure a record of attendance is kept for the service that:

- records the full name of each child attending the service
- records the date and time each child arrives and departs
- is signed at the time the child arrives and departs by either the person who delivers the child or collects the child, or the nominated supervisor or an educator.

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.

family day care

The family day care educator must keep a record of attendance for each child attending the educator's residence or venue that:

- records the full name of each child
- records the date and time each child arrives and departs
- is signed at the time the child arrives and departs by either the person who delivers the child or collects the child, or if the signature of the person who delivers the child cannot reasonably be obtained, the family day care educator.

The family day care educator's own children (under 13 years of age) do not need to be signed in and out each day. However, keeping a record of when the educator is caring for their own children while also educating and caring for children as part of the service can assist the provider to make sure ratio requirements are met.

The approved provider does not need to keep the record of attendance if it is kept by the family day care educator (see regulation 177(5)).

National Regulations

Regulations 102, 160–162

Children's enrolment record

The approved provider must ensure that an enrolment record is kept for each child enrolled at the service. The family day care educator must keep an enrolment record for each child educated and cared for by the educator. The enrolment record must include the information below.

Information that must be included in enrolment record
Full name, date of birth and address of the child
The name, address and contact details of: • each known parent of the child • any emergency contact • any authorised nominee • any person authorised to consent to medical treatment or administration of medication • any person authorised to give permission to the educator to take the child off the 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 their parents
Any special considerations for the child, such as cultural, dietary or religious requirements or additional needs
Authorisations for: • the approved provider, nominated supervisor or an educator to seek medical treatment and/or ambulance transportation for the child • the service to take the child on regular outings
Name, address and telephone number of the child's registered medical practitioner or medical service
Medicare number (if available)
Details of any specific healthcare needs of the child, including any medical conditions, allergies, or diagnosis that the child is at risk of anaphylaxis
Any medical management plan, anaphylaxis medical management plan or risk minimisation plan
Dietary restrictions
Immunisation status
If the approved provider or a staff member has sighted a child health record, a notation to that effect
In NSW, certificates for immunisation or exemption for the child, as required under *the Public Health Act 2010 NSW*
In VIC, certificates for immunisation, as required under the *Public Health and Wellbeing Act 2008 VIC* which excludes outside school hours care or school holiday care services.

National Regulations

Regulation 184

Transferring a service approval

If a service approval is transferred, the transferring approved provider must transfer the documents required under regulation 177 (see above) to the receiving provider if they relate to children currently enrolled at the service. The transfer must not occur without the permission of a parent of the child.

National Regulations

Regulation 167

Record of service's compliance

The approved provider must keep a record of the service's compliance. The record must include:

- details of any amendment to the service approval made by the regulatory authority under section 55 of the National Law
- details of any suspension of the service approval, other than a voluntary suspension
- details of any compliance direction or notice issued to the approved provider in respect of the service.

The record must not include any information that identifies someone other than the approved provider. The details of an amendment, suspension, compliance direction or notice do not need to be included if the period for seeking review has not yet expired or a review request has not yet been determined. Details also do not need to be included if a review has been conducted and the amendment, suspension, compliance notice or compliance direction was not confirmed.

National Law & Regulations

Section 51
Regulations 29–30, 180

Insurance information

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.

7.5 CONFIDENTIALITY AND STORAGE OF RECORDS

National Law

Section 175

Documents to be available for inspection by authorised officers

The documents that an approved provider must keep under the National Regulations must be available for inspection by an authorised officer.

To the extent practicable, an approved provider must keep the documents set out in regulation 177 at the service premises if they relate to:

- the operation of the service
- any staff member employed or engaged by the service
- any child educated and cared for at those premises in the previous 12 months.

In any other case, the documents must be kept at a place and in a manner that is readily accessible by an authorised officer.

The documents that a family day care educator must keep under the National Regulations must be available for inspection by an authorised officer at the educator's family day care residence or approved family day care venue.

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.

National Regulations

Regulation 177

Access to documents

Any documents relating to a child must be made available to a parent of the child on request (unless limited by a court order). The record of the service's compliance must be able to be accessed by any person on request. These documents should only have information specific to their child.

National Regulations

Regulations 181, 182

Confidentiality

The approved provider and the family day care educator must ensure that information kept in a record under the National Regulations is not divulged or communicated, directly or indirectly, to another person other than in the situations listed below.

Circumstances in which confidential information may be disclosed
To the extent necessary for the education and care or medical treatment of the child to whom the information relates
A parent of the child to whom the information relates (except information in a staff record)
The regulatory authority or an authorised officer
As expressly authorised, permitted or required to be given by or under any act or law
With the written consent of the person who provided the information
For a family day care educator – the approved provider or a nominated supervisor of the family day care service.

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.

National Regulations

Regulation 183

Storage of records and other documents

The approved provider must ensure the documents kept under regulation 177 are stored in a safe and secure place and for the relevant period. The relevant period for different types of records is set out below.

Records may be kept in hard copy or electronic form, provided they are accessible as required.

Timeframes for keeping records
If the record relates to an incident, illness, injury or trauma suffered by a child while being educated and cared for by the service, or may have been suffered following an incident that occurred while being educated and cared for at the service, until the child is aged 25
If the record relates to the death of a child while being educated and cared for by the service, or that may have occurred as a result of an incident while being educated and cared for by the service, until seven years after the death
In the case of any other record relating to a child enrolled at the service, until the end of three years after the last date on which the child was educated and cared for by the service
If the record relates to the approved provider, until the end of three years after the last date on which the approved provider operated the service
If the record relates to a nominated supervisor or a staff member, until the end of three years after the last date on which the nominated supervisor or staff member provided education and care on behalf of the service
In the case of any other record, until the end of three years after the date on which the record was made.

The prescribed records and information must be stored in a safe and secure place. This means the information should remain confidential and only accessible by a person who has the authority to do so (which includes authorised officers). For example, through storage in a locked filing cabinet or locked room, or stored electronically in a secure manner (such as password protected).

Authorised officers may discuss with the approved provider and family day care educator what steps they take to ensure documents are kept confidential.

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 183 (see table below) to the new approved provider on the date the transfer takes effect.

Law and Regulations to be accessible

National Regulations

Regulation 185

The approved provider must ensure that a copy of the National Law and Regulations is accessible at the education and care service premises at all times for use by nominated supervisors, staff members, volunteers, parents of children enrolled at the service and any person seeking to make use of the service.

For a family day care service, a copy of the National Law and Regulations should be accessible at the principal office of the service and each educator's residence or venue. It can be an electronic copy.

7.6 OTHER STAFFING ARRANGEMENTS AND RELATED NOTIFICATIONS AND RECORDS

Note: See *Quality Area 4 – Staffing arrangements* for more information on responsible persons, qualifications, education leadership and family day care arrangements.

National Law & Regulations

Section 269
Regulation 153

Register of family day care educators, co-ordinators and assistants

The approved provider of a family day care service must keep at its principal office a register of each family day care educator, co-ordinator and assistant and any other person engaged by or registered with a family day care service to educate and care for a child.

The approved provider must take reasonable steps to ensure the information contained in the register is accurate. Failure to do so will result in a penalty of $2000.

The approved provider must provide any information on the register and any changes to the information on the register to the regulatory authority on request within 24 hours of the request.

It is an offence not to keep a register of family day care educators at the principal office of the service that contains the required information in respect of each family day care educator engaged by or registered with the service, each family day care co-ordinator employed or engaged by the service and each family day care educator assistant engaged by or registered with the service ($4000 in the case of an individual, and $20,000 in any other case).

It is an offence if the approved provider does not provide any information on the register and any changes to the information on the register to the regulatory authority on request within 24 hours of the request. It is an offence not to provide information to the regulatory authority as required ($4000, in the case of an individual, and $20,000 in any other case).

National Regulations

Regulation 153

What should be included on the register?

The register of family day care educators, co-ordinators and assistants must include the information below in relation to each family day care educator, co-ordinator and assistant engaged by or registered with the service.

Information held on the register in relation to a family day care educator, a family day care co-ordinator or a family day care educator assistant must be kept on the register until the end of 3 years after the date on which the family day care educator, the family day care co-ordinator or the family day care educator assistant ceased to be employed or engaged by or registered with the service.

Information that must be included in the register of family day care educators, co-ordinators and assistants

For family day care educators

The full name, address and date of birth of the educator
The contact details of the educator
The address of the residence or approved family day care venue where the educator will be providing education and care to children as part of the service, including a statement as to whether it is a residence or a venue
The date the educator was engaged by, or registered with, the service
When applicable, the date the educator ceased to be engaged by or registered with the service for the period of 3 years following that date
The days and hours when the educator will usually be providing education and care to children as part of the service
If the educator is an approved provider, the number of the provider approval and the date approval was granted
Evidence: • of any relevant qualifications held by the educator or • if applicable, that the educator is actively working towards that qualification as provided under regulation 10
Evidence the educator has completed: • current approved first aid training • current approved anaphylaxis management training • current approved emergency asthma management training
Evidence of any other training completed by the educator
The name and date of birth of each child the educator cares for, and the days and hours the educator usually provides care to that child
The full name and date of birth of other people who normally reside at the family day care residence and a record of any working with children or working with vulnerable people check for those people, including the identifying number and expiry date, and date sighted by the approved provider or nominated supervisor of the service.
Evidence that each educator is adequately monitored and supported by a co-ordinator, including: • dates and times of the co-ordinator's visits to the residence or venue or phone calls between the co-ordinator and educator for the purpose of monitoring or support • details of any correspondence or written materials provided to the educator by the co-ordinator for the purpose of monitoring or support, and the dates and times the information was provided.
If the educator will be providing education and care to children in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the check conducted or card issued under that law and the expiry date of that check or card (if applicable).

For family day care co-ordinators
The full name, address and date of birth of the co-ordinator
The contact details of the co-ordinator
The date the co-ordinator was employed or engaged by the service
When applicable, the date the co-ordinator ceased to be employed or engaged by the service for the period of 3 years following that date
If the co-ordinator is an approved provider, the number of the provider approval and the date the approval was granted
Evidence of any relevant qualifications held by the co-ordinator
If the co-ordinator will be providing education and care to children, evidence the co-ordinator has completed: • current approved first aid training • current approved anaphylaxis management training • current approved emergency asthma management training
Evidence of any other training completed by the co-ordinator
If the co-ordinator will be providing education and care to children in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the check conducted or card issued under that law and the expiry date of that check or card (if applicable) record of the date that the check, card, record or registration was sighted by the approved provider or nominated supervisor of the service.
For family day care educator assistants
The full name, address and date of birth of the educator assistant
The contact details of the educator assistant
The name of the family day care educator to be assisted by the educator assistant
The address of the residence or approved family day care venue where the educator assistant will be providing education and care to children as part of the service, including a statement as to whether it is a residence or a venue
The date the educator assistant was engaged by, or registered with, the service
When applicable, the date the educator assistant ceased to be engaged by or registered with the service for the period of 3 years following that date
If the educator assistant is an approved provider, the number of the provider approval and the date the approval was granted
Evidence of any relevant qualifications held by the educator assistant

Evidence the educator assistant has completed: • current approved first aid training • current approved anaphylaxis management training • current approved emergency asthma management training
Evidence of any other training completed by the educator assistant
If the educator assistant will be providing education and care to children in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the check conducted or card issued under that law and the expiry date of that check or card (if applicable), record of the date that the check, card, record or registration was sighted by the approved provider or nominated supervisor of the service

Visit the ACECQA website to download a copy of the below (optional) template register of family day care educators at www.acecqa.gov.au.

National Regulations

Regulations 163, 169

Residents and family day care educator assistants to be fit and proper

The approved provider of a family day care service must take reasonable steps to ensure that family day care educator assistants and anyone aged 18 years or over who live at the family day care residence are fit and proper people to be in the company of children.

The approved provider must consider the person's history in the following ways in each state or territory.

Australian Capital Territory Northern Territory South Australia Western Australia	One of the following: • a criminal history check issued in the previous six months • a current working with children check or card, relevant history assessment as per child protection law or working with vulnerable people check based on a criminal history record check • a current teacher registration.
New South Wales	Current working with children check or card.
Queensland	Current working with children check or card.
Victoria	Current working with children check or current teacher registration.
Tasmania	Working with vulnerable people registration.

National Regulations

Regulations 164

The approved provider of a family day care service must require each family day care educator to notify the provider of:

- any new persons aged 18 years or over who live, or intend to live, at the educator's family day care residence
- any circumstances which may affect the fitness and propriety of a person aged 18 years or over who resides at a family day care educator's residence, or a family day care educator assistant, who has previously been assessed as fit and proper.

The family day care educator must notify the approved provider of the above.

Visitors to family day care residences and venues

National Regulations

Regulations 165, 169

An approved provider must take all reasonable steps to ensure a record of all visitors to a family day care residence or approved family day care venue is kept. A family day care educator must keep a record of all adult visitors to the educator's residence or venue while children are being educated and cared for at the residence or venue. The record must include the signature of the visitor and the time of arrival and departure.

A sample (optional) template is included at the back of this section. This template may be adapted for use by individual services, or providers might develop their own.

National Regulations

Regulations 166, 169

The approved provider must take all reasonable steps to make sure a child being educated and cared for is not left alone with a visitor. The family day care educator must not leave a child being educated and cared for at the residence or venue alone with a visitor. An approved provider must have policies and procedures in place to ensure children are not left alone with visitors in a family day care residence or venue.

See *Supervising unauthorised persons* below for information about who is considered to be a visitor under the National Law.

Supervising unauthorised persons

National Law

Section 170

TAS

An approved provider and nominated supervisor (except for those in Tasmania) must ensure an unauthorised person does not remain on the education and care service premises while children are being educated and cared for, unless the person is under the direct supervision of an educator or other staff member.

A family day care educator (except for those in Tasmania) must ensure an unauthorised person does not remain on the premises while children are being educated and cared for, unless the person is under the direct supervision of the educator. In Tasmania, the *Registration to Work with Vulnerable People Act 2013* provisions apply.

People who are not an unauthorised person
A person who holds a current working with children check or card
A parent or family member of a child at the service (not including a parent or family member whose access to the child is prohibited by a court or tribunal order, of which the approved provider, nominated supervisor or family day care educator is aware, or who is an inappropriate person)
An authorised nominee of a child at the service
In the case of an emergency, medical or emergency service personnel
A person who is permitted under the relevant working with children law to remain at the service premises without holding a working with children check or card.

Parents, family members and authorised nominees are not unauthorised persons and therefore are not required to be directly supervised while on the education and care service premises. Similarly, educators who are part of the family day care service are registered with the service and considered to be an appropriate person to educate and care for children, so are not considered to be an unauthorised person. This also applies to the co-ordinator of the family day care service.

The National Law does not require an approved provider or nominated supervisor of a centre-based service to keep a record of visitors. However, they may decide to keep a visitor's book to help ensure any unauthorised persons do not remain at the service unless under direct supervision.

OTHER REGULATORY FRAMEWORKS

Interactions with other regulatory frameworks

Approved providers, and to a lesser degree their staff, are subject to a variety of other legislative frameworks in addition to the Education and Care Services National Law and Regulations.

Regulatory authorities are only responsible for monitoring and enforcing compliance with the National Law and Regulations. Authorised officers should be aware of other regulators of the education and care sector and have a basic understanding of their role so they are clear about boundaries.

There will be occasions when authorised officers identify:

- non-compliance under the National Law which may also constitute non-compliance under other legislation
- non-compliance with other legislation.

How authorised officers respond in these situations will depend on the seriousness of the issue and arrangements between the regulators in each state or territory. In some cases, the authorised officer may warn the approved provider that they appear to be in breach of other legislation; in more serious situations, the authorised officer may notify the relevant regulator. However, authorised officers are careful in these situations not to be drawn into issues of compliance outside their responsibility and expertise.

Referencing other regulatory standards

There are some situations where other regulatory standards can be a useful guide to aid interpretation of the National Law and Regulations. For example, the National Regulations require the approved provider to ensure that 'adequate' health and hygiene practices and safe practices for handling, preparing and storing food are implemented at the service (regulation 77). The National Regulations do not specify what 'adequate' health and hygiene practices are so it is appropriate for authorised officers to be informed by the Australian food safety standards and by state and 'territory specific' laws when interpreting this requirement.

However, authorised officers are careful to ensure they focus on the requirements of the National Law and Regulations, and not checking compliance with matters outside the National Quality Framework.

Appendix – Template register of family day care educators, co-ordinators and assistants for optional use or tailoring

Visit the ACECQA website (www.acecqa.gov.au) for a copy of this template.

Register of family day care educators, co-ordinators and assistants

Educator / Co-ordinator / Assistant details			
Full name			
Date of birth			
Contact phone	(BH)	(AH)	(M)
Email address			
Postal address			
Physical address (for educator/assistant) ☐ Residence ☐ Venue			
Educator / Co-ordinator / Assistant qualifications and study			
Relevant qualification, or name of relevant course enrolled in, including details of progress *(attach copies)*			
Mandatory training completed *(attach copies)*	☐ Approved first aid training – Date: ...../...../..... ☐ Anaphylaxis management training – Date: ...../...../..... ☐ Emergency asthma management training – Date: ...../...../.....		
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	

Days and hours of operation	Mon	Tues	Wed	Thurs	Fri	Sat	Sun

Child enrolment details			
Child's full name	Date of birth	Days of attendance	Hours of attendance

Details of other household members	
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 for co-ordinators/educators/assistants and other household members aged 18 years and over who normally reside at the residence:		
Full name	Type of check, identifying number and expiry date	Date check was sighted by the Approved Provider/Nominated Supervisor

Monitoring and support		
For use by co-ordinators for each educator – Name of educator: ……..		
Evidence that each educator is adequately monitored and supported by a family day care co-ordinator including: • the dates and times of any visits by the co-ordinator to the family day care residence or family day care venue for the purpose of monitoring or support • the dates and times of any telephone calls between the co-ordinator and the educator for the purpose of monitoring support • details of any correspondence or written materials provided to the educator by the co-ordinator for the purpose of monitoring or support and the dates and times the correspondence or materials were provided to the educator.		
Date, time	Details	Co-ordinators name

Appendix – Template record of staff for optional use or tailoring

Visit the ACECQA website (www.acecqa.gov.au) for a copy of this template.

Record of staff engaged or employed by family day care service (regulation 154)

Educational leader			
Full name			
Nominated Supervisor			
Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in *(attach copies)*			
Other approved training completed *(attach copies)*			
Identifying number of working with children check (or equivalent) (Refer to Regulations 146(d),(e) & (f))		Expiry date	
Other staff members			
Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in *(attach copies)*			
Other approved training completed *(attach copies)*			
Identifying number of working with children check (or equivalent) (Refer to Regulations 147(d),(e) & (f))		Expiry date	

Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in *(attach copies)*			
Other approved training completed *(attach copies)*			
Identifying number of working with children check (or equivalent) (Refer to Regulations 147(d),(e) & (f))		Expiry date	

Full name			
Date of birth			
Address			
Relevant qualification, or course enrolled in *(attach copies)*			
Other approved training completed *(attach copies)*			
Identifying number of working with children check (or equivalent) (Refer to Regulations 147(d),(e) & (f))		Expiry date	

Volunteers and students					
Full name					
Address					
Date of birth					
Date and hours of attendance					

5. REGULATORY AUTHORITY POWERS

Monitoring, compliance and enforcement
Offences
Good regulatory practice

ICONS LEGEND

National Law and Regulations

Sections of the Education and Care Services National Law (National Law) or regulations from the Education and Care Services National Regulations (National Regulations).

Offence

Offences against the National Law that attract a penalty, for example a fine.

Sight

Authorised officers will sight documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

Centre-based service

An education and care service other than a family day care service which includes most long day care, preschool and outside school hours care services that are delivered at a centre.

Family day care service

An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences.

Observe

Authorised officers will observe what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions).

State icons

Information that is specific to a state or territory.

Birth to three

Children birth to three years of age.

School age children

Includes children attending school in the year before grade 1, and above.

Discuss

Authorised officers will discuss why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members.

REGULATORY AUTHORITY POWERS

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REGULATORY AUTHORITY POWERS

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

Consistent with the objectives of the NQF, 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 NQF.

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

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

MONITORING, COMPLIANCE AND ENFORCEMENT

1. MONITORING

1.1 WHAT IS MONITORING?

Monitoring is a proactive way of assessing and influencing compliance with the National Law and Regulations. Monitoring activities can provide a strong incentive for providers to comply with their regulatory obligations and to improve the quality of education and care at their services.

Monitoring is a compliance tool regulatory authorities may apply to an individual person, a single service or service type as part of deciding whether further regulatory action is needed.

There are several forms of monitoring activities, set out in the table below.

Monitoring activities

Type	Description	Benefits
Targeted campaigns	Monitoring for a specific compliance issue, location or service type.	Encourages providers and others to ensure they are complying with a specific issue of concern to the regulatory authority. Focuses the regulatory authority's resources on addressing a specific problem.
Assessment and rating	The process of assessing and rating a service against the NQS, including by conducting a service visit.	Encourages continuous improvement by engaging the approved provider and the service in a process of self-evaluation, as well as providing a detailed report of their performance against the NQS.
Unscheduled visits	Visiting services without prior notice.	Encourages providers and others to comply with their obligations at all times. Unscheduled visits are particularly useful when there is reason to believe the provider may be non-compliant and misrepresenting its self-reported data, or is likely to destroy evidence if an inspection is announced.
Scheduled visits	Visiting services with prior notice.	Encourages providers and others to comply with their obligations and provides preparation time for compliance visits, for example, ensuring certain paperwork is readily available or particular staff members are present.

Choosing a monitoring activity

Regulatory authorities determine the frequency and focus of monitoring activities based on risk and with reference to the principle of earned autonomy (see *Good Regulatory Practice* for more information about these concepts).

To help assess risk, regulatory authorities may need to collect and analyse information about a service or a service type. Some of the sources of information to assess risk are set out in the table below. Many will come from existing regulatory actions.

Sources of information to help assess risk
The service's quality improvement plan
The provider and the service's history of compliance
The service's quality rating
Characteristics of the provider (length of time in the industry, service types, etc.)
Information obtained from other sources, such as complaints or notifications
Information gathered from other monitoring activities or regulatory activities, including investigations
Analysis of broader sector or regional compliance trends
Other regulatory systems with relevant or overlapping requirements and/or compliance monitoring.

Regulatory authorities should obtain the required information at the least possible cost or burden to the regulatory authority and the service provider.

Regulatory authorities must comply with the National Law when undertaking any monitoring activities (see *Powers of authorised officers* and *Powers of regulatory authorities* below).

Intelligence gathered through monitoring activities may lead to further compliance action. This information can also be used to identify strengths, weaknesses, opportunities, concerns, map sector development and understand broader regulatory trends or issues.

2. COMPLIANCE TOOLS

There are a wide range of methods and tools regulatory authorities may use when addressing non-compliance. This section sets out the tools that are available under the National Law and provides guidance on which tool to use, based on the specific circumstances.

These tools should be used in context of the ***Good Regulatory Practice*** section, which sets out the objectives of the National Law and the best practice principles of regulation listed below.

Best practice principles of regulation
Outcomes focus
Proportionality and efficiency
Responsiveness and flexibility
Transparency and accountability
Independence
Communication and engagement
Mutual responsibility
Consistency and predictability.

Regulatory authorities:

- take a responsive regulatory approach when choosing the methods used to manage non-compliance, considering all the risks
- are mindful of their administrative law obligations and keep records of compliance activities (see ***Good Regulatory Practice***). The *NSW State Records Act 1998* applies to all jurisdictions for the purposes of the National Law and Regulations (section 265).

Summary of National Law compliance tools		
Person	**Compliance tools available**	**Description**
Approved provider	Infringement notice	A fine for minor breaches of the National Law or the National Regulations (section 291)
	Emergency action notice	Direction to remove an immediate risk to children (section 179)
	Compliance direction	Instruction to comply with prescribed regulation (section 176)
	Compliance notice	Instruction to comply with any section or regulation (section 177)
	Enforceable undertaking	Agree to an undertaking from a person to take certain actions or refrain from certain actions to comply with the National Law and the National Regulations (section 179A–181)
	Direction to exclude inappropriate persons from service premises	Instruction to exclude a person from education and care service premises (section 171)
	Amendment of a service approval to include a condition	A requirement in respect of a specific service that the approved provider must comply with to avoid committing an offence under the National Law (section 51)
	Amendment of a provider approval	A requirement that the approved provider must comply with to avoid committing an offence under the National Law (section 19)
	Prosecution	Bringing any offence against the National Law or the National Regulations for decision by a court or tribunal
	Notice to suspend education and care by family day care educator	Prevent a family day care educator from providing education and care to children as part of a family day care service (section 178)
	Suspension of service approval	Temporarily prevent a provider from operating a specific service (section 70)
	Cancellation of service approval	Permanently prevent a provider from operating a specific service (section 77)
	Suspension of provider approval	Temporarily prevent a provider from operating any services (section 25)
	Cancellation of provider approval	Permanently prevent a provider from operating any service (section 31)

Summary of compliance tools		
Person	**Compliance tools available**	**Description**
Nominated supervisor	Infringement notice	A fine for minor breaches of the National Law or the National Regulations (section 291)
	Enforceable undertaking	Agree to an undertaking from a person to take certain actions or refrain from certain actions to comply with the National Law and the National Regulations (section 179A–181)
	Direction to exclude a person from education and care service premises	Direction to exclude inappropriate persons from service premises (section 171)
	Prosecution	Bringing any offence against the National Law or the National Regulations for decision by a court or tribunal
Family day care educator	Infringement notice	A fine for minor breaches of the National Law or the National Regulations (section 291)
	Enforceable undertaking	Agree to an undertaking from a person to take certain actions or refrain from certain actions to comply with the National Law and the National Regulations (section 179A–181)
	Direction to exclude a person from education and care service premises	Direction to exclude inappropriate persons from service premises (section 171)
	Prosecution	Bringing any offence against the National Law or the National Regulations for decision by a court or tribunal
Staff member, educator or volunteer	Enforceable undertaking	Agree to an undertaking from a person to take certain actions or refrain from certain actions to comply with the requirement not to use inappropriate discipline (section 179A–181)
	Prosecution	Bringing an offence to use inappropriate discipline under the National Law for decision by a court or tribunal
Any person in any way involved in an education and care service	Prohibition notice	Prohibit a person from being involved in an education and care service in any way (sections 182–188A)
	Prosecution	Bringing any offence against the National Law or the National Regulations for decision by a court or tribunal

2.1 INFRINGEMENT NOTICES

National Law

Section 291

What is an infringement notice?

An infringement notice is a monetary penalty for non-compliance with specific requirements of the National Law and Regulations. An infringement penalty is 10 per cent of the maximum penalty that could be imposed on the person for that offence. Infringement offences are typically for minor offences that are clear and unambiguous. They are used to give a person an immediate minor penalty to deter future non-compliance.

National Law

Section 291

When can it be used?

An infringement notice can only be served on a person for a contravention of the requirements set out in the table below.

Once satisfied that this tool can be used, a regulatory authority may consider the following in deciding whether an infringement notice is appropriate:

- Is there no serious risk to the safety, health and wellbeing of children being educated and cared for at the service?
- Is the penalty proportionate to the seriousness of the offence?
- Is the penalty likely to serve as a deterrent to committing the offence again?

Requirements for which an infringement notice may be used

Law/Regulation	Requirement	Person
Section 172	Display prescribed information	Approved provider
Section 173	Notify certain circumstances to the regulatory authority	Approved provider
Section 176	Comply with a compliance direction	Approved provider
Section 269	Keep a register of family day care educators, co-ordinators and assistants	Approved provider
Regulation 77(1), (2) and (3)	Health, hygiene and safe food practices	Approved provider, nominated supervisor, family day care educator
Regulation 80(1)	Weekly menu	Approved provider, nominated supervisor and family day care educator
Regulation 83(1), (2) and (3)	Use of alcohol or drugs	Approved provider, nominated supervisor, family day care educator
Regulation 86	Notification of incidents	Approved provider
Regulation 88(1)	Infectious diseases	Approved provider
Regulation 89(1) and (2)	First aid kits	Approved provider, family day care educator

Regulation 97(4)	Display of emergency and evacuation plan	Approved provider
Regulation 98	Telephone or communication equipment	Approved provider
Regulation 104(1)	Fencing regulation	Approved provider
Regulation 112(3)	Nappy change facilities	Approved provider
Regulation 177(2) and (3)	Enrolment and other documents to be kept by approved provider	Approved provider
Regulation 178(2) and (3)	Enrolment and other documents to be kept by family day care educator	Family day care educator

How can it be used?

An infringement notice may be served in accordance with the requirements of the National Law (see *Serving notices*).

An infringement notice must be in the form prescribed and contain the information prescribed by the infringements law of the specific state or territory. Regulatory authority staff should seek advice about what the law in their state or territory requires when using an infringement notice.

Can it be appealed?

The decision to serve an infringement notice is not a reviewable decision under the National Law. However, a person may seek to dispute the infringement notice in a court or tribunal (see *Reviews*).

What happens after it has been issued?

Once an infringement penalty has been paid:

- the infringement cannot be considered when assessing if a person is fit and proper to be involved in the provision of, or to be supervisor of, an education and care service
- the infringement notice cannot be considered when assessing and rating a service.

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 Regulations. If the identified non-compliance continues, the regulatory action will escalate to more serious sanctions.

Failure to pay an infringement penalty

If it is not paid, the rules of the relevant state or territory about enforcing infringement notices will apply.

2.2 EMERGENCY ACTION NOTICES

National Law

Section 179

What is an emergency action notice?

An emergency action notice is a written notice setting out steps the approved provider must take to remove or reduce an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service. An emergency action notice can only be given to an approved provider.

When can it be used?

A regulatory authority can only issue an emergency action notice if it is satisfied a service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.

A regulatory authority may consider the following in deciding whether an emergency action notice is appropriate:

- Is it possible for the regulatory authority to set out clear steps which, if followed, would reduce or remove the risk?
- Will it be possible for the approved provider to remove or reduce the risk in less than 14 calendar days?
- Is the action proportionate to the seriousness of the offence?
- Is the action likely to serve as a deterrent?

How can it be used?

An emergency action notice may be given in accordance with the requirements of the National Law about serving notices (see *Serving notices*).

The notice must set out how long the approved provider has to comply. This period cannot be more than 14 calendar days.

Can it be appealed?

The decision to give an emergency action notice is not a reviewable decision under the National Law.

What happens after it has been issued?

An approved provider must comply with an emergency action notice within the period set out in the notice. The period cannot be more than 14 calendar days.

Failure to comply with an emergency action notice

If the approved provider does not comply with the emergency action notice, the regulatory authority may consider taking further compliance action.

The maximum penalty which may be imposed by a court for not complying is $6,000, in the case of an individual; $30,000, in any other case.

The regulatory authority cannot prosecute for non-compliance with the emergency action notice and the original offence.

2.3 COMPLIANCE DIRECTIONS

What is a compliance direction?

National Law

Section 176

A compliance direction must be in writing and requires an approved provider to take steps set out in the direction to comply with a specific provision of the National Regulations. A compliance direction can only be given to an approved provider.

A compliance direction is different from a compliance notice because it can only be used for a breach of certain provisions of the National Regulations. It also carries a lower maximum penalty for non-compliance.

When can it be used?

National Regulations

Schedule 3

Compliance directions are intended to compel approved providers to comply with straightforward legislative obligations. They are particularly useful when it is appropriate to give the provider some time to take a specific action to comply with a requirement, but the regulatory authority wants to use a strong lever to make sure the provider complies.

A compliance direction can be given to the approved provider if the regulatory authority is satisfied that a service has not complied with one of the regulations set out in the table below.

A regulatory authority may consider the following in deciding whether a compliance direction is appropriate:

- Is it possible for the regulatory authority to set out clear steps which, if followed, would result in the approved provider complying with the regulation?
- What is the immediacy and seriousness of any risk to the safety, health and wellbeing of children being educated and cared for at the service, caused by the breach?
- Is the action proportionate to the seriousness of the offence?
- Is the action likely to serve as a deterrent to committing the offence again?

Requirements for which a compliance direction can be given to the approved provider	
Regulation	**Requirement**
55(1)	Quality improvement plan
72(1), (2)	Offences in relation to giving false or misleading statements about ratings
74(1)	Documenting child assessments or evaluations for delivery of educational program
75	Information about educational program to be kept available
76	Information about educational program to be given to parents
77(1)	Health, hygiene and safe food practices
78(1)	Food and beverages
79(1)	Service providing food and beverages
80(1)	Weekly menu
81(1)	Sleep and rest
82(1)	Tobacco, drug and alcohol-free environment
83(1)	Nominated supervisors, staff members and volunteers not to be affected by alcohol or drugs
84	Awareness of child protection law
89(1)	First aid kits
91	Medical conditions policy to be provided to parents
97(2), (3), (4)	Emergency and evacuation procedures
98	Telephone or other communication equipment
103(1)	Premises, furniture and equipment to be safe, clean and in good repair
104(1)	Fencing
105	Furniture, materials and equipment
106(1), (2)	Laundry and hygiene facilities
107(2)	Indoor space
108(2)	Outdoor space
110	Ventilation and natural light
111	Administrative space
112(3)	Nappy change facilities

Requirements for which a compliance direction can be given to the approved provider	
Regulation	**Requirement**
113	Outdoor space – natural environment
114	Outdoor space – shade
115	Premises designed to facilitate supervision
116(1)	Assessments of family day care residences and approved family day care venues
117(1)	Glass
118	Educational leader
119	Family day care educator and educator assistant to be at least 18 years old
120	Educators who are under 18 to be supervised
136(1)	First aid qualifications
156(1)	Relationships in groups
157(1)	Access for parents
163(1), (2)	Residents at family day care residence and family day care educator assistants to be fit and proper persons
164	Requirement for notice of new persons at residence
168(1)	Education and care service must have policies and procedures
169(1)	Additional policies and procedures – family day care service
170(1), (2)	Policies and procedures to be followed
171(1), (2)	Policies and procedures to be kept available
172(1)(b)	Notification of change to policies or procedures affecting ability of family to utilise service
177(2), (3)	Prescribed enrolment and other documents to be kept by approved provider
183	Storage of records and other documents
185	Law and Regulations to be available

How can it be used?

A compliance direction may be issued in accordance with the requirements of the National Law about serving notices (see *Serving notices*).

The notice must set out how long the approved provider has to comply. The period cannot be less than 14 calendar days.

The compliance direction should be accompanied by information about the approved provider's right to an internal review of the decision, under section 190 of the National Law (see *Reviews* for more information).

National Law

Section 190

Can it be appealed?

A decision to give a compliance direction is subject to review under the National Law (see *Reviews*).

What happens after it has been issued?

An approved provider must comply with the requirements in a compliance direction within the period set out in the direction.

Failure to comply with a compliance direction

If the approved provider does not take the steps set out in the compliance direction, or does not take those steps within the required timeframe, the regulatory authority may consider taking further compliance action, including serving an infringement notice.

The maximum penalty which may be imposed by a court for not complying is $2,000, in the case of an individual; $10,000 in any other case.

The regulatory authority cannot prosecute for non-compliance with the compliance direction and the original offence.

2.4 COMPLIANCE NOTICES

National Law

Section 177

What is a compliance notice?

A compliance notice is a written notice requiring the approved provider to take the steps set out in the notice to comply with any provision of the National Law and Regulations. A compliance notice can only be given to an approved provider.

A compliance notice is different from a compliance direction because it can be used for a breach of any part of the National Law or Regulations. It also carries a higher maximum penalty for non-compliance.

When can it be used?

A regulatory authority can give a compliance notice if satisfied a provision of the National Law or Regulations is not being complied with.

Compliance notices are intended to compel approved providers to comply with their legislative obligations. This tool is particularly useful when it is appropriate to give the provider some time to take a specific action to comply with a requirement, but the regulatory authority wants to use a strong lever to make sure the provider complies.

Once satisfied that this tool can be used, a regulatory authority may consider the following in deciding whether a compliance notice is appropriate:

- Is it possible for the regulatory authority to set out clear steps which, if followed, would result in the approved provider complying with the regulation?

- What is the immediacy and seriousness of any risk to the safety, health and wellbeing of children being educated and cared for at the service, caused by the breach?
- Is the action proportionate to the seriousness of the offence?
- Is the action likely to serve as a deterrent to committing the offence again?

How can it be used?

A compliance notice may be issued in accordance with the requirements of the National Law about serving notices (see *Serving notices*).

The notice must set out how long the approved provider has to comply. The period cannot be shorter than 14 calendar days.

The compliance notice should be accompanied by information about the approved provider's right to an internal review of the decision, under section 190 of the National Law (see *Reviews*).

National Law

Section 190

Can it be appealed?

A decision to give a compliance notice is subject to review under the National Law (see *Reviews*).

What happens after it has been issued?

Disclosure

The regulatory authority may publish specific information about compliance notices (see *Publication of enforcement actions*).

Failure to comply with a compliance notice

An approved provider must comply with a compliance notice within the period set out in the notice.

If the recipient of the compliance notice does not take the steps set out in the notice, or does not take those steps within the required timeframe, the regulatory authority may consider taking further compliance action.

The maximum penalty that may be imposed by a court for not complying is $6,000, in the case of an individual; $30,000, in any other case.

The regulatory authority cannot prosecute for non-compliance with the compliance notice as well as the original offence.

3. ENFORCEABLE UNDERTAKINGS

National Law

Sections 179A, 179B and 180

What is an enforceable undertaking?

An enforceable undertaking is a written undertaking from a person, in which the person sets out what they will do or refrain from doing, to comply with the National Law and Regulations.

When can it be used?

If a person has contravened, or the regulatory authority alleges that a person has contravened, a provision of the National Law, an enforceable undertaking from the person can be accepted.

WA

In Western Australia, this section also applies to people who believe they may have contravened a provision of the National Law.

An enforceable undertaking is a useful tool where there is evidence of a breach or potential breach of the National Law or Regulations which may justify enforcement action, but voluntary action by the offender is most likely to encourage ongoing compliance.

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.

Enforceable undertakings are designed to address non-compliance through prevention and remediation. Their purpose is to reduce risk by having the person in question voluntarily modify their practices, behaviour or skills to ensure they comply with the National Law and Regulations. As an enforceable undertaking is voluntary, it should only be accepted in circumstances where the person is willing to abide by their undertaking.

An enforceable undertaking may also be considered in circumstances when a prohibition or suspension notice under the National Law might be issued. This gives more flexibility to the regulatory authority in addressing issues when a less severe alternative to a prohibition or suspension notice is more suitable for the issue.

For example, a regulatory authority may consider an enforceable undertaking rather than a prohibition notice for the presence of a hazard that could potentially cause a child unacceptable harm or injury, but does not pose an immediate risk to the safety, health or wellbeing of a child, such as an educator who has used any form of discipline that is inappropriate in the circumstances. This gives the service the opportunity to provide a written undertaking setting out the action it will take to eliminate or mitigate the risk.

How can it be used?

The National Law allows a regulatory authority to accept an enforceable

undertaking from a person who has contravened, or who the regulatory authority alleges has contravened, a provision of the National Law. A regulatory authority does not have to accept an enforceable undertaking.

A regulatory authority cannot require a person to enter into an enforceable undertaking. However, the regulatory authority may suggest to a person that they give an enforceable undertaking.

Content of an enforceable undertaking

- An enforceable undertaking must be in writing. It should set out each specific undertaking in plain language.
- Each undertaking must be assessable, so the regulatory authority can check it has been fulfilled.
- An enforceable undertaking needs to address the contravention, or alleged contravention, of the National Law, and set a timeframe for the undertaking to be fulfilled.
- An enforceable undertaking needs to include the name and signature of the person giving the undertaking, and the date it was accepted by the regulatory authority.

When negotiating the content of an enforceable undertaking with the person, the regulatory authority may seek to include the matters listed below.

Examples of matters in an enforceable undertaking
A commitment to comply with a particular requirement or requirements of the National Law and to remain compliant in the future
An acceptance of responsibility for the non-compliance
Details of the non-compliance being addressed by the enforceable undertaking
Arrangements for the person to monitor compliance with the undertaking
Arrangements for the regulatory authority to monitor compliance with the undertaking
Arrangements for publishing the details of the undertaking.

An enforceable undertaking should not include the below matters.

Matters an enforceable undertaking should not include
A denial that the person giving the undertaking breached the National Law (although they do not have to admit a breach)
Obligations on the regulatory authority which are not already obligations, independent of the undertaking
Attempts to limit the regulatory authority's discretion, or to require the authority to exercise its discretion in a particular way

Obligations on people other than the person giving the undertaking (although it is acceptable to include a requirement for the person to be mentored, monitored, audited, etc. by a third party, and requirements which affect the person's employees in their capacity as employees)
Confidentiality or non-disclosure requirements
An undertaking to pay an infringement notice penalty.

Deciding whether to accept an enforceable undertaking

Enforceable undertakings must not be unduly burdensome or disproportionate to the breach or alleged breach of the National Law. The obligations imposed by the undertaking should not be more intrusive, expensive or damaging than obligations which may result from other enforcement action, such as cancellation of an approval or prosecution.

Regulatory authorities should not accept enforceable undertakings which will cause loss or damage to a third party, unless that loss or damage is unavoidable to properly address the breach.

Factors which the regulatory authority may consider when deciding whether or not to accept an enforceable undertaking include:

- Is it likely the enforceable undertaking will be fulfilled?
- Does the undertaking address the non-compliance?
- Is the regulatory authority able to monitor compliance with the enforceable undertaking?
- Is the person willing to comply with the undertaking?

While an undertaking is in force or being complied with, proceedings cannot be brought for any directly related offence. Similarly, if a regulatory authority has accepted an undertaking in relation to a proposed suspension of provider approval (see section 27(a)), proposed suspension of service approval (see section 72(a)) or proposed prohibition (see section 184(3)), the regulatory authority must not suspend the provider or service approval, or give the prohibition notice.

The regulatory authority should consider whether the offence for which an enforceable undertaking is entered into would lead to prosecution if not complied with.

It is at the discretion of the regulatory authority whether it will accept an enforceable undertaking from a person. The acceptance of an enforceable undertaking does not establish a precedent that would bind the regulatory authority to accept an enforceable undertaking in similar circumstances or to accept an enforceable undertaking from a person who has previously entered into one.

What happens after it has been accepted?

Disclosure

The regulatory authority may publish on its website an enforceable undertaking it has accepted (see *Publishing information about enforcement actions*).

By agreeing to, and complying with, an enforceable undertaking, proceedings cannot be brought against the person for the offence.

Changing or withdrawing acceptance of an enforceable undertaking

A person may withdraw or change the enforceable undertaking with the agreement of the regulatory authority.

The regulatory authority may withdraw its acceptance of the undertaking at any time, and the undertaking ceases to be in effect on that withdrawal.

Combining an enforceable undertaking with other compliance action

An enforceable undertaking may be combined with other action, such as:

- education about how to comply
- action to amend or suspend the person's provider approval (sections 23, 25) or service approval (sections 55, 70), if the person is an approved provider
- an infringement notice (section 291).

National Law

Section 181, 284

Failure to comply with an enforceable undertaking

If the regulatory authority considers the person who gave the enforceable undertaking has failed to comply with any of its terms, the regulatory authority may seek an order from the relevant tribunal or court to enforce the undertaking.

The tribunal or court may order the person to:

- comply with the undertaking
- take a specific action to comply with the undertaking, or
- any other order appropriate to the circumstances.

If the tribunal or court determines that a term of the undertaking has been breached, legal action can be taken for any offence related to the breach of the undertaking or the original non-compliance.

If a regulatory authority accepted an undertaking in relation to a proposed suspension of provider approval (see section 27(a)), proposed suspension of service approval (see section 72(a)) or proposed prohibition (see section 184(3)), and the tribunal or court determines that a term of the undertaking has been breached, the regulatory may without further notice suspend the provider or service approval or give a prohibition notice.

Where a person has breached a term of an undertaking, legal action can be taken either within two (2) years of the date on which the offence is alleged to have occurred, or within six (6) months of the determination of the court or tribunal, whichever occurs last.

The regulatory authority is not required to seek an order. The regulatory authority may choose to withdraw the enforceable undertaking and address the non-compliance through other statutory action, for example, an infringement notice or prosecution. The action would be based on the original breach of the National Law or Regulations, not on failure to fulfil the enforceable undertaking.

Seeking orders from the relevant tribunal or court may be an expensive process, and

there are no guarantees either an order can be sought in the timeframe required to address the breach, or that the tribunal or court will grant the order sought by the regulatory authority.

When deciding whether or not to seek an order, the regulatory authority should take into account all options available to address the breach.

3.1 PROHIBITION NOTICES

National Law

Sections 182–183

What is a prohibition notice?

A prohibition notice is a written notice given to a person which states the person is prohibited from doing any of the following:

- providing education and care to children for an education and care service
- being engaged as a nominated supervisor, educator, family day care educator, employee, contractor or staff member, or being a volunteer at, an education and care service
- carrying out any other activity relating to education and care services.

Who does it apply to?

A prohibition notice may be given to any person who is in any way involved in the provision of an approved education and care service.

A prohibited notice may be given to a person in any of the following roles.

People involved in the provision of an approved education and care service
An approved provider
A nominated supervisor
An educator
A family day care educator
An employee
A contractor
A volunteer
A person who was formerly one of the above people in this table or in any other capacity.

When can it be used?

National Law

Section 182

A regulatory authority may give a prohibition notice to a person in the following circumstances:

- If the regulatory authority considers there may be an unacceptable risk of harm to a child or children, if the person were allowed to remain on the education and care service premises, or to provide education and care to children (section 182(1)).

- To prohibit a person from being nominated as a nominated supervisor, if the regulatory authority considers the person is not a fit and proper person to be a nominated supervisor (section 182(3)(a)).
- To impose one or more conditions on the nomination of a nominated supervisor if the regulatory authority considers the person is a fit and proper person to be a nominated supervisor of a service, subject to those conditions (section 182(3)(b)).

The National Law does not limit the type of conditions. A regulatory authority may consider it appropriate to prohibit a person from being a nominated supervisor entirely or subject to conditions. For example, a person may be restricted by a condition that they can only work as a nominated supervisor for:

- one particular service
- a centre-based service and not a family day care service
- a service that primarily educates and cares for children over preschool age if the person's qualification or experience is specifically related to school age children. In such cases, the regulatory authority may inform the person of the factors taken into consideration when determining whether a service primarily educates and cares for children over preschool age.

For example:

- the percentage of children who are enrolled and, if the information is available, who attend, the education and care service who are over preschool age – for example, 60 per cent is a persuasive factor, 70 per cent would be more persuasive whereas 51 per cent would be less so
- the operating hours of the service – operating mostly or solely out of school hours may indicate the service 'primarily' educates and cares for school age children
- service advertising – advertising education and care for school age children may indicate the service primarily provides education and care to school age children.

See ***Monitoring, Compliance and Enforcement – Conditions*** for more information about using a prohibition notice to impose a condition on a nominated supervisor.

To issue a prohibition notice under section 182(1), the regulatory authority must:

- identify the reason there may be an unacceptable risk of harm to a child or children
- have sufficient evidence to support the view there may be unacceptable risk of harm (for more information about evidence gathering, see ***Investigations and evidence-gathering***).

The National Law does not define unacceptable risk of harm. The risk of harm may be direct (for example, causing harm to children) or indirect (for example, wilful failure to act to prevent harm to children), but it must be unacceptable.

Regulatory authorities can refer to the risk matrix when assessing this risk (see ***Good Regulatory Practice***).

In considering whether or not a person is fit and proper to be a nominated supervisor for the purposes of giving a prohibition notice under section 182(3), regulatory authorities consider the same types of fit and proper tests that apply to applicants for provider approval and people with management or control of an education and care service. These tests are listed at section 13 and include compliance history, working with vulnerable people checks and other matters (excluding whether a person is bankrupt (section 13(1)(d)), as this is not relevant to a regulatory authority's consideration of whether a person is fit and proper to be a nominated supervisor under section 182(3)).

See *Quality Area 4 – Staffing requirements* for more information on responsible persons including responsibilities of the approved provider and nominated supervisor, and minimum requirements for responsible persons.

How can it be used?

Show cause notice

National Law

Section 183

Before giving a person a prohibition notice, the regulatory authority must give the person a show cause notice which:

- tells the person the regulatory authority is going to give the person a prohibition notice and the reasons for the proposed prohibition
- invites the person to make a written submission within a set time (at least 14 calendar days) about the proposed prohibition.

The purpose of a show cause notice is to give the recipient an opportunity to explain why they should not receive the prohibition. The show cause notice should clearly set out the reasons for the proposed prohibition, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Prohibition without a show cause notice

If the regulatory authority is satisfied that it is necessary, in the interests of the safety, health or wellbeing of a child or children to give the prohibition notice immediately, the regulatory authority may choose not to give a show cause notice.

Regulatory authorities should exercise caution if they are considering issuing a prohibition notice without first issuing a show cause notice, because the show cause notice is a means of giving natural justice (see *Good Regulatory Practice – Good decision-making* for more information about natural justice).

Considering the response to a show cause notice

National Law

Section 184

If the regulatory authority has given a person a show cause notice and the person gives a written response in the specified timeframe, the regulatory authority must have regard to the response before deciding whether to give the person a prohibition notice.

If the regulatory authority decides not to give the person a prohibition notice, it needs to notify the person in writing.

The regulatory authority may accept an enforceable undertaking from a person instead of giving a prohibition notice.

Content of a prohibition notice

National Law
Section 185

A prohibition notice given under section 182(1) must state the person is prohibited from doing any of the following:

- providing education and care to children for an education and care service
- being engaged as an educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service
- carrying out any other activity relating to education and care services.

A prohibition notice given to a person under section 182(3) must state that either:

- the person is prohibited from being nominated as a nominated supervisor, or
- the person may only be nominated as a nominated supervisor on the condition or conditions specified in the notice.

A prohibition notice must also state the person may apply for cancellation of the notice, and how to apply for cancellation.

The prohibition notice should be accompanied by information about the approved provider's right to an external review of the decision under section 192 of the National Law (see *Reviews*).

Serving a prohibition notice

A prohibition notice may be given in accordance with the requirements of the National Law about serving notices (see *Serving notices*).

Can it be appealed?

National Law
Section 192

The recipient of a prohibition notice can seek external review of the decision to give the prohibition notice, or a decision to refuse to cancel a prohibition notice (see *Reviews*).

What happens after it has been issued?

Disclosure

National Law
Section 272

The National Law and Regulations do not give regulatory authorities the power to publish information which discloses who is the subject of a prohibition notice. However, if asked by an approved provider, the regulatory authority can say whether the person named in the request is the subject of a prohibition notice.

Cancelling the notice

National Law & Regulations
Section 186
Regulation 189

The regulatory authority must cancel the prohibition notice if it is satisfied that there is not a sufficient reason for the prohibition notice to stay in force. The regulatory authority must notify the person that the prohibition notice is cancelled.

The recipient of a prohibition notice may apply to the regulatory authority to have it cancelled. The application must be in writing and include:

- the applicant's name
- their contact details, including an address for service of the decision
- a statement setting out the grounds for the application to cancel the prohibition
- the signature of the person.

The applicant may include the following additional information in their application:

- anything the person considers relevant to the regulatory authority's decision about whether:
  - there would be an unacceptable risk of harm to children if they were to remain at the service premises, or to provide education and care to children
  - the person is a fit and proper person to be nominated as a nominated supervisor (with or without conditions)
- any change in the person's circumstances since the prohibition notice was given, or since they last applied for cancellation of the notice, that would warrant cancellation of the notice.

National Law

Sections 187–188

Failure to comply with a prohibition notice

An approved provider must not engage a person, or allow a person to volunteer, or nominate a person as a nominated supervisor, if the provider knows or ought reasonably to have known that there is a prohibition notice in place for this person or that their nomination to be a nominated supervisor would contravene a condition of the prohibition notice.

The regulatory authority can take further compliance action if a prohibited person contravenes the notice, or if a provider engages or allows a person who is subject to a prohibition notice to volunteer at the service.

The maximum penalty which may be imposed by a court for non-compliance with a prohibition notice is $20,000. The maximum penalty for approved providers who knowingly employ or engage a person who is subject to a prohibition notice is $20,000, in the case of an individual; $100,000, in any other case.

When considering whether to prosecute for employing or engaging a person who is subject to a prohibition notice, the regulatory authority may consider whether there is evidence that the approved provider:

- was aware of the prohibition notice
- intentionally or recklessly disregarded the responsibility to not employ or engage a person subject to a prohibition notice.

National Law

Section 188A

Giving false or misleading information about a prohibition notice

A person who is subject to a prohibition notice must not give an approved provider false or misleading information about the content or existence of the notice. The maximum penalty which may be imposed for non-compliance is $6,000.

3.2 DIRECTION TO EXCLUDE INAPPROPRIATE PERSONS FROM SERVICE PREMISES

National Law

Section 171

What is a direction to exclude inappropriate persons?

A direction to exclude an inappropriate person is an instruction to an approved provider, nominated supervisor and/or family day care educator to exclude a person from a service. The inappropriate person can be excluded for as long as the regulatory authority considers appropriate.

When can it be used?

A direction to exclude an inappropriate person can be given in relation to a person:

- who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the service, or
- whose behaviour or state of mind, or whose pattern of behaviour or common state of mind, is such that it would be inappropriate for him or her to be on the premises. For example, a person who is under the influence of drugs or alcohol.

The regulatory authority should be able to identify why it would be 'inappropriate' for this person to be at the service premises.

How can it be used?

Deciding whether to issue a direction to exclude inappropriate persons

Before issuing a direction to exclude an inappropriate person, the regulatory authority should consider all available information about the person to be excluded and judge whether this information is credible. The regulatory authority may investigate further if there is not enough information to make a decision.

The regulatory authority may choose to give the person the opportunity to make submissions about the available information and the proposed direction to exclude the person. This may be particularly appropriate in situations where a long period of exclusion is being considered. For more information about a regulatory authority's obligations to give procedural fairness, see *Good Regulatory Practice – Good decision-making*.

Content of a direction to exclude inappropriate persons

A direction to exclude an inappropriate person should be in writing, except where the direction is given in the case of an emergency. In an emergency, a verbal direction may be appropriate.

The direction should identify:

- the approved provider, nominated supervisor or family day care educator to whom the direction is made
- the inappropriate person who is the subject of the direction

- the education and care service premises that the inappropriate person is to be excluded from while children are being educated and cared for at the premises
- the length of time it applies for
- any other terms of the direction.

Can it be appealed?

A decision to give a direction to exclude inappropriate persons is not a reviewable decision under the National Law.

What happens after it has been issued?

If the recipient of the direction is unable to persuade the inappropriate person to stay away from the premises, the person may need to obtain assistance from an authority, such as the police.

If the recipient does not comply with the direction, the regulatory authority may consider taking further compliance action.

The maximum penalty which may be imposed by a court for not complying is $10,000, in the case of an individual; $50,000, in any other case.

3.3 PROSECUTION

What is prosecution?

Prosecution involves instituting legal proceedings in a court or tribunal against a person who has allegedly committed an offence. If the offence is proven, then a fine or other form of penalty such as a suspension or prison sentence can be imposed. Prosecution aims to punish the offender, encourage future compliance and deter others from committing an offence.

Who does it apply to?

Any person who has allegedly committed an offence against the National Law can be prosecuted. Where an offence is committed by an approved provider that is a separate legal entity, such as a corporation, the entity may be prosecuted. If a body corporate commits an offence against the National Law, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention also commits the offence. They may be subject to the penalty for an individual who commits that offence.

When can it be used?

A person may be prosecuted for any offence under the National Law, however there is no obligation to prosecute.

When deciding to prosecute for an offence against the National Law, regulatory authorities should consider the matters listed below.

Considerations when deciding whether to prosecute
Whether there is enough admissible evidence to make it likely the offence will be proved, including whether there are available, credible and reliable witnesses
The seriousness of the offence and any mitigating circumstances
Actual or potential harm caused by the non-compliance
Whether there are any alternative sanctions that might achieve a similar or better outcome
The cost of prosecution
Whether prosecution will act as a deterrent
The effect on public confidence in the regulatory system
Whether it is in the public interest
The person's history of non-compliance
The likelihood the person will re-offend.

How can it be used?

The process for deciding when and how to prosecute varies in each state and territory. Regulatory authority staff should consult closely with their legal team or equivalent for advice on prosecution.

4. AMENDMENT OF APPROVAL – CONDITIONS

What is a condition?

While the National Law and Regulations do not specifically define 'condition', a useful definition is 'a legally enforceable constraint or limitation on an approval in addition to those already found in the legislation'. The requirement to publish conditions on the copy of the service approval ensures transparency for families using the service.

A condition cannot waive a requirement of the National Law or Regulations. A waiver gives an approved provider greater flexibility to operate a service. For example, the regulatory authority might grant a waiver allowing a service to meet a requirement in ways other than those set out in the National Regulations, or to operate without meeting certain requirements.

In contrast, a condition usually involves setting an extra requirement that must be met in a certain way. For information on temporary or service waivers, see *Applications and Approvals*.

A service approval may include additional information, such as the details of any associated children's services. This information is not a condition, and does not bind or limit the approved provider.

Who does a condition apply to?

National Law

Sections 19, 51, 182

The regulatory authority can put a condition on a provider approval or service approval certificate (see *Applications and Approvals*).

An approved provider must comply with the conditions on their provider or service approval. The maximum penalty that may apply for failing to comply is $10,000, in the case of an individual; $50,000, in any other case.

The regulatory authority may also give a person a prohibition notice to impose one or more conditions on the nomination of the person as a nominated supervisor, if the regulatory authority considers the person is a fit and proper person to be a nominated supervisor of a service, subject to compliance with the relevant conditions. For more information on conditions on prohibition notices, see *Prohibition Notices*.

While a condition on provider or service approval might refer to people other than the approved provider, such as a nominated supervisor at the service, the condition applies only to the approved provider. The regulatory authority cannot take action against a person other than the approved provider for failure to comply with a condition on provider approval or service approval.

See the *Glossary* for definitions of key terms, including 'approved provider' and 'person with management or control'.

When can a condition be used?

The regulatory authority can impose a condition when it grants an approval, or at a later time, by amending the approval. See *Applications and Approvals* for information on amending an approval.

A regulatory authority has the power to use prohibition notices to restrict a person from being the nominated supervisor either entirely, if it considers the person is not suitable to be appointed as a nominated supervisor of a service, or subject to such conditions as it considers appropriate where the person is considered suitable to be appointed as a nominated supervisor of a service subject to one or more conditions (see *Prohibitions*).

Unenforceable conditions

The National Law does not place any specific limits on the regulatory authority's power to impose a condition on a provider approval or service approval.

Reasons a condition might be unenforceable are listed below. The regulatory authority should therefore avoid using these types of conditions.

When deciding whether to impose a condition, the regulatory authority should only take relevant considerations into account. Taking irrelevant considerations into account may lead to an unlawful decision (see *Good Regulatory Practice – Good decision-making*).

Reasons a condition might be unenforceable
Goes beyond the regulatory authority's power in administering the National Law and Regulations
Contradicts the intent of the National Law
Seeks to waive, completely or partially, a requirement of the National Law or Regulations
Imposes an unreasonable requirement, for example, a requirement that unnecessarily constrains supply or affects the provider's financial viability
Replicates a requirement of the National Law or Regulations
Replicates a requirement of other legislation such as health or building legislation.

Condition on provider approval

The regulatory authority can use a condition on a provider approval to address issues that affect, or potentially affect, all the provider's services. For example, if the regulatory authority has concerns about an applicant's management capacity, it might impose a condition limiting the number, or size, of services the provider can operate.

For issues that do not affect all the provider's services, the regulatory authority may decide to use a condition on service approval.

Condition on service approval

A condition on service approval must be relevant to the particular service.

In some instances, the regulatory authority might decide to grant an approval subject to a time-limited condition to allow a provider to start operating the service. For example, a regulatory authority might grant a service approval with a condition

limiting the age of children that may attend, pending further information to satisfy the regulatory authority that the service premises are suitable for very young children. Using a condition in this way enables the provider to start operating the service, although in a limited way, while ensuring the provider satisfies the regulatory authority all relevant requirements are met.

Condition on a nominated supervisor

A regulatory authority may give a prohibition notice to a person to impose conditions on the nomination of the person as a nominated supervisor. Examples of conditions the regulatory authority might consider appropriate to impose include that the person:

- may only be the nominated supervisor of one particular service, or
- may only be the nominated supervisor of a particular type of service. For example, if the applicant's qualification or experience is specifically related to school age children, the regulatory authority may impose a condition limiting the person's nomination as nominated supervisor to services that primarily educate and care for children over preschool age.

See *Approvals – Monitoring, Compliance and Enforcement – Prohibition notices* for more information on conditions that may apply to a nominated supervisor.

How is a condition used?

To help the approved provider or individual easily understand the conditions that apply to them, the regulatory authority should use language consistent with the National Law and Regulations.

Conditions should always be expressly stated as conditions. Information included on the service approval is not necessarily a condition.

Because the regulatory authority may publish information about a condition as part of a compliance action, it should avoid using people's names in the condition. Instead, if required, the condition should refer to the position at the service.

The National Law does not require the regulatory authority to give a show cause notice before amending an approval. However, regulatory authorities should exercise caution if they are considering imposing a condition without first issuing a show cause notice, because a show cause notice is a means of giving natural justice. See *Good Regulatory Practice – Good decision-making* for more information about natural justice.

The purpose of a show cause notice is to give the proposed recipient an opportunity to explain why they should not be subject to the condition. The show cause notice should set out very clearly the reasons for the proposed condition, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Advising the approved provider before the condition is imposed is also a useful way to encourage compliance.

When giving a notice of the decision to impose a condition, the regulatory authority should make sure to include information about the right to internal or external review of the decision (see ***Reviews***).

After a condition is imposed

Unless the duration is expressly indicated in the condition, it remains in place until removed by the regulatory authority. The regulatory authority can remove or vary a condition at any time by amending the provider approval. An approved provider can also apply for amendment or removal of a condition. See ***Applications and Approvals*** for more information.

The regulatory authority's decision to impose a condition is reviewable. The regulatory authority's decision to impose conditions on a nominated supervisor's nomination is also reviewable. See ***Reviews*** in ***Applications and Approvals*** for more information.

The regulatory authority should monitor those people and services that are subject to a condition. The level of monitoring will depend on the nature of the condition. See ***Monitoring*** for more information about monitoring activities.

The regulatory authority should regularly review conditions to ensure only relevant conditions remain active in the National Quality Agenda IT System.

Breaching a condition on approval

National Law

Sections 19, 51

If an approved provider breaches a condition on approval, the regulatory authority may take further action. See ***Compliance tools*** for information on tools available to regulatory authorities to compel compliance with the National Law and Regulations.

5. SUSPENSIONS AND CANCELLATIONS

5.1 NOTICE TO SUSPEND EDUCATION AND CARE BY A FAMILY DAY CARE EDUCATOR

National Law

Section 178

What is a notice to suspend education and care by a family day care educator?

A notice to suspend education and care by a family day care educator is an instruction to an approved provider to cease engaging or allowing a family day care educator to be registered with their service.

A notice to suspend can only be given to an approved provider. However, a show cause notice (given before the notice to suspend) may be given to the approved provider, nominated supervisor and family day care educator. Information about show cause notices is under ***How can it be used?*** below.

When can it be used?

A notice to suspend education and care by a family day care educator can be given if the regulatory authority is satisfied that due to the conduct of, or inadequacy of, the service provided by a family day care educator:

- the approved provider or nominated supervisor is not complying with any provision of the National Law or Regulations, or
- there is a risk to the safety, health or wellbeing of children being educated and cared for by the family day care educator.

Unlike a prohibition notice, a notice to suspend education and care by a family day care educator is issued to the approved provider, does not prevent the educator from any involvement with a service, and only applies to a specific education and care service.

The grounds for issuing a notice to suspend education and care by a family day care educator are broader than the grounds for issuing a prohibition notice or a direction to exclude an inappropriate person. The grounds for suspension focus on the conduct of, or inadequacy of, the service provided by the family day care educator. This means a notice to suspend a family day care educator can be used to address a wider range of non-compliance. In addition, a prohibition notice can be issued immediately if necessary, without a show cause notice process.

How can it be used?

Show cause notice

The regulatory authority may give a show cause notice to the approved provider, nominated supervisor (if applicable) and educator of a family day care service

stating it intends to direct the approved provider to suspend the provision of education and care by the educator.

- The show cause notice must also give the reasons for the proposed direction, and inform the approved provider, nominated supervisor and educator they have 14 calendar days to make submissions to the regulatory authority about the proposed direction.
- The show cause notice must be served by delivering it personally to the family day care educator.

The regulatory authority must consider any submissions from these parties during the timeframe, and may consider any other submissions and matters it considers relevant.

The regulatory authority may give the approved provider a notice directing the provider to suspend the provision of education and care to children by the family day care educator.

The regulatory authority must notify the approved provider of its decision, either way.

The purpose of a show cause notice is to give the recipient an opportunity to explain why they should not receive the notice to suspend. The show cause notice should set out very clearly the reasons for the proposed notice, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Regulatory authorities should exercise caution if they are considering issuing a notice without first issuing a show cause notice because the show cause notice is a means of giving natural justice. See *Good Regulatory Practice – Good decision-making* for more information about natural justice.

Content of a notice to suspend

The National Law does not specify what needs to be included in a notice to suspend education and care by a family day care educator.

Regulatory authorities should make sure the notice includes, as a minimum, the following information set out below.

Information that must be included in a notice to suspend
The date the notice is given and the date it takes effect (if they are different)
The name of the approved provider to whom the notice is being given
The name of the family day care educator who is the subject of the notice
The name of the regulatory authority giving the notice
The signature of the person issuing the notice
Information about the right to external review of the decision under section 192 of the National Law (see *Reviews*).

Serving a notice to suspend

A notice to suspend education and care by a family day care educator may be given in accordance with the requirements of the National Law about serving notices (see *Serving notices*).

National Law

Section 192

Can it be appealed?

The decision to give a notice to suspend education and care by a family day care educator is a reviewable decision under the National Law.

What happens after it has been issued?

National Law

Section 272

Disclosure

An approved provider may ask the regulatory authority whether a specific family day care educator has been suspended. The regulatory authority may disclose this information about whether a family day care educator has been suspended, subject to the *Commonwealth Privacy Act 1988* as applied by the National Law and any protocol approved by ACECQA.

Failure to comply with the notice

If the approved provider does not suspend the educator, the regulatory authority may consider taking further compliance action.

The maximum penalty which may be imposed by a court for failure is $6,000, in the case of an individual; $30,000, in any other case.

5.2 SUSPENSION OF SERVICE APPROVAL

What is suspension of service approval?

Suspension of service approval is a way of preventing a service from operating for a specific period of time. A person cannot operate an education and care service if the service approval has been suspended.

National Law

Section 70

When can it be used?

The regulatory authority may suspend a service approval for any of the reasons set out below.

Section 70 of the National Law suggests a regulatory authority may suspend service approval if the approved provider has contravened the National Law and Regulations as they apply in any state or territory where the approved provider operates a service. This should be taken to mean the National Law and Regulations as they apply in the jurisdiction where the service that is the subject of the proposed suspension operates.

Where the regulatory authority is concerned that an approved provider no longer has the right to occupy the service premises, it may ask the approved provider for evidence, such as a current lease agreement.

Reasons a regulatory authority may suspend a service approval
The regulatory authority believes it is not in the best interests of children at the service for the service to continue operating
A condition of the service approval has not been complied with
The service is not managed in accordance with the National Law or Regulations
The service has operated at a rating level that does not meet the National Quality Standard, a service waiver or temporary waiver does not apply in relation to the non-compliance and there has been no improvement in the rating level
The approved provider has contravened the National Law or Regulations, as they apply in any state or territory where the approved provider operates a service
The approved provider failed to comply with a direction, compliance notice or emergency order under the National Law or Regulations, as they apply in any relevant state or territory
The approved provider ceased to operate the service at the premises for which the service approval was granted, and did not transfer the service to another approved provider within six months
The approved provider did not commence ongoing operation of the service within six months from when service approval was granted
The approved provider has not paid the prescribed annual fee for service approval.

How can it be used?

National Law

Section 101

If the service is a family day care service, the regulatory authority must consult the regulatory authority of each jurisdiction in which the approved family day care service operates before suspending the service approval (see *Applications and Approvals – Exercise of powers by another regulatory authority*).

Suspension of service approval for associated children's service only

National Law

Section 75

If the regulatory authority considers a service approval should be suspended only in relation to an associated children's service, it must refer the matter to the relevant children's services regulator to determine appropriate action under children's services law.

The children's services regulator must notify the regulatory authority if it proposes to conduct any investigation or inquiry into an associated children's service.

A children's services regulator must advise the regulatory authority if it determines a service approval in relation to the associated children's service should be suspended. If this occurs, the service approval in relation to the associated children's service is suspended in accordance with the determination of the children's service regulator.

National Law & Regulations

Sections 71–72
Regulation 39

Show cause notice

If the regulatory authority is considering suspending a service approval, it must first give the approved provider a show cause notice. The notice must advise the approved provider of the intention to suspend the service approval, the reasons, and the proposed period of suspension.

The notice must also inform the approved provider that they may, within 30 calendar days of the notice being given, provide a written response to the regulatory authority.

After considering any written response from the approved provider (that is received within 30 calendar days), the regulatory authority may:

- accept a written undertaking (under section 179A) from the approved provider to take or refrain from taking certain actions, if:
  - the suspension was proposed because the regulatory authority reasonably believes that the continued operation of the service would not be in the best interests of children
  - the service is not being managed in accordance with the National Law
  - the service is rated Working Towards and has not improved its rating level (and a waiver does not apply to the service in respect of the non-compliance)
- suspend the service approval for up to 12 months
- decide not to suspend the approval.

National Law

Section 73

Suspension without show cause notice

The regulatory authority may suspend a service approval without giving the approved provider a show cause notice if it is satisfied there is an immediate risk to the safety, health or wellbeing of a child or children at the service.

The purpose of a show cause notice is to give the proposed recipient an opportunity to explain why they should not receive the suspension. The show cause notice should set out very clearly the reasons for the proposed suspension, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Regulatory authorities should exercise caution if they are considering suspending approval without first issuing a show cause notice, because the show cause notice is a means of giving natural justice. See *Good Regulatory Practice – Good decision-making* for more information about natural justice.

National Law & Regulations

Section 74
Regulation 39

Content of suspension notice

The regulatory authority must give the approved provider written notice of its decision to suspend service approval. The notice must set out the period of suspension and when the suspension takes effect. The period of suspension cannot exceed 12 months.

The National Law and Regulations do not say what else needs to be included in a notice of suspension of service approval. However, the regulatory authority should make sure the notice includes the following additional information:

- the name of the approved provider to whom the notice is being given
- the name of the approved service to which the notice relates
- the name of the regulatory authority giving the notice
- the signature of the person issuing the notice
- information about the right to internal review (if no show cause notice was given) or external review (if a show cause notice was given). See *Reviews*.

When the suspension takes effect

National Law

Section 74

If a service approval is suspended without a show cause notice, the decision to suspend takes effect when the notice is given to the approved provider.

If a service approval is suspended after a show cause notice process, the decision to suspend takes effect 14 calendar days after the date of the decision, or at the end of another period specified by the regulatory authority.

A regulatory authority may specify a suspension takes effect less than 14 calendar days after the date of the decision. However, the regulatory authority should ensure it has strong evidence this is necessary before deciding on a shorter period.

Can it be appealed?

National Law

Sections 190, 192

A person can seek internal and external review of a decision to suspend a service approval (see *Reviews*).

What happens after it has occurred?

Notice to parents

National Law

Sections 83–84

The regulatory authority may require the approved provider, whether or not a show cause notice was given, to give parents of children enrolled at the service (and any associated children's service) written notice of the suspension and its effect.

If a show cause notice is given, the regulatory authority may require the approved provider to supply contact details for parents of all children enrolled at the service within seven (7) calendar days. The regulatory authority may notify parents of the suspension, and cannot use this information for any other purpose.

The powers of the regulatory authority are intended to make sure parents will always be notified if service approval is suspended, because this automatically results in the closure of the service.

Generally, the regulatory authority should only need to require the approved provider to give written notice to parents if they are concerned that this may not occur otherwise. If the regulatory authority is concerned that, even with a direction to the approved provider, parents may not be notified, the regulatory authority should exercise its power to request the approved provider to give the regulatory authority the details, so it can contact the parents.

Failure to comply with the notice

If the approved provider does not comply with the notice, the regulatory authority may consider taking further compliance action.

The maximum penalty which may be imposed by a court for this offence is $3,000, in the case of an individual; $15,000, in any other case.

Disclosure

The regulatory authority may publish specific information about suspension of service approval (see *Publication of enforcement actions*).

National Law

Section 103

Operating a service with a suspended service approval

A person who operates a service which is the subject of a suspended service approval is committing an offence under the National Law and the regulatory authority may consider taking compliance action. The maximum penalty that may be imposed by a court for this offence is $20,000, in the case of an individual; or $100,000 in any other case.

6. CANCELLATION OF SERVICE APPROVAL

What is cancellation of service approval?

Cancellation of service approval is a significant compliance action which permanently prevents an approved provider from operating a specific education and care service. Cancellation of a service approval includes any associated children's services.

When can it be used?

National Law

Sections 31, 77

The regulatory authority may cancel a service approval if:

- 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 is no longer considered fit and proper to operate an education and care service
- the service approval has been suspended and the reason for the suspension is not rectified by the end of the suspension
- the service approval was obtained improperly, a condition of the service approval has not been complied with, or
- the approved provider has been found guilty of an offence.

Along with prosecution, cancelling a service approval is a severe way to address non-compliance at the service level. When considering cancelling service approval under the National Law, the regulatory authority should consider the matters below.

Considerations when deciding whether to cancel service approval
If this form of regulatory action will best achieve the objectives of the legislation
The principles of best practice regulation (see *Good Regulatory Practice*), including the Ayres and Braithwaite enforcement pyramid. Cancellations are at the top of the pyramid.
Whether there are any alternative sanctions that might achieve a similar or better outcome, such as a condition on service approval
Seriousness of the non-compliance and any mitigating circumstances
Cost of regulatory action
Effect on public confidence in the regulatory system
Actual or potential harm caused by the non-compliance
The impact on the community and families using the service
Whether it is in the public interest
History of non-compliance
Cooperation of the person and the likeliness they will continue to be non-compliant
Whether it will act as a deterrent to other providers.

How can it be used?

National Law
Section 101

If the service is a family day care, the regulatory authority must consult the regulatory authority of each jurisdiction in which the family day care service operates before cancelling the service approval (see *Applications and Approvals – Exercise of powers by another regulatory authority*).

Cancellation of service approval for associated children's service only

If the regulatory authority considers a service approval should be cancelled only in relation to an associated children's service, it must refer the matter to the relevant children's services regulator to determine appropriate action under children's services law.

The children's services regulator must notify the regulatory authority if it intends to conduct any investigation or inquiry into an associated children's service.

The children's service regulator must notify the regulatory authority if it determines the service approval in relation to the associated children's service should be cancelled.

Show cause notice

National Law
Section 78

If the regulatory authority is considering cancelling a service approval, it must first give the approved provider a show cause notice stating its intent to cancel the service approval and the reasons.

The notice must also inform the approved provider that they may, within 30 calendar days after the notice is given, provide a written response to the proposed cancellation.

National Law & Regulations
Section 79
Regulation 39

After considering any written response from the approved provider (that is received within 30 calendar days) the regulatory authority may decide to:

- cancel the service approval
- suspend the service approval for up to 12 months, or
- take no further action.

The purpose of a show cause notice is to give the proposed recipient an opportunity to explain why they should not receive the cancellation. The show cause notice should set out very clearly the reasons for the proposed cancellation, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Content of cancellation notice

National Law
Section 79

The regulatory authority must give the approved provider written notice of its decision. The notice must set out the date on which the cancellation takes effect.

The National Law and Regulations do not say what else needs to be included in a notice of cancellation of service approval. However, the regulatory authority should make sure the notice includes the following additional information:

- The name of the approved provider to whom the notice is being given
- The name of the approved service to which the notice relates
- The name of the regulatory authority giving the notice

- The signature of the person issuing the notice
- Information about the right to external review (see *Reviews*).

When the cancellation takes effect

Cancellation takes effect at the end of 14 calendar days after the date of the decision, or at the end of another period specified by the regulatory authority.

The regulatory authority may specify a cancellation takes effect less than 14 calendar days after the date of the decision. However, the regulatory authority should ensure it has strong evidence this is necessary before deciding on a shorter period.

Can it be appealed?

National Law

Section 192

A person can seek external review of a decision to cancel a service approval (see to *Reviews*).

What happens after it has occurred?

Notice to parents

National Law

Sections 35, 84

The regulatory authority may require the approved provider, whether or not a show cause notice was given, to give parents of children enrolled at the service (and any associated children's service) written notice of the cancellation and its effect.

If an approved provider fails to comply with the notice, the regulatory authority may consider taking further compliance action.

The maximum penalty which may be imposed by a court is $3,000, in the case of an individual; $15,000, in any other case.

National Law

Sections 35, 83

If a show cause notice is given, the regulatory authority may require the approved provider to supply contact details for parents of all children enrolled at the service within seven (7) calendar days. The regulatory authority may notify parents of the cancellation, and cannot use this information for any other purpose.

The power of the regulatory authority to give notice to parents is intended to make sure parents will always be notified if service approval is cancelled, because this automatically results in the closure of the service.

Generally, the regulatory authority should only need to require the approved provider to give written notice to parents if they are concerned that this may not occur otherwise. If the regulatory authority is concerned that, even with a direction to the approved provider, parents may not be notified, the regulatory authority should exercise its power to request the approved provider give the contact details to the regulatory authority, so it can contact the parents.

Disclosure

The regulatory authority may publish specific information about cancellation of provider approval (see *Publication of enforcement actions*).

National Law

Section 103

Operating a service with cancelled service approval

A person who operates an education and care service without service approval is committing an offence under the National Law and the regulatory authority may consider taking compliance action. The maximum penalty that may be imposed by a court for this offence is $20,000, in the case of an individual; $100,000 in any other case.

6.1 SUSPENSION OF PROVIDER APPROVAL

National Law

Section 30

What is suspension of provider approval?

Provider approval is required to operate an approved education and care service under the National Law. A person whose provider approval is suspended is not considered an approved provider for the period of the suspension, and all service approvals held by the person are suspended for the same period. This includes any associated children's services.

Suspension of provider approval is a way of preventing a person from operating any education and care service for a specific period of time.

National Law

Section 25

When can it be used?

A regulatory authority may suspend a provider approval if one of the below matters applies to the approved provider.

The regulatory authority may also suspend a provider approval if they are taking compliance action (other than a compliance direction) in relation to more than one service operated by the approved provider.

The approved provider must notify the regulatory authority of any changes affecting their fitness and propriety (see *Operational Requirements – Governance and leadership*).

Grounds to suspend a provider approval
Being charged with an indictable offence (or an offence that if committed in the regulatory authority's jurisdiction would be an indictable offence), or any other circumstance that indicates the approved provider may not be a fit and proper person to be involved in the provision of an education and care service
Failure to comply with a condition of the provider approval
Failure to comply with the National Law
Not having operated any education and care service for more than 12 months (including any period of suspension)
Purporting to transfer or receive a transfer of an approved education and care service without the regulatory authority's consent
Failure to pay any outstanding prescribed fees.

How can it be used?

The regulatory authority must consult the regulatory authority of each jurisdiction in which the approved provider operates an approved education and care service before suspending the provider approval (see *Applications and Approvals – Exercise of powers by another regulatory authority*).

Reassessing fitness and propriety

National Law
Section 21

The regulatory authority may reassess an approved provider's fitness and propriety to provide an education and care service at any time. This includes assessment of a person with management or control. If a person is no longer a fit and proper person to be involved in the provision of an education and care service, the regulatory authority may then consider suspending the provider approval. This information is also included in *Applications and Approvals – Provider approval* for information on assessing fitness and propriety.

Show cause notice

National Law & Regulations
Sections 26–27
Regulation 18

The regulatory authority must give the approved provider a show cause notice before suspending provider approval. The notice must advise that the regulatory authority intends to suspend the provider approval for a specified length of time and include the reasons for the proposed suspension.

The show cause notice must also inform the approved provider that they have 30 calendar days to give a written response to the regulatory authority.

After considering any written response to the show cause notice, the regulatory authority may:

- accept a written undertaking (under section 179A) from the approved provider to take or refrain from taking certain actions, if the suspension was proposed because the approved provider has been charged with an indictable offence or may not be a fit and proper person to be involved in the provision of an education and care service
- suspend the provider approval for up to 12 months
- decide not to suspend the approval.

Suspension without a show cause notice

National Law
Section 28

The regulatory authority may suspend a provider approval without giving a show cause notice if it is satisfied there is an immediate risk to the safety, health or wellbeing of a child or children at a service operated by the approved provider.

The suspension cannot exceed six (6) months.

The purpose of a show cause notice is to give the proposed recipient an opportunity to explain why they should not receive the suspension. The show cause notice should set out very clearly the reasons for the proposed suspension, so the person fully understands the regulatory authority's rationale and can respond appropriately.

Regulatory authorities should exercise caution if they are considering suspending approval without first issuing a show cause notice, because the show cause notice is a means of giving natural justice. See *Good Regulatory Practice – Good decision-making* for more information about natural justice.

National Law

Section 29

Content of a suspension notice

The regulatory authority must give the approved provider written notice of a decision to suspend provider approval.

The written notice must set out the period of suspension and when it takes effect. The suspension cannot exceed 12 months.

The National Law and Regulations do not say what else needs to be included in a notice of suspension of provider approval. However, regulatory authorities should make sure the notice includes the following additional information:

- the name of the approved provider to whom the notice is being given
- the name of the regulatory authority giving the notice
- the signature of the person issuing the notice
- information about the right to internal review (if no show cause notice was given) or external review (if a show cause notice was given). See *Reviews*.

When the suspension takes effect

If a provider approval is suspended without a show cause notice, the decision to suspend takes effect when the notice is given to the approved provider.

If a provider approval is suspended after a show cause notice process, the decision to suspend takes effect at the end of 14 days after the date of the decision, or at the end of another period specified by the regulatory authority.

The regulatory authority may specify that a suspension takes effect less than 14 calendar days after the date of the decision. However, the regulatory authority should ensure it has strong evidence this is necessary before deciding on a shorter period.

National Law

Section 30

Death of approved provider

A service approval is not suspended during any period that a person is approved to manage or control the education and care service in the event that the approved provider dies or becomes incapacitated. See *Applications and Approvals – Approval of executor, representative or guardian as approved provider*.

National Law

Sections 190, 192

Can it be appealed?

A person can seek internal and external review of a decision to suspend a provider approval (see *Reviews*).

What happens after it has occurred?

National Law

Section 36

Notice to parents

The regulatory authority may require the approved provider to give written notice of the suspension of their provider approval and its effect to parents of children enrolled at any or all services operated by the approved provider. The regulatory authority may require this whether or not a show cause notice was given prior to the suspension.

If the approved provider does not give the required notice to parents, the regulatory authority may decide to escalate the matter. The maximum penalty a court may impose is $3,000, in the case of an individual; $15,000, in any other case.

National Law

Section 35

If a show cause notice is given, the regulatory authority may also request the approved provider supply the contact details of parents of all children enrolled at a service operated by the approved provider within seven (7) calendar days. The regulatory authority may notify parents of the suspension. The regulatory authority cannot use the contact details for any other purpose.

The powers of the regulatory authority on giving notice to parents are intended to make sure parents will always be notified if provider approval is suspended, because this automatically results in suspension of service approval and, consequently, their closure.

Generally, the regulatory authority should only need to require the approved provider to given written notice to parents if they are concerned that this may not occur otherwise. If the regulatory authority is concerned that, even with a direction to the approved provider, parents may not be notified, the regulatory authority should exercise its power to request the approved provider give the contact details to the regulatory authority, so it can contact the parents.

National Law

Section 30

Transfer of suspended service approval

The regulatory authority may give permission for transfer of a service approval that is suspended. The suspension of the service approval ceases when the approval is transferred, unless the regulatory authority imposes a condition on its consent for transfer specifying a later date. See *Applications and Approvals – Transfer of service approval*.

Disclosure

The regulatory authority may publish specific information about suspension of provider approval (see *Publication of enforcement actions*).

At the end of the suspension

Once the period of suspension has concluded, the provider approval will be effectively reinstated.

National Law

Section 103

Operating a service with suspended provider approval

A person who operates an education and care service without provider approval is committing an offence under the National Law and the regulatory authority may consider taking further compliance action. The maximum penalty that may be imposed by a court for this offence is $20,000 for an individual; or $100,000 in any other case.

7. CANCELLATION OF PROVIDER APPROVAL

What is cancellation of provider approval?

Provider approval is required to operate an approved education and care service under the National Law. If a provider approval is cancelled, all service approvals held by the person who was the approved provider are also cancelled. This includes associated children's services.

Cancellation of provider approval is a significant compliance action which permanently prevents a person from operating any approved education and care service.

When can it be used?

National Law
Section 31

The regulatory authority may cancel a provider approval for the reasons set out below.

If a person is found guilty of an indictable offence, the regulatory authority should consider the extent this affects their suitability to provide an education and care service.

Grounds to cancel a provider approval
The regulatory authority is satisfied that the approved provider or a person with management or control of a service operated by the approved provider is not a fit and proper person to be involved in the provision of an education and care service
The regulatory authority is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider
The approved provider has been found guilty of an indictable offence (or an offence that if committed in this jurisdiction would be an indictable offence)
The approved provider has been found guilty of an offence under the National Law as it applies in any participating jurisdiction
The approved provider has breached a condition of their provider approval
The approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension).

National Law
Section 21

The regulatory authority may reassess an approved provider's fitness and propriety to provide an education and care service at any time. This includes assessment of a person with management or control of the service. If a person is no longer a fit and proper person to be involved in the provision of an education and care service, the regulatory authority may then consider cancelling the provider approval. The approved provider is required to notify the regulatory authority of any changes affecting their fitness and propriety (see *Operational Requirements – Governance and leadership*).

Regulatory authorities should also consider the principles of best practice regulation (see *Good Regulatory Practice*), including the Ayres and Braithwaite enforcement pyramid.

Cancellations are at the top of the pyramid. Usually, cancellation would be the final course of action, after a graduated response moving up the regulatory pyramid, depending on the willingness and ability of the provider to comply and the seriousness of the offence.

Along with prosecution, cancelling a provider approval is a severe way to address non-compliance at the service level. In some circumstances, it may be appropriate to use cancellation in conjunction with prosecution.

Cancelling a provider approval means that all approvals for services operated by that approved provider will also be cancelled, unless the regulatory authority consents to a transfer of service approvals. This would have a significant impact on the families using these services.

Where a provider operates one service only, the regulatory authority may consider whether there are grounds to also cancel the provider approval. Note that section 31 of the National Law allows a provider approval to be cancelled if the provider has not operated a service for a period of more than 12 months.

When considering under the National Law, the regulatory authority should consider the below matters.

Considerations when deciding whether to cancel provider approval
Whether there are any alternative sanctions that might achieve a similar or better outcome, such as a condition on provider approval
Seriousness of the non-compliance
Cost of regulatory action
Effect on public confidence in the regulatory system
Actual or potential harm caused by the non-compliance
The impact on the community and families using the service
Whether it is in the public interest
History of non-compliance
Cooperation of the person and the likeliness they will continue to be non-compliant
Whether it will act as a deterrent to other providers.

How can it be used?

The regulatory authority must consult the regulatory authority of each jurisdiction in which the approved provider operates an approved education and care service before cancelling the provider approval (see *Applications and Approvals – Exercise of powers by another regulatory authority*).

National Law

Section 32

Show cause notice

If the regulatory authority is considering cancelling a provider approval, it must first give the approved provider a show cause notice advising of its intention to cancel the provider approval and the reasons for the proposed cancellation.

The notice must advise the approved provider they have 30 calendar days to respond in writing.

National Law & Regulations

Section 33
Regulation 18

The regulatory authority must consider any written response from the approved provider within 30 calendar days before making its decision.

The regulatory authority may decide to cancel the provider approval, suspend the provider approval for up to 12 months, or to take no further action.

The purpose of a show cause notice is to give the proposed recipient an opportunity to explain why they should not receive the cancellation. The show cause notice should set out very clearly the reasons for the proposed cancellation, so the person fully understands the regulatory authority's rationale and can respond appropriately.

National Law

Section 33

Content of cancellation notice

The regulatory authority must give the approved provider written notice of its decision. The notice of the decision must specify the date the cancellation takes effect.

The National Law and Regulations do not say what else needs to be included in a notice of cancellation of provider approval. However, the regulatory authority should make sure the notice includes the following additional information:

- the name of the approved provider to whom the notice is being given
- the name of the regulatory authority giving the notice
- the signature of the person issuing the notice
- information about the right to external review (see ***Reviews***).

National Law

Section 33

Taking effect of cancellation

If the regulatory authority decides to cancel the provider approval, cancellation takes effect at the end of 14 calendar days after the date of the decision, or at the end of a period specified by the regulatory authority.

A regulatory authority could specify that a cancellation takes effect less than 14 calendar days after the date of the decision. However, the regulatory authority should ensure it has strong evidence this is necessary before deciding on a shorter period.

National Law

Section 34

Application to transfer service approval if provider approval is going to be cancelled

An approved provider whose approval is to be cancelled may apply to the regulatory authority for consent to transfer a service approval to another approved provider.

Application for consent to transfer must be made within 14 calendar days after the date of the decision to cancel the provider approval. In this case, the service approval is suspended until the regulatory authority has determined the application for consent to transfer.

If the regulatory authority consents to the transfer, suspension of the service approval ceases on the date transfer takes effect, unless conditions of transfer specify a later date.

If the regulatory authority decides not to consent to the transfer, the service approval is cancelled from the date of its decision.

Can it be appealed?

National Law

Section 192

A person can seek external review of a decision to cancel a provider approval (see *Reviews*).

What happens after it has occurred?

National Law

Sections 34, 36

Notice to parents

The regulatory authority may require the approved provider to give written notice of the cancellation of their provider approval and its effect to parents of children enrolled at any or all services operated by the approved provider.

If the approved provider fails to comply with the notice, the regulatory authority may decide to escalate the matter. The maximum penalty a court may impose for not giving the required notice to parents of enrolled children is $3,000, in the case of an individual; $15,000, in any other case.

National Law

Section 35

If a show cause notice is given, the regulatory authority may also request that the approved provider supply within seven (7) calendar days the contact details of parents of all children enrolled at a service operated by the approved provider. The regulatory authority may notify parents of the suspension. The regulatory authority cannot use the contact details for any other purpose.

The powers of the regulatory authority on giving notice to parents are intended to make sure parents will always be notified if provider approval is cancelled, because this automatically results in the cancellation of the related service approvals and, consequently, the closure of those services.

Generally, the regulatory authority should only need to require the approved provider to give written notice to parents if they are concerned that this may not occur otherwise. If the regulatory authority is concerned that, even with a direction to the approved provider, parents may not be notified, the regulatory authority should exercise its power to request the approved provider give the contact details to the regulatory authority, so it can contact the parents.

Disclosure

The regulatory authority may publish specific information about cancellation of provider approval (see *Publication of enforcement actions*).

National Law

Section 103

Operating a service with cancelled provider approval

A person who operates an education and care service without provider approval is committing an offence under the National Law and the regulatory authority may consider taking further compliance action. The maximum penalty that may be imposed by a court for this offence is $20,000, for an individual; $100,000 in any other case.

If, prior to the cancellation of the provider approval, a person is approved to manage or control an education and care service due to death or incapacity of the approved provider under section 41 of the National Law, the service approval is not cancelled. However, the service approval is cancelled if the person ceases to manage or control the service.

8. SERVING NOTICES

National Law

Section 293

The table below sets out notices that are required or permitted to be served on an individual or an entity, under the National Law.

Individuals	Person other than an individual
Delivering it personally to the individual	
Posting or delivering it to the address provided by the individual for the purpose of accepting notices, or the last known address of the residence or business of the individual	Posting or leaving it at the address provided by the person for the purpose of accepting notices, or the address of the head office, a registered office or the principle place of business of the person
Faxing it to a number provided by the individual for the purpose of accepting notices	Faxing it to a number provided by the person for the purpose of accepting notices
Emailing it to an address provided by the individual for the purpose of accepting notices.	Emailing it to an address provided by the person for the purpose of receiving the notice.

National Law

Section 294

A tribunal or court may authorise a different way of serving a notice.

Where a notice is authorised or required to be served by post, service of the notice:

- may be effected by properly addressing, prepaying and posting a letter containing the document
- in Australia or an external Territory, is taken to have been effected on the fourth day after the letter was posted (unless there is sufficient evidence to create doubt)
- in another place, is taken to have been effected at the time when the letter would have been delivered in the ordinary course of the post (unless there is sufficient evidence to create doubt).

If a notice is served by post, the regulatory authority must allow enough time for delivery.

The regulatory authority should keep evidence of postage, such as a receipt or tracking number. Using registered post which requires the recipient to sign upon receipt is recommended.

9. PUBLISHING INFORMATION ABOUT ENFORCEMENT ACTIONS

National Law & Regulations

Section 270
Regulation 227

WA

What information can be published?

Regulatory authorities may publish prescribed information about the following enforcement actions taken under the National Law:

- compliance notices
- emergency action notices
- prosecutions
- enforceable undertakings
- suspension or cancellation of approvals or certificates (other than voluntary suspension or surrender)
- amendments to approvals or certificates for enforcement purposes.

Additional enforcement actions may be prescribed under the National Regulations in future.

This published information must not identify or lead to the identification of an individual other than:

- an approved provider
- a person who is being prosecuted for an offence under the National Law
- a person with management or control of an education and care service (if the regulatory authority is satisfied that it is in the public interest to do so).

The published information must not identify or lead to the identification of a child.

The general information which may be published about these actions is set out below.

Information that may be published
Type of enforcement action
Name and provider approval number of the approved provider subject to the enforcement action
Information that identifies a person with management or control of an education and care service (if the regulatory authority is satisfied that it is in the public interest to do so)
For a centre-based service: • address of the service • name of the service
For a family day care service: • the address of the service, unless this is the home address of a family day care educator • the name of the service • the service approval number
For an individual subject to the enforcement action, their name if relevant
The reason for the enforcement action, including details of the breach or alleged breach and the provision that was breached or alleged to be breached.

The details of each enforcement action that may be published are set out below.

Enforcement action	What can be published
Prosecution for an offence under the National Law or Regulations leading to a conviction or finding of guilt or plea of guilt	The provision of the National Law or Regulations that the person was convicted, or found guilty of, or pleaded guilty to breaching
	The date of the conviction, the finding or the plea of guilt for the offence
	Any penalty imposed for the offence
	Information about any steps taken to remedy the subject of the prosecution and the date the steps were taken.
Enforceable undertaking	The terms of the enforceable undertaking
	The date of the enforceable undertaking
	Information about any steps taken to remedy the subject of the enforceable undertaking and when the steps were taken.
Compliance notice	The steps specified in the compliance notice that the person must take to comply with the National Law or Regulations
	The date by which the steps must be taken
	Information about any steps taken to remedy the subject of the compliance notice and the date on which the steps were taken.
Amendment to approval or certificate	Details of the amendment
	The date on which the amendment took effect
Suspension of approval or certificate (non-voluntary)	The date of the start of the suspension
	The date of the end of the suspension
Cancellation of approval or certificate	The date on which the cancellation took effect

Regulatory authorities do not have powers under the National Law to publish information about the below matters.

Enforcement actions the regulatory authority cannot publish
Infringement notices
Compliance directions
Direction to exclude inappropriate persons from service premises
Notice to suspend education and care by family day care educator
Prohibition notices.

Courts and tribunals typically publish details of their decisions.

The approved provider must keep a record of the service's compliance (see *Operational Requirements – Governance and leadership* for further information).

9.1 TIMING OF PUBLICATION

National Law & Regulations

Sections 191, 193
Regulation 228

Where a person is eligible to apply for an internal or external review of an enforcement action, information may be published after the end of the period for requesting a review, if no request for a review is made. For an internal review, this period is 14 calendar days after the person is notified of the enforcement action or after they become aware of the decision if they are not notified. For an external review, this period is 30 calendar days after the person is notified of the enforcement action or outcome of an internal review.

If an application for internal or external review is made and withdrawn before a decision is made, the regulatory authority may publish the information on or after the day on which the application is withdrawn.

If an application is made for an external review, the regulatory authority may publish the information on or after the day on which the review is decided, if the enforcement action is confirmed or amended or another enforcement action is substituted.

10. POWERS OF REGULATORY AUTHORITIES

10.1 GENERAL POWERS

National Law

Section 261

A regulatory authority has the power to do anything necessary or convenient to carry out its functions under the National Law and Regulations including those set out in the table below.

Powers of regulatory authorities
Collect, hold and use information obtained under the National Law by the regulatory authority or ACECQA about the provision of education and care to children, including information about outcomes for children and information about providers of education and care services
Collect, hold and use information about providers of education and care services, family day care educators, subject to the *Commonwealth Privacy Act 1988*
Maintain and publish registers of approved providers and approved education and care services
Publish information about the National Quality Framework, including ratings and prescribed information about compliance
Collect, waive, reduce, defer and refund fees (including late fee payments) and enter into agreements in relation to fees
Enter into agreements relating to fees and funding with ACECQA
Exercise any other powers conferred on it under the National Law.

10.2 POWER TO OBTAIN INFORMATION, DOCUMENTS AND EVIDENCE BY NOTICE

National Law

Section 215

What is the power?

This power enables the regulatory authority to require a person to provide information, produce documents or appear before the regulatory authority and give evidence.

What can be done using the power?

If a regulatory authority reasonably believes an offence has been committed, it may write to a specified person and require the person to:

- provide any relevant information, within the time and in the matter specified in the notice, and signed by the person (or if the person is not an individual, by a competent officer)

- produce to the regulatory authority (or any person identified in the notice as acting on its behalf) any relevant document set out in the notice
- appear before the regulatory authority (or a person identified in the notice as acting on its behalf), at a specified time and place, to give evidence or produce any relevant document set out in the notice.

A specified person means a person who is or was an approved provider, staff member or volunteer at a service or a family day care educator.

The regulatory authority may require the evidence to be given on oath or affirmation. Evidence may be given by telephone or electronic means, unless the regulatory authority requires, on reasonable grounds, the evidence be given in person.

The notice must warn the person:

- it is an offence to fail or refuse to comply with a notice under section 217
- it is an offence to hinder or obstruct a regulatory authority under section 218
- self-incrimination is not an excuse under section 219.

National Law

Section 219

Self-incrimination not an excuse

Regulatory authorities should be aware that a person is not excused from complying with the notice on the grounds information being provided could incriminate the person.

Information disclosed is not admissible in evidence against the individual in any criminal proceedings (other than as an offence to hinder or obstruct a regulatory authority or provide false or misleading information or documents) or in any civil proceedings. Disclosed information means the answer or information given by an individual to any requests under a power of regulatory authorities to obtain information, documents and evidence by notice or at a service, or any information obtained directly or indirectly because of that answer or information.

Despite this, any information obtained from documents required to be kept under the National Law and Regulations that is produced by a person is admissible in evidence against the person in criminal proceedings under the National Law.

Disclosed information which is not admissible under section 219 may be used to support an alternative action, such as a compliance direction or emergency action notice. It may also be used to support a decision to impose a condition on an approval.

A regulatory authority may also obtain information, documents and evidence by notice as part of an investigation.

10.3 POWER TO OBTAIN INFORMATION, DOCUMENTS AND EVIDENCE AT AN EDUCATION AND CARE SERVICE

National Law

Section 216

What is the power?

This power enables the regulatory authority to require a specified person at an education and care service to supply information if it reasonably suspects an offence against the National Law has been committed.

What can be done using the power?

The regulatory authority may require a specified person to:

- provide the regulatory authority (or a person acting on its behalf) with any specified information relevant to the suspected offence
- produce to the regulatory authority (or a person acting on its behalf) any specified document relevant to the suspected offence.

A specified person means a person who is or was an approved provider, staff member or volunteer at a service, or a family day care educator.

The regulatory authority must warn the person it is an offence to fail or refuse to comply with the requirement, specifically that:

- it is an offence to fail to comply with a notice or requirement
- it is an offence to hinder or obstruct the regulatory authority
- self-incrimination is not an excuse.

The regulatory authority must not require the person to remain at the service more than a reasonable time when providing information or documents.

National Law

Section 219

Self-incrimination not an excuse

Regulatory authority staff should be aware that a person is not excused from complying with a requirement on the grounds information being provided could incriminate the person.

Information disclosed is not admissible in evidence against the individual in any criminal proceedings (other than as an offence to hinder or obstruct a regulatory authority or provide false or misleading information or documents) or in any civil proceedings. Disclosed information means the answer or information given by an individual to any requests under a power of regulatory authorities to obtain information, documents and evidence by notice or at a service, or any information obtained directly or indirectly because of that answer or information.

Despite this, any information obtained from documents required to be kept under the National Law and Regulations that is produced by a person is admissible in evidence against the person in criminal proceedings under the National Law.

Disclosed information which is not admissible under section 219 may be used to support an alternative action, such as a compliance direction or emergency action notice. It may also be used to support a decision to impose a condition on an approval.

When can the power be used?

The regulatory authority must not require a person to remain at the education and care service for more than a reasonable time for the purpose of providing information or producing documents.

10.4 EMERGENCY REMOVAL OF CHILDREN

National Law

Section 189

What is the emergency removal of children?

The power to remove or cause the emergency removal of children enables the regulatory authority to protect children from an immediate danger at an education and care service premises.

What can be done using the power?

If the regulatory authority considers on reasonable grounds there is an immediate danger to the safety or health of a child or children being educated and cared for by a service, it may remove or cause the removal of the child or children from the premises.

Another party (for example, police officers) may assist the regulatory authority to remove a child or children in an emergency, if required. The regulatory authority or person assisting may enter the service premises without a warrant and use reasonable force as necessary.

If a child is removed from a service, the regulatory authority must ensure that the child's parents are immediately notified of the situation and the child's current location.

'Reasonable force as necessary' is not defined in the National Law, but should be taken to mean using no more force than is needed in the circumstances. 'Reasonable force' refers to the broad range of actions that involve a degree of physical contact with another person.

Force is usually used either to control or restrain. It ranges from passively blocking a person (including a child) or guiding them by the arm to safety, through to more extreme circumstances such as restraining a person to prevent violence or injury. In all cases, an authorised officer should endeavour to make sure the use of reasonable force does not result in injury.

When can the power be used?

The power can be exercised at any time children are being educated and cared for by the service.

11. POWERS OF AUTHORISED OFFICERS

11.1 AUTHORISED OFFICERS

National Law

Section 195

Who is an authorised officer?

An authorised officer is a person who has been authorised by the regulatory authority to carry out specific functions under the National Law. Regulatory authorities may authorise anyone who they consider appropriate.

A defect in the authorisation of an authorised officer does not affect the validity of any action taken or decision made by the officer under the National Law.

National Law & Regulations

Section 196
Regulation 187

Identity cards

The regulatory authority must issue each authorised officer an identify card which states:

- the full name of the authorised officer
- that the officer is authorised under section 195 of the National Law
- the date of the officer's authorisation
- the card must be issued by the regulatory authority that authorised the person.

An authorised officer must carry the card whenever he or she is exercising functions under the National Law.

If the identity card does not have a photograph of the authorised officer, the officer must carry another form of photographic identification and a letter authorising the use of the photographic identification from the regulatory authority. The photographic identification and letter must be presented along with the identity card.

The card must be presented before exercising a power of entry and, if requested, during the exercise of any other power under the National Law. The officer is not authorised to exercise the power unless the card is produced when required.

When an officer's authorisation ceases, they must return their identity card to the regulatory authority.

An authorised officer may be prosecuted for failing to carry, show or return the identity card as required. The maximum penalty that may be imposed by a court is $1,000.

11.2 AUTHORISED OFFICER'S POWERS OF ENTRY

National Law

Sections 197, 199, 200, 200A, 201

Authorised officers have powers to enter, inspect and search an education and care service premises or any other business premises to carry out the following:

- assess and monitor the service
- investigate the service
- search for documents and evidence at the principal office or any other business office of the approved provider
- enter any premises without a search warrant to determine if a service is operating without a service approval
- enter any premises with a search warrant, to determine whether a service is operating without a service approval or in contravention of the National Law, or to search for documents and evidence.

Each power of entry has specific requirements that must be met for the entry to be considered lawful. The guidance below provides information about these requirements. Note that some requirements apply to more than one power of entry, such as:

National Law

Section 212

Giving warning

Before requiring a person to answer a question or provide information under the relevant powers of entry, an authorised officer must:

- produce their identity card
- warn the person that a failure to comply with the officer's requirement or to answer the question, without reasonable excuse, is an offence
- in the case of an individual, warn the person about protection against self-incrimination.

This requirement does not prevent an authorised officer from obtaining and using evidence given to the officer voluntarily. This requirement also does not apply to requests made under section 197 (powers of entry for assessing and monitoring approved services).

National Law

Section 211

Protection against self-incrimination

An individual may refuse or fail to give information or do anything that is required under the National Law that may incriminate the individual, except for:

- producing a document or part of a document that is required to be kept under the National Law, or
- giving their name or address when required, or
- doing anything required under sections 215 and 216 (information, documents and evidence required under the powers of regulatory authorities).

Documents or parts of documents produced by an individual, that are required to be kept under the National Law, are not admissible in evidence against the individual in any criminal proceedings (other than under the National Law) or in any civil proceedings. However, information disclosed by an individual may be used to support an alternative action, such as a compliance direction or emergency action notice. It may also be used to support a decision to impose a condition on an approval.

National Law

Section 213

Occupier's consent to entry and search

Where an occupier's written consent to entry and search is required and the occupier provides this, the occupier must be given a copy of the signed consent immediately.

If a written consent is not produced in court, it is presumed the occupier did not consent to the entry and search, until the contrary is proved.

National Law

Section 197

Powers of entry for assessing and monitoring an approved education and care services

What is the power?

An authorised officer may enter any education and care service premises to:

- monitor compliance with the National Law
- conduct a rating assessment of a service
- collect contact details of the parents of all enrolled children due to the suspension or cancellation of a service or provider approval (see *Suspension and Cancellations*).

The authorised officer may enter the premises with any assistants reasonably required.

When considering how many assistants are 'reasonably required', authorised officers should examine whether there is a genuine need. Authorised officers should not bring more assistants than are necessary to perform the functions listed under section 197. Assistants might include a translator to ensure clear communication with educators or police, if there is a risk to the safety of the people involved.

When can the power be used and what consent is required?

An authorised officer may enter the education and care service premises at any reasonable time.

An authorised officer may not enter a family day care residence unless the service is operating at the time of entry or the occupier has given written consent to the entry and inspection.

What can be done using the power?

An authorised officer may enter the service premises and take any of the actions listed below.

Actions the authorised officer may take
Inspect the premises and any plant, equipment, vehicle or other thing
Photograph or film or make audio recordings or sketches of any part of the premises or thing at the premises
Inspect and make copies of, or take extracts from, any document kept at the premises
Take any document or thing from the premises
Ask a person at the premises to answer a question to the best of the person's knowledge, information and belief, or to take reasonable steps to provide information or produce a document.

A document or thing in this context means something that is used or likely to be used in the provision of the education and care service.

If a document or thing is taken away, the authorised officer must tell the person apparently in charge of it or an occupier of the premises. It must then be returned to that person or to the service within seven (7) calendar days.

National Law

Section 198

National Authority representative may enter service premises in company with Regulatory Authority

What is the power?

A representative from the National Authority may enter an approved education and care service with an authorised officer.

When can the power be used?

The National Authority representative, in company with an authorised officer, may enter the premises within the service's usual hours of operation.

What can be done using the power?

The entry is solely for the purpose of informing the National Authority of a regulatory authority's rating assessment processes, to assist the National Authority to promote consistency across jurisdictions.

National Law

Section 199

Powers of entry for investigating approved education and care service

What is the power?

An authorised officer may investigate an approved education and care service if the officer reasonably suspects an offence has been or is being committed against the National Law.

The authorised officer may enter the service premises with any necessary assistants.

When can the power be used and what consent is required?

An authorised officer may enter the education and care service premises at any reasonable time, with or without the consent of the occupier of the premises.

An authorised officer may not enter a family day care residence unless:

- the authorised officer reasonably believes that a service is operating at that time, or
- the register of family day care educators indicate that the service is operating at that time, or
- the occupier of the residence has consented in writing to the entry and inspection.

A 'reasonable belief' that an education and care service is operating might include hearing or seeing signs that children are present.

What can be done using the power?

An authorised officer may enter the service premises and take any of the actions listed below.

Actions the authorised officer may take
Search any part of the premises
Inspect, measure, test or record any part of the premises or anything at the premises
Take a thing or a sample of a thing for analysis, measurement or testing
Copy or take an extract from a document at the premises
Bring any person, equipment and materials the authorised officer reasonably requires for exercising this power
Require information from the occupier of the premises, or any person present, to help with the investigation.

A document or thing in this context means something that is used or likely to be used in the provision of the education and care service.

A regulatory authority may also choose to exercise its power to obtain information, documents and evidence by notice as part of an investigation. See *Powers of regulatory authorities* for more information.

National Law

Section 200

Powers of entry to business premises

What is the power?

An authorised officer may enter the principal office or any other business office of the approved provider if they reasonably suspect it holds documents or other evidence that are relevant to a possible offence against the National Law.

When can the power be used and what consent is required?

The authorised officer must not enter and search the premises without consent from the occupier.

Before obtaining the occupier's consent, the authorised officer must:

- present their identity card
- inform the occupier of the purpose of the search and the powers that may be exercised
- inform the occupier that they may refuse to give consent to:
  - the entry and search or the taking of anything
  - the taking of any copy or extract of any documents.

What can be done using the power?

If the occupier consents, the authorised officer may enter the premises and take any of the actions listed below.

Actions the authorised officer may take
Search any part of the premises
Inspect, measure, test or record any part of the premises or anything at the premises
Take a thing or a sample of a thing for analysis, measurement or testing
Copy or take an extract from a document at the premises
Bring any person, equipment and materials the authorised officer reasonably requires for exercising this power
Require information from the occupier of the premises, or any person present, to help with the investigation.

National Law

Section 200A

Entry to premises without a search warrant

What is the power?

An authorised officer may enter any premises (including residential or business premises) to determine whether an education or care service is operating without a service approval, if:

- the authorised officer reasonably believes a person is operating a service in contravention of section 103 at the premises, and
- the occupier of the premises has consented in writing to the entry and inspection.

When can the power be used and what consent is required?

The authorised officer must not enter and search the premises without written consent from the occupier.

Before obtaining the occupier's consent, the authorised officer must:

- present their identity card
- inform the occupier of the purpose of the search and the powers that may be exercised
- inform the occupier that they may refuse to give consent to:
  - the entry and search or the taking of anything
  - the taking of any copy or extract of any documents.

What can be done using the power?

If the occupier consents, the authorised officer may enter the premises and take any of the actions listed below (see clause 5(2)(a) to (e) of Schedule 2 of the National Law).

Actions the authorised officer may take
Search any part of the premises
Inspect, measure, test or record any part of the premises or anything at the premises
Take a thing or a sample of a thing for analysis, measurement or testing
Copy or take an extract from a document at the premises
Bring any person, equipment and materials the authorised officer reasonably requires for exercising this power.

Entry to premises with a search warrant

National Law
Section 201

What is the power?

An authorised officer may enter any education and care service premises with a search warrant, if they reasonably believe that:

- a person is operating an education and care service from the premises without service approval (see section 103 of the National Law)
- an approved education and care service is operating from the premises in contravention of the National Law.

An authorised officer may also enter the principal office or any other business office of the approved provider, if they reasonably believe that the premises holds documents or other evidence relevant to a possible offence against the National Law.

When can the power be used and what consent is required?

An authorised officer must obtain a search warrant before entering the premises.

National Law

Clause 1, Schedule 2

Applying for a warrant

An authorised officer may apply to a magistrate for a search warrant if they reasonably believe that:

- a person is or has been operating a service at the premises in breach of the National Law, or
- documents or other evidence relevant to a possible offence against the National Law are on the premises.

The authorised officer must prepare a sworn, written application that sets out the grounds on which the warrant is sought. The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires, and in the manner specified.

In urgent or special circumstances (for example, remote location), an authorised officer may apply for a warrant electronically by phone, fax, email, radio, video conferencing or another form of communication. The application can be made after the authorised officer prepares the written application and before it is sworn.

An authorised officer should refer to their regulatory authority's internal guidelines or protocols for information about when the regulatory authority will consent to the authorised officer seeking a warrant.

National Law

Clause 2, Schedule 2

Receiving the warrant

The magistrate may issue the warrant only if they reasonably believe that the grounds for applying for a warrant (set out above) are met.

The warrant must state:

- the named authorised officer may, with necessary and reasonable help and force, enter the premises and any other premises necessary for entry, and exercise the officer's powers under the warrant
- the matter for which the warrant is sought
- the evidence that may be seized
- the hours when the premises may be entered
- the end date of the warrant (within 14 days of issue).

National Law

Clause 3, Schedule 2

Where an application was made electronically, the magistrate may issue the warrant if they are satisfied that it was necessary to apply electronically, and the application was appropriate.

If the warrant is issued, the magistrate must immediately give a copy of the warrant to the authorised officer, where reasonably possible (for example, sending by email or fax). If this is not possible, the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant. The authorised officer must complete a form of warrant containing the magistrate's name, the date and time of issue, and other terms of the warrant. In either case, this warrant is referred to as a duplicate warrant and can be used the same way as an original warrant.

If the authorised officer completed a form of warrant, they must send the written application for the warrant and the form of warrant to the magistrate at the first reasonable opportunity. The magistrate must file these documents along with the original warrant.

If there is an issue about whether an exercise of power was authorised by the duplicate warrant and the original warrant is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the exercise of power to prove that it was authorised.

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In Western Australia, a Justice of the Peace may also exercise the powers of a magistrate when issuing a search warrant.

Before entering the premises

National Law

Clause 4, Schedule 2

Before entering the premises with a warrant, an authorised officer must or make a reasonable attempt to:

- show their identity card to an occupier of the premises
- give the person a copy of the warrant
- tell the person the authorised officer is permitted by the warrant to enter the premises
- give the person an opportunity to allow immediate entry without the officer using force.

The authorised officer does not need to follow this procedure if they reasonably believe that immediate entry is necessary to ensure effective execution of the warrant.

What can be done using the power?

National Law

Clause 5, Schedule 2

An authorised officer entering the premises with a search warrant may take any of the actions listed below.

Actions the authorised officer may take
Search any part of the premises
Inspect, measure, test or record any part of the premises or anything at the premises
Take a thing or a sample of a thing for analysis, measurement or testing
Copy or take an extract from a document at the premises
Bring any person, equipment and materials the authorised officer reasonably requires for exercising this power
Require information or reasonable help from the occupier of the premises, or any person present, to help with the investigation.

Seized items

National Law

Section 202

If an authorised officer has taken an item under the powers of entry for investigating approved education and care services, entering business premises or entering premises with or without a search warrant (sections 199, 200, 200A, 201), they must take reasonable steps to return the item if there is no reason to retain it.

While an authorised officer holds a seized item, they must provide the owner of the item with reasonable access while it is being held.

If the seized item is not returned within 60 calendar days, the authorised officer must take reasonable steps to return it unless:

- proceedings (including any appeal) have commenced within the 60 day period

and are not completed, or

- a court order states that the item can be retained.

National Law

Section 203

An authorised officer may apply to a court within 60 calendar days of seizing an item, to request permission to hold the item for an extended period. The court may extend the period if it considers it necessary:

- for an investigation into whether an offence has been committed, or
- to allow evidence of an offence to be obtained for a prosecution.

The court may adjourn an application for extension to enable notice of the application to be given to any person.

An authorised officer may apply to a court within a period of extension to request permission to hold the item for a further extended period.

Summary table – Powers of entry

This table is a brief overview of the powers of entry available to authorised officers.

Power of entry	Purpose of entry	When can the power be used?	Occupier's consent required?
Section 197 Powers of entry for assessing and monitoring approved education and care service	Enter service premises to: • assess and monitor the service • collect contact details of parents of enrolled children	Centre-based: At any reasonable time FDC: Service is operating at time of entry or occupier has given written consent	Centre-based: No FDC: Written consent required if service is not operating at time of entry
Section 198 National Authority representative may enter service premises in company with Regulatory Authority	Inform ACECQA of a regulatory authority's rating assessment processes	Within the service's usual hours of operation	No
Section 199 Powers of entry for investigating approved education and care service	Enter service premises to investigate the service if reasonably suspect commission of offence	Centre-based: At any reasonable time FDC: Service is operating at time of entry (either reasonable belief or indicated in register of FDC educators), or occupier has given written consent	Centre-based: With or without consent FDC: Written consent required if service is not operating at time of entry

Power of entry	Purpose of entry	When can the power be used?	Occupier's consent required?
Section 200 Powers of entry to business premises	Search for documents and evidence reasonably suspected to be held at the principal office or any other business office of the approved provider that are relevant to possible offence	Must follow disclosure procedures (see section 200) and obtain consent before entering	Yes
Section 200A Entry to premises without a search warrant	Enter any premises (including residential or business) to investigate reasonable belief that a service is operating without a service approval	Must follow disclosure procedures (see section 200A) and obtain written consent before entering	Yes, written consent

Power of entry	Purpose of entry	When can the power be used?	Occupier's consent required?
Section 201 Entry to premises with a search warrant	Enter service premises to investigate reasonable belief that the service is operating without a service approval or in contravention of the National Law (at the service premises) Search for documents and evidence reasonably believed to be held at the principal office or other business office of approved provider that are relevant to possible offence	Must obtain search warrant and follow disclosure procedures before entering (see Clause 4, Schedule 2), unless reasonably believe that immediate entry is necessary	No

11.3 AUTHORISED OFFICER'S POWERS TO OBTAIN INFORMATION

Authorised officers have powers to obtain the following types of information:

- a person's name and address in relation to offences or suspected offences against the National Law (section 204)
- evidence of a person's age, name and address to check if minimum age requirements are met (section 205)
- information, documents and evidence for monitoring compliance, a rating assessment, or notifying parents of children enrolled at a service about the suspension or cancellation of a service or provider approval (section 206).

Each power to obtain information has specific requirements that must be met for the exercise of power to be considered lawful. The guidance below provides information about these requirements. Note that some requirements apply commonly across the powers, such as:

National Law

Section 212

Giving warning

Before requiring a person to answer a question or provide information under these powers, an authorised officer must:

- produce their identity card
- warn the person that a failure to comply with the officer's requirement or to answer the question, without reasonable excuse, is an offence
- in the case of an individual, warn the person about protection against self-incrimination.

This requirement does not prevent an authorised officer from obtaining and using evidence given to the officer voluntarily.

National Law

Section 211

Protection against self-incrimination

An individual may refuse or fail to give information or do anything that is required under the National Law that may incriminate the individual, except for:

- producing a document or part of a document that is required to be kept under the National Law, or
- giving their name or address when required, or
- doing anything required under sections 215 and 216 (information, documents and evidence required under the powers of regulatory authorities).

Documents or parts of documents produced by an individual, that are required to be kept under the National Law, are not admissible in evidence against the individual in any criminal proceedings (other than under the National Law) or in any civil proceedings. However, information disclosed by an individual may be used to support an alternative action, such as a compliance direction or emergency action notice. It may also be used to support a decision to impose a condition on an approval.

Power to require name and address

National Law

Section 204

An authorised officer may require a person to state their name and residential address if the authorised officer:

- finds a person committing an offence against the National Law
- finds a person in circumstances that lead the officer to reasonably suspect the person is committing or has committed an offence against the National Law
- has information that leads the officer to reasonably suspect the person is committing or has committed an offence against the National Law.

If the authorised officer reasonably suspects the person gave a false name or residential address, the officer may require evidence of the name or address.

Evidence of a person's name could include a driver's licence, birth certificate, change of name certificate, bank card or passport.

Evidence of a person's residential address could include a driver's licence, utility bill, or a lease agreement or contract of sale for a residential property.

Power to require evidence of age, name and address of person

National Law
Section 205

If an authorised officer reasonably suspects that a staff member, family day care educator or a volunteer employed or engaged at a service is not of the minimum age required by the National Regulations, the authorised officer may require the person to:

- state their correct date of birth
- provide evidence of their date of birth either immediately (if, in the circumstances, it would be reasonable to expect the person to have evidence of their date of birth) or within 14 calendar days
- state their name and residential address if the person refuses to, or is unable to, state their correct date of birth or provide evidence of their date of birth, or if the person is not of the required minimum age.

Evidence of a person's date of birth could include a birth certificate, driver's licence or passport.

Power of authorised officers to obtain information, documents and evidence

National Law
Section 206

An authorised officer may write to a specified person to request that they provide relevant information in the manner requested and in writing, signed by the person or a competent officer of that person (if the person is not an individual).

The officer may exercise this power for:

- monitoring compliance with the National Law
- a rating assessment of a service
- collecting contact details of the parents of all enrolled children due to a suspension or cancellation of a service or provider approval (see *Suspensions and Cancellations*).

The person must be given at least 14 calendar days to respond to the request.

A specified person means a person who is or was an approved provider, nominated supervisor, staff member or volunteer at an approved education and care service, or a family day care educator.

12. CONDUCTING AN INVESTIGATION

What is an investigation?

An investigation is a formal and systematic inquiry to establish facts about an incident, complaint or alleged non-compliance by collecting, documenting, examining and evaluating evidence. An investigation is not an end in itself. Throughout an investigation, the investigator should keep an open mind about the possible outcomes of the investigation, such as education, compliance action, or a decision not to pursue the matter. The regulatory authority must ensure the safety, health and wellbeing of all children at the service. This may mean addressing immediate risks before the investigation has been completed.

The investigator must remain impartial throughout the investigation.

The investigator should also be mindful of the best practice regulation principles outlined in the section on good decision-making when conducting the investigation.

When to investigate

An investigation may be initiated where there is reason to believe that an offence against the National Law has been or is being committed.

A regulatory authority may decide to investigate an issue after receiving a notification of a serious incident, a complaint, or becoming aware of potential or apparent contravention. An investigation might also be initiated if a pattern of non-compliance across a particular group of services or roles in a service leads a regulatory authority to suspect an offence may have been, or is being, committed. The potential or apparent contravention may be identified during an assessment and rating or monitoring visit to a service or through other intelligence.

For information on conducting monitoring activities, see *Monitoring, Compliance and Enforcement – Monitoring*. For information about receiving and responding to complaints, see *Monitoring, Compliance and Enforcement – Complaints*.

Power to investigate

Regulatory authorities can investigate incidents and alleged contraventions of the National Law and Regulations, using the powers of regulatory authorities and authorised officers detailed in the National Law. The term 'investigator' is used in this guide to refer to a person with the appropriate powers given to them in the National Law or through delegation. See *Monitoring, Compliance and Enforcement – Powers of regulatory authorities* and *Monitoring, Compliance and Enforcement – Powers of authorised officers*.

Where a regulatory authority becomes aware of potential or apparent contravention of a different law, the relevant authority should be contacted. The disclosure of information to other authorities is permitted in particular circumstances by section 271 of the National Law.

See *Operational Requirements – Other regulatory frameworks*.

The role of the investigator

The role of the investigator is to:

- define the focus and scope of the investigation
- collect evidence
- establish and document the facts
- prepare a report on the findings.

An investigator should always ensure they have the necessary delegation to use the powers given to them under the National Law to conduct an investigation. Authorised officers may exercise their specific powers under the National Law, while other powers are given to the regulatory authority. See ***Monitoring, Compliance and Enforcement – Powers of regulatory authorities*** and ***Monitoring, Compliance and Enforcement – Powers of authorised officers*** for more information.

Collaboration with other agencies

At times more than one regulatory agency will be involved in investigating an issue. This could include the police, child protection, environmental protection, or a regulatory authority from another jurisdiction. If another agency is involved, the regulatory authority should identify the appropriate channels of communication with the agency as soon as possible. This is likely to be through senior management and must be in accordance with any protocols in place. Agencies should exchange information about their investigative and compliance powers and the direction and scope of their investigations to get the best outcome by avoiding overlap and identifying any gaps. An investigation conducted by the approved provider in question does not relieve the regulatory authority of its power to investigate a potential non-compliance.

Regulatory authorities should be mindful that while they can share information with other agencies, the extent to which they can share some information gathered in an investigation can be restricted by the National Law (see Part 13 of the National Law).

The regulatory authority should liaise closely with the other agency to avoid taking any action that jeopardises the other agency's investigation. This is particularly important when a police investigation is being carried out. In some circumstances, a regulatory authority might consider deferring its investigation while another agency is investigating.

Communicating with children, families, and educators

Children, families and educators cannot always be made aware of the details and particulars of the notification that prompted the investigation, however, if possible the regulatory authority should help those affected to understand why an investigation is occurring and how this might impact on the education and care of children attending the service. The regulatory authority may detail the potential outcomes of the investigation including the possibility that the investigation may find no evidence to support a contravention. The investigator must remain impartial about the outcomes of the investigation.

The regulatory authority must consider confidentiality requirements in meeting the needs of children, families and educators for information about the investigation. It can be helpful to nominate a specific contact person who can address any questions or concerns.

Where the subject of an investigation has caused distress or anger, the regulatory authority might consider additional resources to support people who are affected. For example, taking along assistants, as permitted by section 199 of the National Law (see ***Powers of entry for investigating approved education and care service***), or providing details for counselling services.

Record keeping

The investigator must thoroughly and objectively document the investigation, mindful that it may need to be used to support a future compliance action, including prosecution. Investigators should take thorough notes of phone calls, discussions and observations related to the investigation. Records should indicate the date, time and author. Calls and discussions held at the office should also be noted on a running sheet.

The running sheet is a chronological list that records the actions and tasks completed as part of the investigation along with details such as date, time, responsible person and comments. Running sheets give a clear overview of the investigation and may be helpful for reviews or as a reference when giving evidence in court.

See ***Good Regulatory Practice*** for information on keeping records of investigations and decisions. The *State Records Act 1998* (NSW) applies to all jurisdictions for the purposes of the National Law and Regulations except to the extent that the National Law applies to a regulatory authority and the records of a regulatory authority (section 265).

Planning an investigation

Planning an investigation is essential to ensure that:

- the focus or reason for the investigation is clearly identified
- the investigation addresses any immediate and ongoing risks to children being educated and cared for at the service
- the investigation is carried out methodically and professionally
- resources are used effectively
- appropriate sources of evidence are identified and opportunities for people to remove, destroy or alter evidence are minimised.

When planning an investigation, the investigator should remember the aim of the investigation is to establish facts, and consider the below matters.

Considerations when planning an investigation
Any perceived or real conflicts of interest
Allegations that have been made
Possible sources of information and evidence
The investigation timeframe
Any cultural sensitivities or special needs and what resources are needed to address these
Any other regulatory bodies involved
Resources required, including staff (both on the visit and in the office for immediate inquiries), cameras, travel, laptops, printers, scanners, specialist consultants
Communication protocols between teams, particularly if multiple visits are conducted simultaneously.

Closing an investigation

Once an investigation has concluded, the investigator should compile a report that details the findings of the investigation. Regulatory authorities should be mindful of the good decision-making principles set out in *Good Regulatory Practice* when making a decision on what action, if any, to take as a result of the investigation. Investigators should close the investigation in the National Quality Agenda IT System.

The investigator might recommend a particular course of action in the report, however in most cases, it is good practice for a person other than the investigator to decide what, if any, action should be taken as a result of the investigation. Appropriate action may be compliance focused or it may be educative. In some cases, the regulatory authority might notify the parties to the investigation, including families, of the outcome, where appropriate and within the confidentiality requirements of the National Law. Compliance actions and prosecutions must be initiated by the relevant delegate.

12.1 GATHERING EVIDENCE

What is evidence?

Evidence is gathered to establish facts which prove or disprove whether an offence has been committed. The manner in which the evidence is gathered is important and evidence to be relied upon for an enforcement action must be sufficient to prove each and every element of the alleged offence or breach. In an investigation, the main sources of evidence are:

- oral evidence (recollections) including witness statements
- documentary evidence (records)
- real evidence (physical evidence or objects)
- expert evidence (technical advice)

- site inspection and the resulting investigator statements, video or photographs.

In some circumstances, one piece of evidence might be enough to prove a fact. However it is best to collect supporting evidence where possible. Evidence may be either direct or circumstantial. Direct evidence establishes a fact directly, for example a confession statement or security footage of a person contravening the law. Circumstantial evidence may lead an investigator to deduce a particular fact, for instance forensic evidence that indicates a person was present in a particular location.

Characteristics of evidence	
Authentic	The evidence is factual and real
Valid	The evidence is relevant to the facts it is used to prove
Reliable	The evidence is trustworthy and may be supported by other evidence
Current	The evidence is relevant to the time period in question

When collecting evidence for legal proceedings, it is particularly important to ensure that it is gathered correctly so it can be used in court. Investigators should seek advice from the relevant area of the regulatory authority about satisfying the rules of evidence in their jurisdiction. It is also important any evidence seized or copied is kept in a secure location with a clear process that will ensure continuity and eliminate any claims of misconduct.

Records of the recovery, storage and movement of evidence should be kept.

Standard of proof

The standard of proof is the amount and type of evidence that is required to prove something. In some jurisdictions, it is best practice to always operate at a standard of proof of beyond reasonable doubt. If unsure of the applicable standard of proof, seek advice from the regulatory authority's legal team, or equivalent.

Depending on the purpose of the investigation then there may be different standards of proof. For civil prosecutions, the evidence will need to show that on 'the balance of probabilities' something occurred. However, for criminal prosecutions, the proof must be 'beyond reasonable doubt'.

Conducting interviews

In some circumstances, people involved in an incident, including witnesses to an incident, may need to be interviewed as part of the investigation. People being interviewed should be informed of the investigation, any confidentiality requirements and that they may be asked to give evidence in person at a later point. Different requirements apply when interviewing persons of interest, including the giving of a warning under section 212 of the National Law.

If unsure, seek advice from the regulatory authority's legal team, or equivalent. The investigator may take a written witness statement to record facts established in an interview.

A statement should set out the relevant facts in chronological order. Statements should be specific, detailed and accurate. The statement should set out:

- where the incident occurred
- when the incident occurred
- who was present
- what the person observed.

If possible, the statement should specify the exact words that were used. If the person does not remember the exact wording, the statement should make this clear, for example 'she said words to the effect of'. Where a person provides an opinion, the statement should include the reason that the person formed that opinion. The statement should reflect the person's account of the incident, rather than conclusions drawn by the investigator.

Using photographs or film

An authorised officer may photograph or film at an education and care service or business premises when exercising their powers under sections 197 (powers of entry for assessing and monitoring approved education and care service), 199 (powers of entry for investigating approved education and care service), and 200 (powers of entry to business premises). When entering business premises that are not an education and care service premises, an authorised officer must have consent from the occupier of the premises to take photographs or film.

Using photographs or film as evidence

The regulatory authority may sometimes need to take photographs or film when investigating a service, including possible contravention of the National Law or Regulations or circumstances surrounding a serious incident. For instance, if a provider has failed to maintain fixtures at the service premises and there is a risk to children's safety, the authorised officer might photograph the fixture. The images may be used as evidence to support a compliance action, or to support a prosecution if the contravention is serious.

State or territory based legislation may include requirements for the collection and storage of photos or film to be used as evidence for a prosecution. Other jurisdictional or national legislation may also apply to the use and storage of photographs and film of children, such as privacy, child protection and copyright legislation and criminal codes. Regulatory authority staff should consult their legal team as required about relevant legislation and the proper collection and maintenance of photos and film to be used as evidence. For information on privacy, 'Information Sheet 1 (Public Sector) on Information Privacy Principles' is available on the Office of the Australian Information Commissioner website: www.oaic.gov.au.

The regulatory authority may also be required to show continuity of custody for photographs or film used as evidence for court proceedings. For instance, if photos are taken on a digital camera and stored electronically, the regulatory authority may be required to provide a record of who has accessed the file. It might also need to demonstrate it has measures in place to ensure a reliable framework for storing digital records, including:

- policies and procedures to guide digitisation processes

- training programs and support for staff about collecting and storing photos and film
- documented security controls for digital images
- documented monitoring and review mechanisms.

In general, where a photograph or film is taken, it is recommended that a minimum of three photographs are taken or 'aspects' covered:

- a close up of any identifying features
- a close up to show the whole subject
- a wide shot to show the context.

An authorised officer should record in their notebook any photos taken as part of monitoring and compliance activities. This should include details of the direction the camera is facing, a brief description of the image, the time and the photographer's name.

As soon as practicable after taking the photograph or recording the film, an authorised officer should upload the photographs or film from the device onto a computer belonging to the regulatory authority and follow relevant labelling conventions. For video recordings, an authorised officer should record the date, time and location verbally as part of the audio recording, and log the video in their notebook.

Photographs or film should only be recorded on a camera (or other device) belonging to the regulatory authority, rather than a privately-owned camera, mobile phone or other device.

Photographing or filming children

An authorised officer should avoid taking photographs or film of children unnecessarily in the exercise of their powers. When deciding whether to take photographs or film of children in the exercise of their powers, an authorised officer should consider if evidence could be gathered effectively without taking photographs or filming children, for example, by moving children out of the frame, or by using another means of recording the information.

An authorised officer should explain to any person who is or appears to be concerned about the photographing or filming of children that they are only taken and used for purposes directly related to the regulatory authority's function, which is to monitor education and care services.

They should also advise the person that the regulatory authority is bound by the Information Privacy Principles set out in the *Commonwealth Privacy Act 1988*.

Disruption to the service program should be minimised.

Wherever possible, an authorised officer should avoid taking photographs of children:

- in toileting areas
- in nappy changing areas
- when they are in any state of undress or exposure.

OFFENCES

13. OFFENCES RELATING TO ENFORCEMENT

Offence to obstruct an authorised officer

National Law

Section 207

A person must not obstruct an authorised officer in exercising powers under the National Law and Regulations.

The regulatory authority may seek to prosecute a person for obstructing an authorised officer. The maximum penalty which may be imposed by a court is $8,000, in the case of an individual; $40,000 in any other case.

Offence to fail to assist an authorised officer

National Law

Section 208

A person must not, without reasonable excuse:

- refuse to answer a question asked lawfully by an authorised officer
- refuse to provide information or produce a document lawfully required by an authorised officer
- fail to comply with a request made by an authorised officer entering premises under a warrant to:
  - require the occupier of the premises or any person present to help with the investigation
  - require the occupier of the premises or any person present to give information to help the investigation.

The regulatory authority may seek to prosecute a person for failing to assist an authorised officer. The maximum penalty which may be imposed by a court is $8,000, in the case of an individual; $40,000 in any other case.

Offence to destroy or damage notices or documents

National Law

Section 209

A person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept under the National Law.

The regulatory authority may seek to prosecute for destroying or damaging notices or documents under the National Law. The maximum penalty which may be imposed by a court is $8,000, in the case of an individual; $40,000 in any other case.

Offence to impersonate authorised officer

National Law

Section 210

A person must not impersonate an authorised officer.

The regulatory authority may seek to prosecute a person for impersonating an authorised officer. The maximum penalty which may be imposed by a court is $8,000.

Offence to fail to comply with notice or requirement

National Law

Section 217

A person must not refuse or fail to comply with a requirement under the power of regulatory authorities to obtain information, documents and evidence by notice or at a service, to the extent that the person is capable of complying with the requirement.

The regulatory authority may seek to prosecute a person for refusing or failing to comply with a notice or requirement. The maximum penalty which may be imposed by a court is $8,000, in the case of an individual; $40,000 in any other case.

Offence to hinder or obstruct regulatory authority

National Law

Section 218

A person must not hinder or obstruct the regulatory authority in exercising a power to obtain information, documents and evidence by notice or at a service.

The regulatory authority may seek to prosecute a person for hindering or obstructing a regulatory authority. The maximum penalty which may be imposed by a court is $8,000, in the case of an individual; $40,000 in any other case.

False or misleading information or documents

National Law

Section 295

A person must not give the regulatory authority or authorised officer any information or document that the person knows is false or misleading unless, when giving the document, the person:

- informs the regulatory authority or authorised officer how the document is false or misleading, to the best of their ability
- gives the correct information to the regulatory authority or authorised officer, if the person has or can reasonably get the correct information.

The regulatory authority may seek to prosecute for providing false or misleading information or documents. The maximum penalty which may be imposed by a court is $6,000, in the case of an individual; $30,000 in any other case.

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	✓				
Provide a family day care service from a place that is not a residence or approved venue, unless otherwise permitted	Section 103A	✓				
Advertise a service without service approval	Section 104	✓				
Operate a service without nominated supervisor	Section 161	✓				
Fail to ensure nominated supervisor meets prescribed minimum requirements	Section 161A	✓				
Operate a service without responsible person present (centre-based service only)	Section 162	✓				
Fail to employ or engage the prescribed minimum number of co-ordinators (family day care service only – see *Staffing Arrangements* in *Operational Requirements*)	Section 163	✓				
Fail to provide support to family day care educators	Section 164	✓				
Education and care at a family day care service not to be provided by person other than a family day care educator, except as prescribed in regulation	Section 164A	✓				
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	✓	✓	✓		

Offence	Reference	Approved provider	Nominated supervisor	Family day care educator	Staff member	Infringement notices
Fail to comply with direction to exclude inappropriate person	Section 171	✓	✓	✓		
Fail to display prescribed information	Section 172	✓				✓
Fail to notify circumstances to the regulatory authority	Section 173	✓				✓
Fail to notify information to the regulatory authority	Section 174	✓				
Fail to notify information to the approved provider (family day care educator)	Section 174A			✓		
Fail to keep enrolment and other documents	Section 175	✓		✓		
Compliance directions	Section 176	✓				✓
Engage person to whom prohibition notice applies	Section 188	✓				
False or misleading information about prohibition notice	Section 188A	Any or all persons				
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				
Register of family day care educators	Section 269	✓				

ATTACHMENT B – SUMMARY OF OFFENCES UNDER THE NATIONAL REGULATIONS

Offence	Approved provider	Nominated supervisor	Family day care educator	Infringement notice	Compliance direction	Maximum penalty
Quality Improvement Plans (Regulation 55)	✓				✓	
Offences in relation to giving false or misleading statements about ratings (Regulation 72)	✓				✓	$2,000
Location of principal office of a family day care service (72A)	✓					$2,000
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)	✓	✓	✓	✓	✓	$2,000
Access to safe drinking water and regular food and beverages (Regulation 78)	✓	✓	✓		✓	$2,000
Service providing food and beverages (Regulation 79)	✓	✓	✓		✓	$2,000
Weekly menu (Regulation 80)	✓	✓	✓	✓	✓	$1,000
Sleep and rest (Regulation 81)	✓	✓	✓		✓	$1,000
Tobacco, drug and alcohol free environment (Regulation 82)	✓		✓		✓	$2,000
Staff members not to be affected by alcohol or drugs (Regulation 83)	✓	✓	✓	✓	✓	$2,000
Awareness of child protection law (Regulation 84)	✓				✓	$1,000
Notification to parents of incident, injury, trauma and illness (Regulation 86)	✓			✓		$2,000

Offence	Approved provider	Nominated supervisor	Family day care educator	Infringement notice	Compliance direction	Maximum penalty
Infectious diseases (Regulation 88)	✓			✓		$2,000
First aid kits (Regulation 89)	✓		✓	✓	✓	$2,000
Medical conditions policy to be provided to parents (Regulation 91)	✓				✓	
Administration of medication (Regulation 93)	✓	✓	✓			$2,000
Emergency and evacuation procedures (Regulation 97)	✓			✓	✓	$2,000
Telephone or other communication equipment (Regulation 98)	✓			✓	✓	$1,000
Children leaving the education and care service premises (Regulation 99)	✓	✓	✓			$2,000
Risk assessment must be conducted before excursion (Regulation 100)	✓	✓	✓			$2,000
Authorisation for excursions (Regulation 102)	✓	✓	✓			$1,000
Premises, furniture and equipment to be safe, clean and in good repair (Regulation 103)	✓				✓	$2,000
Fencing and security (Regulation 104)	✓			✓	✓	$2,000
Access to sufficient furniture, materials and developmentally appropriate equipment (Regulation 105)	✓				✓	
Laundry and hygiene facilities (Regulation 106)	✓				✓	
Space requirements – indoors (Regulation 107)	✓				✓	$2,000
Space requirements – outdoor space (Regulation 108)	✓				✓	$2,000
Ventilation and natural light (Regulation 110)	✓				✓	$2,000
Administrative space (Regulation 111)	✓				✓	
Nappy change facilities (Regulation 112)	✓			✓	✓	$1,000
Outdoor space – natural environment (Regulation 113)	✓				✓	
Outdoor space – shade (Regulation 114)	✓				✓	$1,000
Premises designed to facilitate supervision (Regulation 115)	✓				✓	
Assessments of family day care residences and approved venues (Regulation 116)	✓				✓	$2,000
Glass (Regulation 117)	✓				✓	
Educational leader (Regulation 118)	✓				✓	
Family day care educator to be at least 18 years old (Regulation 119)	✓				✓	$1,000

Offence	Approved provider	Nominated supervisor	Family day care educator	Infringement notice	Compliance direction	Maximum penalty
Educators who are under 18 to be supervised (Regulation 120)	✓				✓	$1,000
Minimum requirements for a family day care educator (regulation 143A)	✓					$2,000
Ongoing management of family day care educators (Regulation 143B)	✓					$2,000
Relationships in groups (Regulation 156)	✓				✓	
Access for parents (Regulation 157)	✓	✓	✓		✓	$1,000
Residents at family day care residence and family day care educator assistants to be fit and proper persons (Regulation 163)	✓				✓	$2,000
Requirement for notice of new persons at residence (Regulation 164)	✓				✓	$2,000
Children not to be alone with visitors (Regulation 166)	✓		✓			$2,000
Policies and procedures in place (Regulation 168)	✓				✓	$1,000
Additional policies and procedures for family day care (Regulation 169)	✓				✓	$1,000
Policies and procedures to be followed (Regulation 170)	✓				✓	$1,000
Policies and procedures to be available (Regulation 171)	✓				✓	$1,000
Notification of change to policies and procedures (Regulation 172)	✓				✓	
Prescribed enrolment and other documents to be kept by approved provider (Regulation 177)	✓			✓	✓	$2,000
Prescribed enrolment and other records to be kept by family day care educator (Regulation 178)			✓	✓		$2,000
Confidentiality of records kept by approved provider (Regulation 181)	✓					$2,000
Confidentiality of records kept by family day care educator (Regulation 182)			✓			$2,000
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					$1,000
False or misleading documents (Regulation 191)	Applies to an authorised officer					$2,000

14. COMPLAINTS

14.1 COMPLAINTS TO THE REGULATORY AUTHORITY

National Law

Section 260

Regulatory authorities are responsible for investigating complaints that have come directly to them about approved providers and services. A complaint is a communication stating something about a provider or service is unacceptable or unsatisfactory.

Regulatory authorities may receive complaints from:

- a parent, authorised nominee or child
- a staff member or volunteer at an education and care service
- a nominated supervisor
- another person.

A person may not expressly state that they are making a complaint.

Complaints may be made in a variety of ways, such as email, mail, fax and phone or in person.

Regulatory authorities should only accept complaints about centre-based services if the service is operating in their jurisdiction. When a complaint is about a family day care educator, the regulatory authority should liaise with the relevant regulatory authority where the educator's service is located.

If a complaint should have been directed to another jurisdiction, the regulatory authority should immediately notify the approved provider or redirect the complaint, or both.

Regulatory authorities will receive notifications about certain complaints received by approved providers, as required by section 174 of the National Law (see ***Operational Requirements – Governance and leadership*** for more information about notifications).

Other internal departmental policy or protocols may be in place for responding to complaints.

See the Australian Standards on complaints handling or the Commonwealth Ombudsman's *Better Practice Guide to Complaint Handling* at www.ombudsman.gov.au for more detailed guidance.

Referring a complaint to the approved provider

Where a complaint (and any relevant background information) does not indicate a real and serious or immediate risk to the safety, health or wellbeing of a child or children, the regulatory authority may refer the complaint to the approved provider.

This is most likely to be appropriate for low risk complaints that have been directed to the regulatory authority in the first instance and the approved provider has not yet had an opportunity to try and resolve the issue.

Where this occurs, the regulatory authority should advise the complainant of the intended process and advise that they may contact the regulatory authority again if they are not satisfied with the provider's response.

An approved provider's response to a complaint can be examined during a monitoring visit, and at an assessment and rating visit when looking at Quality Area 7 of the National Quality Standard. An approved provider must have policies and procedures about dealing with complaints and must ensure they are followed (regulations 168, 170). This applies to complaints received directly from parents or other people, and those referred to the approved provider by the regulatory authority (see *Operational Requirements – Governance and leadership*).

14.2 ONCE A COMPLAINT HAS BEEN RECEIVED

Once a complaint has been received, the regulatory authority will generally conduct a risk assessment to determine the appropriate response.

Regulatory authorities may have their own guidance or framework for managing complaints.

Risk assessment

When conducting a risk assessment in response to a complaint about an education and care service or approved provider, a key thing to consider is the nature of the complaint itself. For example, whether the subject of the complaint suggests a real and serious or immediate risk to the health, safety and wellbeing of a child or children and whether it alleges that the safety, health or wellbeing of a child or children may have been compromised or there may have been a contravention of the National Law. In addition, the regulatory authority should consider:

- the compliance history of the approved provider
- the nature of any previous complaints against the service or provider.

High

Where the risk assessment indicates that there is a high risk to children and a high likelihood of harm eventuating, investigation into the complaint is a priority. Regulatory authorities should also consider whether other regulatory bodies need to be notified, such as the police or a child protection agency.

Medium

Where the risk assessment indicates a moderate risk to children and a moderate likelihood of harm eventuating, the complaint should be investigated as soon as reasonably practicable.

Low

Where the risk assessment indicates a low risk or no risk to children and a low likelihood of the harm eventuating, the complaint should be investigated in the normal course of the regulatory authority's work.

See *Good Regulatory Practice* for more information about how to conduct a risk assessment.

Complaints about privacy

National Law
Section 263

The National Law provides individuals with a right to complain to the National Education and Care Services Privacy Commissioner (NECS Privacy Commissioner) if they feel that a regulatory authority or ACECQA has mishandled their personal information. Contact details for the NECS Privacy Commissioner are available at www.necsopic.edu.au.

Complaints about freedom of information

National Law
Section 264

The National Law also provides individuals with a right to complain to the National Education and Care Services Freedom of Information Commissioner (NECS FOI Commissioner) if they are not satisfied with how their freedom of information request has been handled by a regulatory authority or ACECQA. Contact details for the NECS FOI Commissioner are available at www.necsopic.edu.au.

Complaints about administrative actions

National Law
Section 282

People with complaints about the administrative actions of ACECQA and regulatory authorities may complain to the Education and Care Services Ombudsman (about ACECQA) or the state or territory ombudsman of that jurisdiction (about regulatory authorities). It is important to remember that an ombudsman will not look at the decision itself but rather the process by which the decision was reached.

Contact details for each ombudsman are set out below.

Jurisdiction	Ombudsman	Website
ACECQA	ECS Ombudsman	necsopic.edu.au
Australian Capital Territory	ACT Ombudsman	ombudsman.act.gov.au
New South Wales	NSW Ombudsman	ombo.nsw.gov.au
Northern Territory	Ombudsman NT	ombudsman.nt.gov.au
Queensland	Queensland Ombudsman	ombudsman.qld.gov.au
South Australia	Ombudsman SA	ombudsman.sa.gov.au
Tasmania	Ombudsman Tasmania	ombudsman.tas.gov.au
Victoria	Victorian Ombudsman	ombudsman.vic.gov.au
Western Australia	Ombudsman Western Australia	ombudsman.wa.gov.au

Responding to a complaint

Once the regulatory authority has investigated a complaint, it should determine and implement an appropriate response. See ***Good Regulatory Practice*** for more information on how to determine a response and on keeping records of investigations and decisions.

Regulatory authorities should endeavour to communicate actions and outcomes to the complainant and the person who is the subject of the complaint taking into account the requirements of the *Commonwealth Privacy Act 1988* as modified by the National Regulations. Outcomes should also be recorded on the National Quality Agenda IT System.

Complaints outside the scope of the National Quality Framework

In some instances, complaints to the regulatory authority will be about matters outside the scope of the National Law and Regulations. For example, complaints about racial discrimination, fees and charges, or lack of available parking near an education and care service. Where the regulatory authority finds a complaint is out of scope of the National Law and Regulations, it should notify the complainant immediately and explain to the person that:

- the complaint is out of scope of the National Quality Framework
- who the complaint should be directed to (if known).

See ***Operational Requirements – Other regulatory frameworks*** for more information.

GOOD REGULATORY PRACTICE

15. GOOD REGULATORY PRACTICE

15.1 WHY ARE REGULATORY AUTHORITIES REGULATING?

Regulatory authorities and the Australian Children's Education and Care Quality Authority (ACECQA) are regulating to:

- further the objectives of the National Law
- influence the behaviour of providers, nominated supervisors and educators in ways that are consistent with these objectives, and improve outcomes for children
- fulfil their obligations under the National Law and Regulations.

Objectives of the National Law

The National Law's objectives are shared by regulatory authorities and ACECQA and underpin regulatory actions and decisions.

The objectives are set out below:

- 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 NQF
- 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.

Best practice regulation principles

Regulatory authorities and ACECQA are guided by best practice regulation principles in the day-to-day implementation of the National Law.

The nine principles below apply to all regulatory work, from education and information giving, to investigation and enforcement.

1. Outcomes focused

Regulatory actions should not be seen as ends in themselves. They should promote improved quality outcomes for children and families, and further the objectives of the National Law.

All activities of regulatory authorities should:

- be clearly focussed on the underlying regulatory objectives
- represent the course of action(s) that is likely to achieve these objectives in the most effective and efficient manner
- be integrated and aligned, that is, they work towards common purposes and objectives
- be flexible and innovative, achieving the best regulatory outcome in the particular circumstances of each case.

Regulatory authorities should be guided by evidence and the objectives of the National Law to regularly review the effectiveness of regulatory actions.

2. Proportionality and efficiency

The design and application of regulation should be proportionate to the problem or issue it is seeking to address. Proportionality involves ensuring that regulatory measures do not 'overreach', or extend beyond achieving an identified objective or addressing a specific problem. The scope and nature of regulatory measures should match the benefits that may be achieved, by improving outcomes for children or families, or reducing risk of harm.

Regulatory effort should also be focussed where it will generate the greatest benefits from the resources employed. Actions should be targeted at areas where the largest gains can be made. Regulatory authorities should prioritise effort and resources to areas where, based on the available evidence, the potential benefits and risks are more significant.

3. Responsiveness and flexibility

Regulatory authorities should be responsive and flexible by:

- considering the full range of options available to them
- tailoring their approach to account for the circumstances of each individual case
- focusing on consistency of outcome
- regularly reviewing their practice and operational policy to ensure it is evidence based, remains relevant and appropriate to changes in the sector.

Regulatory authorities should be responsive to the particular circumstances of each region, location and provider. Regulatory authorities may adopt different approaches to the same or similar issues, owing to, for example, the prevalence of that issue, compliance history, the particular importance of the issue or other relevant differences across jurisdictions, or within a jurisdiction.

Regulatory authorities should encourage and not constrain appropriate and desirable innovation by education and care providers, within the bounds of regulatory requirements.

4. Transparency and accountability

Regulatory actions should be open and transparent to encourage public confidence and provide certainty and assurance for regulated entities.

Legislation should be fairly and consistently administered and enforced and, where relevant, regulatory authorities should explain the reasons for their decisions.

Regulatory authorities should also be accountable for the actions they take, and welcome public and sector scrutiny, including the regular reporting of performance information.

In general, the design and administration of regulation should provide for transparent and robust mechanisms to appeal against decisions made by regulators.

5. Independence

Regulatory authorities should ensure the integrity and objectivity of regulatory actions. Where regulatory authorities exercise powers or make decisions, this should be done in the absence of actual or perceived conflicts of interest or other relationships, measures or influences that may impinge, or be seen to impinge, upon their objectivity.

Abiding by this principle should not jeopardise having constructive working relationships between regulators and regulated entities.

6. Communication and engagement

Regulatory authorities operate in a dynamic context made up of a broad range of stakeholders, including:

- government agencies (for example, policy agencies, other regulators)
- the regulated sector (including providers, supervisors and educators)
- peak bodies
- service users (i.e. children and families)
- the broader community.

Engaging appropriately with each stakeholder group makes regulatory activities more efficient and effective, for example:

- exchanging operational information with other government agencies can inform better policy development, and mutually improve regulatory decision-making
- appropriate relationships with the regulated sector can facilitate more effective educative and advisory regulatory approaches, as well as enabling the

regulator to obtain valuable feedback and information that improves its own performance

- outward communication of performance and outcomes to service users and the broader community supports better information and decision-making, as well as greater transparency and public accountability.

7. Mutual responsibility

Regulatory authorities should acknowledge the primary responsibility of education and care providers, their owners, managers and staff, for maintaining and improving the quality of their services.

Providers, supervisors and educators are responsible for meeting their obligations under the National Law and Regulations, for ensuring the safety, health and wellbeing, and improving the educational and developmental outcomes of children in their care.

The role of regulatory authorities is to administer the National Law and Regulations, promoting quality improvement through exercising the powers and functions given to them by the legislation.

8. Consistency and cooperation across jurisdictions

Cooperation and coordination between the jurisdictions is critical to ensure efficiency, consistency and predictability of regulatory systems. It can also ensure that scarce public resources are employed efficiently, reducing duplication of regulatory effort and improving effectiveness.

Central to achieving cooperation across regulatory authorities is agreement on the sharing of data and information to the greatest extent possible within the limits of the law.

Regulatory authorities should also share evidence, experimentation, experience and policy initiatives to facilitate the adoption of best practice across jurisdictions.

9. Awareness of the broader regulatory environment

Regulatory authorities should be aware of the existence of other relevant and overlapping regulatory schemes, the role these schemes perform and the obligations they impose on businesses and other organisations.

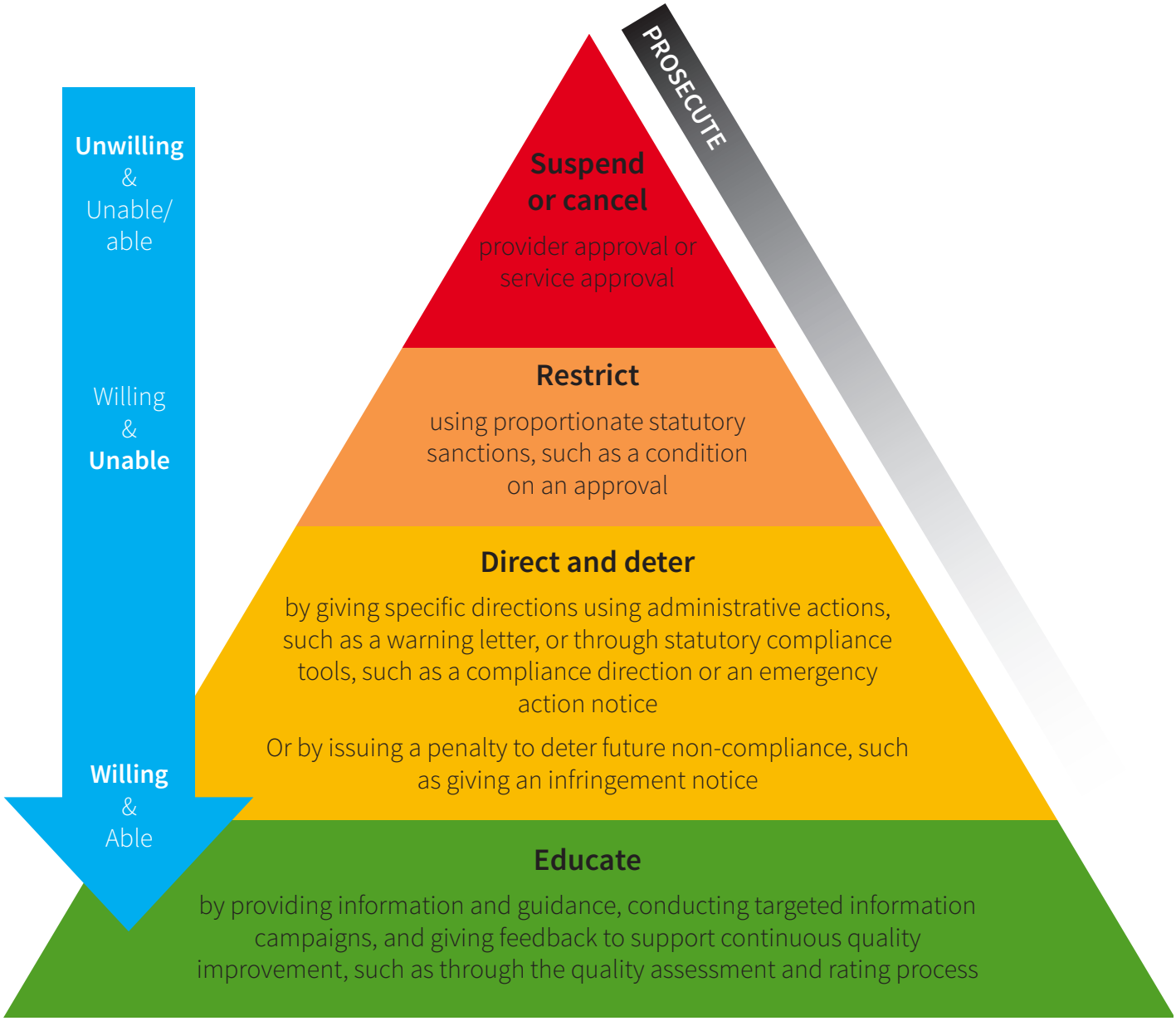
Regulatory authorities should:

- minimise the duplication of regulatory obligations, impositions and effort
- cooperate and coordinate information sharing.

For those jurisdictions where some or all preschool services are delivered through the government school system, regulatory action should be cognisant of the policy and regulatory environment in that system.

Other relevant regulatory systems could include those relating to:

- child protection
- occupational health and safety
- planning
- food safety.



15.2 REGULATORY PRACTICE DIAGRAMS

Ayres and Braithwaite enforcement pyramid

In their book, *Responsive Regulation: Transcending the deregulation debate*, Ian Ayres and John Braithwaite suggest a responsive compliance model. This model can be depicted as a pyramid, its shape indicating the:

- number of entities (i.e. service providers and others with liabilities under the legislation) likely to be found at each level of the model
- hierarchical and escalating nature of regulatory engagement
- increasing focus towards the top of the pyramid on the small minority of entities that appear to deliberately not comply.

The responsive compliance model is dynamic and allows versatility in managing non-compliance. The model's strength is that it allows regulatory authorities to identify the best remedy for the particular situation. This includes taking into account an entity's efforts to comply. Having a set of graduated responses enables the regulatory authority to:

- respond in a way that is proportionate to the risk
- escalate regulatory action
- de-escalate regulatory action
- minimise costs associated with a response.

The diagram above is adapted from a version of the regulatory compliance pyramid published in the *Australian National Audit Office Better Practice Guide*. The vertical arrow demonstrates the range of responses to regulation. Providers and other people with obligations under the legislation who are willing and able to respond to regulation comply most of the time. Those who are unwilling and/or unable to respond require more persuasive deterrents and remedies. The responsive compliance pyramid model is also consistent with the principle of earned autonomy, where regulatory intervention is focussed towards those who are unwilling and/or unable to comply.

Prosecutions: Bring an offence against the National Law or Regulations for decision by a court or tribunal.

Statutory sanctions: Cancellations, suspensions, conditions, infringement notices, compliance notices, compliance directions, enforceable undertakings, emergency action notices, prohibition notices, direction to exclude an inappropriate person.

Administrative actions: Additional monitoring, meetings, warning letters or cautions.

Information and guidance: Factsheets, newsletters, FAQs, helplines, campaigns, capacity-building, practice notes and guidelines.

15.3 ASSESSING RISK TO CHILDREN

National Law

Sections 3–4

When exercising functions under the National Law, regulatory authorities must consider the Law's objectives and guiding principles. These include ensuring the safety, health and wellbeing of children attending education and care services, and improving their educational and developmental outcomes. They also include promoting continuous improvement in the provision of quality education and care services.

To fulfil this responsibility, regulatory authorities often need to assess the level of risk to children at education and care services. The guidance below is to help regulatory authorities carry out a risk assessment and determine appropriate follow up action.

What is risk?

The National Law and Regulations do not define 'risk'. A common tool used to analyse the level of risk is a risk matrix (see below). This tool helps identify the level of risk by looking at how likely it is a negative event may occur, and the severity of the consequence should it occur.

Risk can arise:

- through any part of the environment where education and care is provided to children including the physical environment, staff members and other people at the service
- from an action or through a failure to act
- from systemic failure, such as a provider not having adequate systems in place to control for risk.

Risk Matrix

Consequences \ Likelihood	Rare	Unlikely	Possible	Likely	Almost Certain
Major	Moderate	High	High	Critical	Critical
Significant	Moderate	Moderate	High	High	Critical
Moderate	Low	Moderate	Moderate	High	High
Minor	Very low	Low	Moderate	Moderate	Moderate
Insignificant	Very low	Very low	Low	Moderate	Moderate

Likelihood

The risk matrix includes five levels of likelihood, which are described below. When thinking about likelihood, regulatory authorities should take into account factors such as history of compliance, as well as readiness, willingness and ability to comply. It is also important to consider how soon an event might occur, as this will help decide the most suitable action for responding to the risk.

Likelihood	Description
Rare	Very unlikely – the event may occur only in exceptional circumstances
Unlikely	Improbable – the event is not likely to occur in normal circumstances
Possible	Potential – the event could occur at some time
Likely	Probable – the event will probably occur in most circumstances
Almost certain	Very likely – the event is expected to occur in most circumstances

Consequence

The risk matrix includes five levels of consequence: insignificant, minor, moderate, significant and major. This takes into account the impact, or potential impact, of an event including its scale and duration. A consequence might affect the safety and wellbeing of children at the service, their family or the wider community.

When analysing the consequences of a potential event, regulatory authorities should consider the vulnerability of people who might be affected. For instance, very young children or children with a disability may be particularly vulnerable, because they are less able to act to protect their wellbeing.

Harm to children might arise as the result of a single incident or from several incidents that occur over time. This is known as cumulative harm.

Risk prioritisation

A risk matrix helps work out the priority of a particular risk. This can help regulatory authorities determine which risks to address first. The priorities in the above risk matrix are: very low, low, moderate, high and critical.

Monitoring, Compliance and Enforcement has information about tools available to regulatory authorities, which can be used to compel providers to reduce risks to children.

Once the regulatory authority has taken action to compel the approved provider to reduce the risk, it can reassess the level of risk to children using the risk matrix. If it considers the risk to children is still moderate or greater, the regulatory authority should consider further options for compelling the provider's compliance. The aim is to reduce the level of risk to very low or low. However, depending on the circumstances, regulatory authority may decide to act to address a low or very low level risk, as there may be ways of further reducing the risk or removing it entirely.

Unacceptable risk

The term 'unacceptable risk' appears in a number of provisions in the National Law and Regulations (see table below). The National Law and Regulations do not define 'unacceptable risk'. This is because the nature and degree of risk to children will vary depending on the particular circumstances.

The National Law allows regulatory authorities to prevent a provider or service from operating if the regulatory authority is satisfied there is an unacceptable risk to the health, safety or wellbeing of children at the service. In the case of a prohibition notice, the regulatory authority can prevent a person from having any involvement with any service if they are satisfied there is an unacceptable risk.

The regulatory authority may consider there is an unacceptable risk if the operation of the service has resulted in harm to children, and there are no options for effectively reducing the risk to children. For example, the regulatory authority may have made previous attempts to ensure the provider reduces or eliminates risk to children, without success.

Because risk includes analysing potential consequences, the regulatory authority might also be satisfied there is an unacceptable risk to children even where no child has been harmed.

Regulatory authorities can use the risk matrix to help determine whether a risk is unacceptable. It is likely that a risk that falls into the 'critical' category will be unacceptable, but regulatory authorities should always use their judgement and take into account the specific circumstances when determining appropriate action.

Provisions with reference to unacceptable risk to children		
S 31	**Grounds for cancellation of provider approval**	The regulatory authority may cancel a provider approval if it is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider. *See Applications and Approvals for more information on cancelling a provider approval.*
S 49	**Grounds for refusal to grant service approval**	The regulatory authority must refuse to grant a service approval if it is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service. *See Applications and Approvals for more information on refusing to grant a service approval.*
S 77	**Grounds for cancellation of service approval**	A regulatory authority may cancel a service approval if it reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service. *See Applications and Approvals for more information on cancelling a service approval.*
S 182	**Grounds for giving prohibition notice**	The regulatory authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed to remain on the education and care service premises or to provide education and care to children. *See Monitoring, Compliance and Enforcement for more information on issuing a prohibition notice.*
R 25	**Additional information about proposed education and care service premises**	An application for a service approval for a centre-based service must include a statement made by the applicant that states that, to the best of the applicant's knowledge the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. *See Applications and Approvals for more information on service approval applications.*

15.4 GOOD DECISION-MAKING

Good decision-making refers to the lawful and proper exercise of public power. Public power is the power vested in government agencies to make decisions which impact on the rights, interests and legitimate expectations of individuals. Administrative law regulates the exercise of public power by defining the extent of the power and by giving individuals the right to challenge decisions made by government.

Preparing to make the decision

Before making a decision, decision-makers must ensure they have prepared appropriately. This involves identifying and recording key issues, creating and maintaining a document trail, checking any legal requirements and identifying the limits of the available decision-making power.

Checking delegation

Decision-makers must check they are authorised to make the decision. If the decision-maker does not have the power to make the decision, the decision may not be lawful. If the law does not give the decision-maker the power to make the decision themselves, they need to check if this power has been delegated to them. When a person with the authority to make a decision passes the power to someone else, it is called a delegation. Delegations are often specific to a position and are generally outlined in an operational document.

Authorised officers should check which decisions they are authorised to make and be aware that sometimes the authority to make a decision will rest with someone else within the regulatory authority.

The person with the authority to make the decision is responsible for ensuring the decision is made properly.

Power under the law

The power to make a decision, and the limits on that power, are set by acts of parliament (for example the National Law), associated instruments (for example the National Regulations) and case law (law made by courts).

For example, the National Law sets out the types of decisions regulatory authorities can make about applications for provider or service approval, or for an amendment to, or suspension of, an approval.

Guidelines and policies

Government agencies, generally, have guidelines and policies to help guide decision-makers. However, decision-makers must remember that policy cannot override the law. Although relevant policy should be considered when making a decision, policy must be applied reasonably and consistently with the law. Decision-makers must not make a decision without considering the merits of the particular case.

Timeframes

When a timeframe for making a decision is included in the legislation, for example, '30 days after receiving an application', these timeframes must be adhered to. The National Law specifies that for provider and service approval applications, failing to make a decision within the set timeframe, including timeframes extended under the legislation, will automatically result in a 'deemed refusal' of the application.

A deemed refusal gives the applicant the right to apply for a review as if the regulatory authority had made a decision to refuse the application. Where a regulatory authority is aware that it will not meet (or is not likely to meet) the timeframe set out in the legislation, it should notify the applicant and, wherever possible, give an indication of when the decision will be made.

For applications without a 'deemed refusal' provision, if the regulatory authority does not make a decision within the legislated timeframe, an applicant may follow up the decision in a range of ways, including by involving the relevant ombudsman. In any case, best practice is to inform applicants of any delays or potential delays in deciding an application.

Considering the decision

Decision-makers must consider all relevant documents and information to ensure a fair and informed decision. They must not take any irrelevant documents or information into account.

Decision-makers must ensure they have fully considered all available evidence, particularly when the decision-maker did not personally collect the evidence.

The National Law sets out what the regulatory authority must consider when deciding an application and, generally, does not limit the regulatory authority from considering any other relevant matter.

To ensure accountability and transparency, decision-makers should always maintain accurate and complete records of the information that informs their decision.

Natural justice

The terms 'natural justice' and 'procedural fairness' are often used interchangeably.

Natural justice means that any person who may be affected by the decision is given a chance to a fair hearing, with full knowledge of their rights and responsibilities, before a decision is made.

Natural justice must be given when the rights, interests or legitimate expectations of individuals may be affected by the exercise of power (i.e. when a decision may not be in favour of the person). However, it is best practice to always give natural justice even when a decision may appear to be in favour of an affected person.

Natural justice has three main elements:

- the notice requirement
- the hearing rule
- the bias rule.

The notice requirement

A person affected by the decision must be notified of any issues in enough detail to allow them to participate or respond in a meaningful way. This may require the decision-maker to present the person with material that may be unfavourable to them.

The National Law includes a number of 'show cause' provisions that underline the principles of natural justice. 'Show cause' provisions aim to ensure affected individuals are aware of the decision-maker's intention, the reasons why the decision-maker is considering making the decision, and give an opportunity to respond.

'Show cause' provisions apply to prohibition notices and the suspension or cancellation of provider and service approvals.

A 'show cause' provision also applies to the suspension of education and care by a family day care educator. However, this 'show cause' provision is discretionary. Regulatory authorities should still consider natural justice obligations, despite the discretion.

The hearing rule

Decision-makers must provide any affected person with a reasonable opportunity to respond to material provided by the decision-maker. The hearing rule ensures the decision-maker has taken any responses into account in making the decision. The hearing rule does not require a formal 'hearing' – the affected person could be provided with an opportunity to respond in writing.

The bias rule

Decision-makers must act impartially and not in their own interests. To maintain public confidence in the integrity of the system, the rule also requires that the decision-maker is not perceived as being biased.

Bias may arise from a conflict of interest or from the impression that the decision-maker has made a judgment on the issue without considering all relevant factors or by considering irrelevant factors.

While a conflict of interest does not always demonstrate a decision-maker's inability to make an impartial judgment, it is generally considered best practice to employ a different decision-maker to avoid the perception of bias.

Making the decision

Once the relevant information and documents have been collected and all affected people have been afforded natural justice, decision-makers need to establish the facts. In establishing the facts, decision-makers must consider all available evidence before deciding which facts are relevant to the decision and which should be discarded due to irrelevance. It is crucial that decision-makers establish facts based on clear evidence.

Decision-makers can consult with other officers and refer to policies and guidelines to help them make a decision, but they must act independently, not at the direction of others, when making a decision. See ***Reviews*** for more information about best practice decision-making when conducting reviews.

After determining the relevant facts, the decision-maker must apply the relevant legislation to the facts. Where there is uncertainty about the interpretation of the law, the decision-maker should take into account the objectives and purpose of the legislation. Decisions made under the National Law should consider the objectives and guiding principles.

When a decision is made under a power granted by legislation, it is important that the relevant legislation is correctly interpreted and applied. If the decision-maker is in doubt about the interpretation, they should seek legal advice.

Once the decision is made, the decision and all supporting evidence should be kept on record. The decision-maker should also document all matters that were taken into account when making the decision. Decision records must generally include the information outlined below, and should be accompanied by a statement of reasons explaining the decision.

Explaining, recording and communicating the decision

Decisions in the public sector are recorded in a variety of ways. The record of a decision must be a standalone record that can be read without reference to a file and should include the following information:

- the date
- who the decision is about
- what the decision is
- who the decision-maker is
- the signature of the decision-maker.

A statement of reasons isn't always required for a decision, however, an affected person may request reasons; sometimes a long time after the decision has been made. For this reason, it is best practice to record a statement of reasons at the time the decision is made.

Individuals may access information, including decision-making documentation, from government agencies under Privacy and Freedom of Information legislation.

A statement of reasons should be clear, unambiguous, jargon-free and easily read and understood by the affected persons.

Generally, statements of reasons should include the following information:

- the decision-maker's findings on the facts
- reference to, or copies of, documents, evidence and relevant information considered in making the decision
- a meaningful statement of reasons addressing all the critical issues and any adopted recommendations, clearly explaining the decision-maker's understanding and application of the law
- the identified grounds for review.

6. REVIEWS

Reviews
Privacy and Freedom of Information

REVIEWS

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REVIEWS

This chapter gives an overview of a person's right to challenge a decision made by a regulatory authority which has negatively impacted an individual's rights, interests or legitimate expectations.

The ***Good Regulatory Practice*** chapter provides regulatory authorities with guidance about ensuring the decisions they make are 'lawful' and, therefore, better able to withstand challenges.

Following most administrative decisions in the public sector, if a person is affected by a decision they can challenge the decision, or the administrative process used to reach it, using one or more mechanisms for review. These mechanisms are generally referred to as 'review rights' and include:

- a statutory right to have a decision reviewed on its merits (also known as 'merits review')
- judicial review
- a review of the administrative process by an Ombudsman.

The National Law provides for both internal review, conducted by the regulatory authority responsible for the initial decision, and external review, conducted by the relevant court or tribunal. A person may also be able to seek judicial review of a decision under state or territory law.

1. INTERNAL MERITS REVIEW

1.1 INTERNALLY REVIEWABLE DECISIONS

An internal review gives a person the opportunity to have a decision reconsidered by the regulatory authority. An internal review is a merits review, which means it allows a new decision-maker to take a fresh look at the matter, with full consideration of all relevant facts, policies and law. This may involve a review of the entire decision, including evidence.

The National Law sets out which decisions made by regulatory authorities are internally reviewable. These are outlined in the table below.

Internally reviewable decisions (section 190)	
Provider approvals	• Refusal to grant provider approval • Amendment of provider approval • Refusal to amend provider approval • Impose a condition on provider approval • Suspend provider approval without a show cause notice
Service approval	• Refusal to grant service approval • Amendment of service approval • Refusal to amend service approval • Impose a condition on service approval • Suspend service approval without a show cause notice • Refuse to consent to transfer of service approval • Revoke a service waiver
Other	• Issue a compliance direction • Issue a compliance notice

If the application is not for an internally reviewable decision, regulatory authorities should contact the applicant to inform them that the application is invalid and can be refused.

Regulatory authorities should notify the applicant of any other avenues to have the decision reviewed. In some instances, this may mean an external review. External review includes review of the administrative decision-making process by an ombudsman.

Note: Quality rating decisions are also subject to review. This process is informally referred to as first tier review and second tier review and is set out in sections 141 and 144 of the National Law.

For more information, see ***Assessment and Rating*** and the *Guidelines for First Tier Review and Second Tier Review* on the ACECQA website at www.acecqa.gov.au.

1.2 APPLICATION FOR INTERNAL REVIEW

National Law & Regulations

Sections 190–191, 141–143
Regulation 186

A person who is the subject of an internally reviewable decision may apply to the regulatory authority for review.

The person must apply in writing to the regulatory authority that made the decision within 14 days after being notified of the decision (or within 14 days of becoming aware of the decision if they are not notified).

Information that must be included in an application for internal review is set out in the table below.

Information that must be included in an application for internal review
The name of the applicant
Contact details for the applicant, including an address for notification of the decision
Provider approval number or service approval number to which the decision relates
The full name of the person to whom the provider approval or service approval was granted
A statement setting out: • the details of the decision, or part of the decision, for which review is sought • how the decision affects the applicant • the grounds for seeking a review of the decision
Any information that the applicant considers relevant to the review.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System at www.acecqa.gov.au.

Incomplete applications

The timeframe for processing an application does not begin until an application is 'valid', meaning complete with all the prescribed information.

If an application does not include all prescribed information the regulatory authority may treat the application as invalid and request missing information be provided within a set timeframe.

The National Law does not specify how much time applicants have to provide this information once requested by a regulatory authority. Regulatory authorities will set timeframes taking into consideration:

- the amount and complexity of the information requested
- the applicant's capacity to provide information in that timeframe
- whether a timeframe applies to when the applicant must submit the application.

If an applicant does not supply the information requested by the regulatory authority, a record of the incomplete application must be retained.

National Law

Section 191

Timeframe for conducting internal review

An internal review must be conducted within 30 days after the application is made. This period may be extended by up to 30 calendar days if the regulatory authority requests more information, or with the agreement of the applicant.

1.3 CONDUCTING AN INTERNAL REVIEW

National Law

Section 191

An internal review must be conducted by a person who was not involved in the assessment or investigation of the person or service.

The person conducting the review may ask the applicant for more information.

How is a review conducted?

An internal review is a merits review, which means it allows a new decision-maker to take a fresh look at the matter, with full consideration of all relevant facts, policies and law (see ***Good Regulatory Practice*** for more information about what type of information must be included in a decision record).

In a merits review, the new decision-maker is expected to make the 'correct and preferable' decision and may sometimes consider new evidence. New evidence should be considered where it is relevant and will help the decision maker come to the correct and preferable decision. In some cases, this may mean that a decision made during merits review is based on factors that were not present at the time of the original decision. For this reason, a different decision on a merits review does not necessarily indicate that the original decision was 'incorrect'.

Even if there was no error of fact or law when the first decision was made, the decision-maker for the review might exercise their discretion or judgement in a different way, making a different decision.

An internal review is a review of the original decision only, so cannot consider a different application. For example, a review on a decision to reject an increase to the maximum number of children at a centre-based service cannot consider a request for a smaller increase to the maximum number of children. The review can only reconsider the original request. If an applicant wishes to change the nature of an application that has been rejected, the applicant should submit a new application, rather than request an internal review.

Who should conduct a review?

Any person conducting the review must not have been involved in the assessment or investigation of the person or service that was the subject of the decision. This means that the original decision-maker, as well as staff who were involved in collecting evidence, making an assessment or preparing a recommendation for the original decision cannot conduct the review. While the conducting officer will most likely be from the same department, where possible the conducting officer should be from a different team.

The person(s) making the review decision should have:

- access to all relevant information, including information submitted by the applicant in the review application, and all information used by the regulatory authority in making the original decision
- relevant knowledge of administrative processes and requirements
- a solid understanding of the relevant provisions of the National Law and Regulations, in particular the requirements relating to reviews
- effective communication skills
- conflict resolution skills to aid working with the applicant and staff within the regulatory authority.

What is the process for conducting a review?

The process for conducting a review is set out below.

Review process	
Step 1	Receive request for review and decide whether it has been provided within 14 days of the applicant having been notified of the original decision (or within 14 days of the applicant becoming aware of the decision if they were not notified). *If the request has not been received in the required timeframe, the application is not valid and must be refused.*
Step 2	Register request for review on the NQA IT System. The regulatory authority has 30 days to conduct the review.
Step 3	Acknowledge receipt of the application.
Step 4	Assign request for review to an individual officer or a panel, making sure the officer or panel members were not involved in the original decision.
Step 5	Validate the application by: • checking the regulatory authority has the power to conduct an internal review of the decision • checking the application form is complete • ensuring all supporting documentation referenced in the application has been included • determining whether the grounds for the review have been satisfied (if the legislation specifies the grounds for requesting a review) and decide if further information is needed. *If the request is not for review of a reviewable decision, it is invalid.*

Step 6	If required, seek further information from the applicant and staff of the regulatory authority such as: • evidence of the grounds for requesting review • notes, evidence or any other information considered in original decision • comment on the grounds of the request for review from those involved in the original decision • any other relevant information required, as determined by examining the information provided by the applicant and/or regulatory authority staff involved in the original decision. *The timeframe for conducting the review is extended by 30 days if more information is requested from the applicant. The timeframe may also be extended by 30 days with the agreement of the applicant.*
Step 7	Assess the application. In some situations the regulatory authority may decide to seek legal advice on a request for review.
Step 8	Consistent with the principles of good decision-making (set out in *Good Regulatory Practice*), determine whether to affirm the original decision or make a new decision. *The person making the decision must confirm that they have the appropriate delegation to do so under the National Law.*
Step 9	Prepare a statement of reasons, clearly setting out the basis for the decision.
Step 10	Notify applicant of the decision and provide the statement of reasons. Notification should also include information about the applicant's right to external review by a tribunal or court (if applicable), or by an ombudsman. (Refer to the table of contacts in *Review of the administrative process by an ombudsman*, below).

2. EXTERNAL REVIEW

2.1 EXTERNALLY REVIEWABLE DECISIONS

National Law

Section 192

The National Law sets out which decisions made by regulatory authorities are externally reviewable. These are outlined in the table below.

Externally reviewable decisions
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)
To suspend a provider approval or service approval after the show cause process
To cancel a provider approval or service approval 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
To give a prohibition notice or to refuse to cancel a prohibition notice.

A person is not entitled to external review of a decision to suspend or cancel a service approval if that suspension or cancellation relates only to an associated children's service. Any right of review would be under the relevant children's services law.

2.2 APPLICATION FOR EXTERNAL REVIEW

National Law

Section 193

A person who is the subject of an externally reviewable decision may apply to the relevant court or tribunal for a review of the decision (see the *Glossary* for details of the relevant court or tribunal in each jurisdiction).

The application must be in writing within 30 calendar days after being notified of the decision.

The National Law does not stipulate or limit the grounds on which a person can apply for external review.

An external review conducted by a tribunal is typically a merits review, whereas a review conducted by a court is usually a judicial review.

2.3 DETERMINING AN APPLICATION FOR EXTERNAL REVIEW

National Law

Section 193

After hearing the matter, the relevant court or tribunal may:

- confirm the regulatory authority's decision
- amend the regulatory authority's decision, or
- make a new decision.

When determining an application for external review, the tribunal or court may consider any decision of a tribunal or court in another state or territory, made under the National Law.

3. JUDICIAL REVIEW

Judicial review involves the review of a decision by a court. In this process, the court addresses the lawfulness of the decision. The court does not review the case based on its merits. Rather, the court seeks to answer the question: 'Was the decision lawful?'

In general, a judicial review does not allow new evidence to be admitted and does not attempt to determine the 'correct and preferable' decision.

Where regulatory authorities and tribunals may substitute decisions during the merits review process, courts will generally:

- set aside a decision
- direct decision-makers to address the matter again, following any recommendations made by the court
- make a declaration, or
- make an order preventing, or specifically directing, any action.

Generally, an application for external judicial review is sought on the following grounds:

- the decision-making process involved an error of law
- a breach of the rules of natural justice occurred in the decision-making process
- irrelevant matters were taken into consideration (or relevant matters were not taken into consideration)
- the exercise of the decision-making power was unreasonable, or
- a decision-making power was exercised improperly; either by a person unauthorised to make the decision, or for an unauthorised purpose.

See ***Good Regulatory Practice*** for more information about natural justice.

4. REVIEW OF THE ADMINISTRATIVE PROCESS BY AN OMBUDSMAN

National Law & Regulations

Sections 5, 282
Regulations 218–225

Relevant state and territory ombudsman legislation applies to decisions made by regulatory authorities. The *Ombudsman Act 1976* (Commonwealth) as applied through the National Law applies to decisions made by ACECQA.

The decision-making processes and conduct of regulatory authorities are subject to scrutiny by the relevant state or territory ombudsman and the relevant ombudsman legislation. Decisions made by ACECQA are overseen by the Education and Care Services Ombudsman.

An ombudsman:

- acts independently of governments and their agencies
- has wide ranging powers to require agencies to furnish documents, to enter premises and to seek injunctions, and may make recommendations to government agencies following investigation of a complaint – while governments are not necessarily required to adopt the findings of an ombudsman, it is in the best interests of governments, their agencies and the broader public to implement an ombudsman's recommendations where possible
- seeks to resolve complaints about conduct and decision-making processes through a process of conciliation
- has the power to conduct investigations and may investigate matters of their own volition
- does not advocate for complainants or governments, but rather may be considered to advocate for best practice decision-making and conduct in government agencies
- does not look at the decision itself but rather the process by which the decision was reached.

Generally, an ombudsman will not accept a complaint before the agency concerned has had a reasonable opportunity to address the complaint and may also refer complaints on to another relevant body for consideration.

Contact details for each ombudsman are set out below.

Jurisdiction	Ombudsman	Website
ACECQA	ECS Ombudsman	necsopic.edu.au
Australian Capital Territory	ACT Ombudsman	ombudsman.act.gov.au
New South Wales	NSW Ombudsman	ombo.nsw.gov.au
Northern Territory	Ombudsman NT	ombudsman.nt.gov.au
Queensland	Queensland Ombudsman	ombudsman.qld.gov.au
South Australia	Ombudsman SA	ombudsman.sa.gov.au
Tasmania	Ombudsman Tasmania	ombudsman.tas.gov.au
Victoria	Victorian Ombudsman	ombudsman.vic.gov.au
Western Australia	Ombudsman Western Australia	ombudsman.wa.gov.au

PRIVACY AND FREEDOM OF INFORMATION

National Law & Regulations

Section 263
Regulations 195–203

ACECQA and each of the regulatory authorities are required to comply with the *Commonwealth Privacy Act 1988* (the Privacy Act), as applied through the National Law, when handling personal information for the purposes of the National Quality Framework (NQF).

The Privacy Act contains 13 Australian Privacy Principles (APPs), which regulate the collection, use, disclosure, storage and accuracy of personal information handled by ACECQA and each of the regulatory authorities.

More information

The Office of the Australian Information Commissioner (OAIC) has published guidelines to the APPs on its website at www.oaic.gov.au. ACECQA and regulatory authorities may refer to these guidelines to assist in complying with the Privacy Act.

The National Education and Care Services Privacy Commissioner website at www.necsopic.edu.au also has information about privacy under the National Law.

5. COMPLAINTS ABOUT PRIVACY

An individual can complain to the relevant agency (ACECQA or a regulatory authority) about the mishandling of their personal information. ACECQA or the regulatory authority should attempt in the first instance to resolve an individual's privacy complaint. If ACECQA or the regulatory authority is not able to resolve the complaint, then the National Law provides individuals with a right to complain to the National Education and Care Services Privacy Commissioner (NECS Privacy Commissioner)

More information

Contact details for the NECS Privacy Commissioner are available at www.necsopic.edu.au.

5.1 ADDRESSING PRIVACY BREACHES

In some circumstances, ACECQA or a regulatory authority may become aware of an interference with an individual's privacy without a complaint. In those circumstances, the best practice response is to address the breach in a manner consistent with the OAIC's data breach response process available on the OAIC website. A brief summary of the process is outlined below.

Addressing privacy breaches		
Step 1	Contain the breach and make a preliminary assessment	• Take immediate steps to contain breach • Designate person/team to coordinate response
Step 2	Evaluate the risks for individuals associated with the breach	• Consider what personal information is involved • Determine whether the context of the information is important • Establish the cause and extent of the breach • Identify what is the risk of harm
Step 3	Consider breach notification	• Risk analysis on a case-by-case basis • Not all breaches necessarily warrant notification
Step 4	Review the incident and take action to prevent future breaches	• Fully investigate the cause of the breach • Consider developing a prevention plan • Option of audit to ensure plan implemented • Update security/response plan • Make appropriate changes to policies and procedures • Revise staff training practices

6. FREEDOM OF INFORMATION

National Law & Regulations

Section 264
Regulations 204–211

The *Freedom of Information Act 1982* (Cth), as modified by the National Law (the FOI Act), applies to documents held by ACECQA and the regulatory authorities for the purposes of the NQF. It provides individuals with a legally enforceable right to access such documents and to seek to correct or annotate any information about them held in such documents if the information is incomplete, incorrect, out-of-date or misleading.

Under the National Law and Regulations, ACECQA and the regulatory authorities must give an individual:

- access to a document, on request, except to the extent that the document is exempt under the FOI Act
- access to a conditionally exempt document, on request, unless access to the document would, on balance, be contrary to the public interest.

The FOI Act only applies to information contained in a document (including electronic records), and only to documents in existence. The FOI Act does not require ACECQA or the regulatory authorities to create documents to supply information falling within the scope of a request and it does not regulate information that is already available for a fee.

6.1 APPLICATIONS UNDER THE FOI ACT

An application under the FOI Act must:

- be made in writing
- state that the application is made for the purposes of the FOI Act
- provide enough information to reasonably identify the document
- include a postal or email address to which notices may be sent.

The FOI Act imposes strict timeframes on ACECQA and the regulatory authorities in processing FOI requests.

More information

Information on timeframes and other matters relating to the processing of FOI requests is available in the OAIC's Guide to the *Freedom of Information Act 1982*. The National Education and Care Services FOI Commissioner website at www.necsopic.edu.au also has information about FOI requirements under the National Law.

6.2 REVIEW OF FOI DECISIONS AND COMPLAINTS ABOUT FOI

If an individual disagrees with an FOI access decision, they can seek an internal review of the decision, or apply to the National Education and Care Services FOI Commissioner for review of the decision. If a person is not satisfied with the outcome of an internal review, they can also seek review by the National Education and Care Services FOI Commissioner.

The National Law also provides individuals with a right to complain to the National Education and Care Services FOI Commissioner if they feel that a regulatory authority or ACECQA has mishandled a request for access to a document.

If an individual is unhappy with a review by the National Education and Care Services FOI Commissioner, they may seek a further review through the appropriate administrative tribunal.

6.3 DISCLOSURE OF INFORMATION

National Law

Sections 271–273

Powers and principles

Jurisdictions (including state and territory regulatory authorities) and ACECQA have broad powers to disclose information about an education and care service to each other and other government departments and public authorities. Importantly, efficient, collaborative and streamlined communication between all parties furthers the objectives of the National Law, including to ensure the safety, health and wellbeing of children attending education and care services.

Information is disclosed between regulatory authorities, ACECQA and Commonwealth in accordance with the National Law for the purposes of:

- promoting the objectives of the NQF
- assisting authorities and other government departments to perform or exercise their functions and powers under the National Law
- research or the development of national, state or territory policy with respect to education and care services
- the funding of education and care services
- the payment of benefits or allowances to persons using education and care services
- compliance, monitoring and enforcement, including with respect to working with children laws.

Other disclosure obligations

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. 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 disclosed for the purpose of research or development of policy relating to education and care services must not include information that could lead to the identification of an individual, other than an approved provider, a nominated 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 where the regulatory authority considers that the approved provider reasonably requires the information to comply with obligations under the National Law. 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.

7. GLOSSARY

GLOSSARY

This glossary explains key terms used in this guide.

Actively working towards a qualification: An educator is actively working towards a qualification if the educator:

a) is enrolled in the course for the qualification; and

b) provides the approved provider with documentary evidence from the provider of the course that:

- the educator has commenced the course; and
- is making satisfactory progress towards completion of the course; and
- is meeting the requirements for maintaining the enrolment; and

In the case of an approved diploma level education and care qualification, the educator:

- holds an approved certificate III level education and care qualification; or
- has completed the units of study in an approved certificate III level education and care qualification (*National Regulations*).

Additional needs:

The term used for children who require or will benefit from specific considerations or adaptations and who:

- are Aboriginals or Torres Strait Islanders
- are recent arrivals in Australia
- have a culturally and linguistically diverse background
- live in isolated geographic locations
- are experiencing difficult family circumstances or stress
- are at risk of abuse or neglect
- are experiencing language and communication difficulties
- have a diagnosed disability—physical, sensory, intellectual or autism spectrum disorder
- have a medical or health condition
- demonstrate challenging behaviours and behavioural or psychological disorders
- have developmental delays
- have learning difficulties
- are gifted or have special talents
- have other extra support needs.

It is important to note that:

- additional needs arise from different causes, and that causes require different responses
- any child may have additional needs from time to time.

Agency: Being able to make choices and decisions, to influence events and to have an impact on one's world (*Early Years Learning Framework*, p. 45).

Analysing learning: For the early childhood education and care context, see *Assessment for learning*. For the school age education and care context, see *Evaluation of wellbeing and learning*.

Approved anaphylaxis management training: Anaphylaxis management training approved by ACECQA and published on the list of approved first aid qualifications and training on the ACECQA website (*National Regulations*).

Approved education and care service: An education and care service for which a service approval exists (*National Law*).

Approved emergency asthma management training: Emergency asthma management training approved by ACECQA and published on the list of approved first aid qualifications and training on the ACECQA website (*National Regulations*).

Approved family day care service: An education and care service that is a family day care service for which a service approval exists (*National Law*).

Approved family day care venue: A place other than a residence approved under Section 50A or 54 (8A) as a family day care venue for an approved family day care service (*National Law*).

Approved first aid qualification: A qualification that includes training in the matters set out in the table below, that relates to and is appropriate to children and has been approved by ACECQA and published on the list of approved first aid qualifications and training on the ACECQA website (*National Regulations*).

First aid qualification – subject matter
Emergency life support and cardio-pulmonary resuscitation
Convulsions
Poisoning
Respiratory difficulties
Management of severe bleeding
Injury and basic wound care
Administration of an auto-immune adrenalin device

Approved learning framework: A learning framework approved by the Ministerial Council (*National Law*).

Approved number of places: In relation to a centre-based service, this means the maximum number of children that can be educated and cared for by the service at any one time, stated on the service approval under section 52(g) of the National Law.

Approved provider: A person who holds a provider approval (*National Law*). A provider approval authorises a person to apply for one or more service approvals and is valid in all jurisdictions.

Assessment and planning cycle: The assessment and planning cycle process includes: observation, analysing learning, documentation, planning, implementation and reflection. This ongoing process is used by educators, with support from the educational leader and in partnership with families and other professionals, to design programs that enhance and extend each child's learning and development.

Assessment and rating: The process by which services are assessed and rated by their regulatory authority against the National Quality Standard, and given a rating for each of the seven quality areas and an overall rating based on these results.

Assessment for learning: In the early childhood education and care context, the process of gathering and analysing information as evidence about what children know, can do and understand (*Early Years Learning Framework*, p.17). This forms part of the ongoing assessment and planning cycle.

Associated children's service: A children's service that is operated or intended to be operated by an approved provider at the same place as an approved education and care service (*National Law*).

Authorised nominee: In relation to a child, means a person who has been given permission by a parent or family member of the child to collect the child from the education and care service or the family day care educator (*National Law*).

Authorised officer: A person authorised to be an authorised officer under Part 9 (*National Law*). Authorised officers are appointed by the regulatory authority under the provisions of the National Law to carry out the functions of monitoring, assessing and rating licensed approved education and care services in their jurisdiction.

Authorised person: An authorised person means a person who belongs to one of the below groups.

- A person who holds a current working with children check or working with children card; or
- A parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or
- An authorised nominee of a parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or
- In the case of an emergency, medical personnel or emergency service personnel
- A person who is permitted under the working with children law of a jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card (*National Law*).

Bankruptcy declaration: A declaration made by an individual about any proceeding in bankruptcy brought against the individual including:

- whether any actions have been taken against the individual under Part IV of the Bankruptcy Act 1966 of the Commonwealth
- whether the individual has made any debt agreement under Part IX of the Bankruptcy Act 1966 of the Commonwealth, and
- whether the individual has made any personal insolvency agreement under Part X of the Bankruptcy Act 1966 of the Commonwealth (*National Regulations*).

Building permit: A permit or consent to carry out building work issued under a building law or planning and development law in the participating jurisdiction (*National Regulations*).

Building practitioner: A person who is:

- registered as a building surveyor, building inspector or draftsperson under a law of a participating jurisdiction
- registered as an architect under a law of a participating jurisdiction
- licensed as a surveyor under a law of a participating jurisdiction
- licensed or registered as a building certifier under a law of a participating jurisdiction, or
- accredited under a law of a participating jurisdiction to design buildings that will be used to provide education and care services (*National Regulations*).

Centre-based service: An education and care service other than a family day care service (*National Regulations*). This includes most long day care, preschool and outside school hours care services that are delivered at a centre.

Child-centred: Consideration of each child's current knowledge, strengths, ideas, culture, abilities and interests as the foundation for the development of the educational program in an education and care service.

Child directed: Child directed play and learning occurs when children lead their learning through exploring, experimenting, investigating and being creative in ways that they initiate and control (*Victorian Early Years Learning and Development Framework*, p. 4). Child directed learning promotes children's agency by enabling them to make choices and decisions that influence events and their world.

Child health record: Not defined in the National Law or Regulations. It may be taken to mean a child's 'blue book' or equivalent (such as a personal health record issued to newborns in NSW), and may consider dental information and any other health records which may be relevant to the child's health needs at the service.

Child over preschool age: A child who:

- is enrolled or registered at a school; and
- attends, or in the current calendar year will attend, school in the year before grade 1, in grade 1 or a higher grade (*National Regulations*).

Child preschool age or under: A child under the age of 7 years who is not a child over preschool age (*National Regulations*).

Children: Refers to each baby, toddler, three to five year old and school age child and means children as individuals and as members of a group in the education and care setting, unless otherwise stated. It is inclusive of children from all social, cultural and linguistic backgrounds and of their learning styles, abilities, disabilities, gender, family circumstances and geographic locations (adapted from the *Early Years Learning Framework*, p. 45).

Children's services law: Defined in the National Law.

Jurisdiction	Children's services law
Australian Capital Territory	Children and Young People Act 2008, chapter 20
New South Wales	Children and Young Persons (Care and Protection) Act 1998
Northern Territory	Care and Protection of Children Act
Queensland	Education and Care Services Act 2013
South Australia	Education and Care Services National Law (South Australia) Children's Protection Act 1993
Tasmania	Child Care Act 2001
Victoria	Children's Services Act 1996
Western Australia	Education and Care Services National Law (Western Australia) Child Care Services Act 2007

Collaboration: Working together cooperatively towards common goals. Collaboration is achieved through information sharing, joint planning and the development of common understandings and objectives (*Framework for School Age Care*, p. 12).

Collaborative learning: Children engaging with other children and educators to collaboratively work with, learn from and help.

Collaborative partnership: A partnership between the educators, families, children and community/ies of an education and care service that is based on active communication, consultation and collaboration and aims to build respectful relationships, support families and promote children's inclusion, learning and wellbeing.

Community: The local or wider social, cultural or geographical context shared with an education and care service.

Community engagement: Developing respectful and responsive connections with the immediate or wider community to build connections and relationships.

Condition: Not defined in the National Law or Regulations. A legally enforceable constraint or limitation on an approval over and above those already found in the legislation.

Continuity of staff: Retention of the staff of an education and care service over a period of time. Staffing arrangements that promote continuity of staff enable children to experience continuity in education and care which, in turn, enhances children's wellbeing, learning and development.

Continuous improvement: Ongoing improvement in the provision of quality education and care services. The National Quality Framework aims to raise

quality and drive continuous improvement through the National Quality Standard, national quality rating and assessment process, streamlined regulatory arrangements and the overseeing of these processes by ACECQA.

Assessment and rating encourages continuous improvement by engaging the approved provider and the service in a process of self-assessment, as well as providing a detailed report of their performance against the National Quality Standard. Quality services regularly monitor and review their performance to guide planning and improve service quality. This creates a shared understanding of the principles that guide the service, and encourages continuous improvement in practice, policies and procedures.

Quality services regularly update and maintain their Quality Improvement Plan as a dynamic document to guide progress towards improvement.

Co-ordinator: See *Family day care co-ordinator*.

Creative arts: Dance, drama, media arts, music and visual arts (CAPA).

Criminal history record check: A full disclosure Australia-wide criminal history record check, issued by a police force or other authority of a State or Territory or the Commonwealth (*National Regulations*).

Criminal history statement: A statement made by an individual that:

- states whether the individual has been convicted in Australia of any offences relevant to a person seeking to work with children, and
- includes details of those convictions (*National Regulations*).

Critical reflection: Describes reflective practices that focus on implications for equity and social justice (*Early Years Learning Framework*, p. 45).

Curriculum: In the early childhood setting, curriculum means 'all the interactions, experiences, activities, routines and events, planned and unplanned, that occur in an environment designed to foster children's learning and development' (*Early Years Learning Framework*, p. 45; adapted from *Te Whariki*).

Curriculum decision-making: In the school age context, also referred to as program decision-making. Interactive decision-making by educators, children, families, and the broader community to develop meaningful curricula/programs to foster children's learning. Curriculum/program decision-making is guided by the approved learning frameworks' inter-related principles, practices and outcomes (Educators' Guide to the *Early Years Learning Framework*, p. 10). The approved learning frameworks support a model of curriculum/program decision-making as an ongoing cycle (*Early Years Learning Framework*, p. 9; *Framework for School Age Care*, p. 6).

Declared approved family day care service: Paraphrased, it means a family day care service that automatically transitioned to regulation under the National Law on 1 January 2012 (1 August 2012 in WA)(*National Law transitional provisions*).

Declared approved family day care venue: Paraphrased, it means a family day care venue that automatically transitioned to regulation under the National Law on 1 January 2012 (1 August 2012 in WA)(*National Law transitional provisions*).

Declared approved provider: Paraphrased, it means an approved provider who automatically transitioned to regulation under the National Law on 1 January 2012 (1 August 2012 in WA) (*National Law transitional provisions*).

Declared approved service: Paraphrased, it means an education and care service that automatically transitioned to regulation under the National Law on 1 January 2012 (1 August 2012 in WA) (*National Law transitional provisions*).

Disciplinary proceedings statement: A statement made by an individual that states:

- whether the individual is or has been subject to a formal disciplinary proceeding or action under an education law of a participating jurisdiction (other than a proceeding that was unsuccessful or was withdrawn), and
- the outcome of the proceeding or action (if known) (*National Regulations*).

Dispositions: Enduring habits of mind and actions, and tendencies to respond in characteristic ways to situations, for example, maintaining an optimistic outlook, being willing to persevere, approaching new experiences with confidence (*Early Years Learning Framework*, p. 45; *Framework for School Age Care*, p. 41).

Each child: Referred to in the National Quality Standard when an individualised approach is warranted and educators are required to modify their response to meet the needs of an individual child. An example is 'each child's current knowledge, ideas, culture and interests provide the foundation for the program'.

Early childhood teacher: A person with an approved early childhood teaching qualification (*National Regulations*). The National Law also refers to 'qualified early childhood teacher', which should be taken to refer to an early childhood teacher. 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.

Education and care service: Any service providing or intended to provide education and care on a regular basis to children under 13 years of age (*National Law*). See ***Section 5*** of the National Law for services that are excluded from this definition.

Education and care service premises: In relation to a centre-based service, means each place at which an education and care service operates or is to operate.

In relation to a family day care service, means:

- an office of the family day care service; or
- an approved family day care venue; or
- each part of a residence used to provide education and care to children as part of a family day care service or used to provide access to the part of the residence used to provide that education and care (*National Law*).

Educational leader: The educational leader is a suitably qualified and experienced educator, co-ordinator or other individual designated in writing by the approved provider under regulation 118 to lead the development and implementation of educational programs in the service (*National Regulations*).

Educational program: A program that:

- is based on an approved learning framework; and
- is delivered in a manner that accords with the approved learning framework; and
- is based on the developmental needs, interests and experiences of each child; and
- is designed to take into account the individual differences of each child (*National Law*).

Education Law: Defined in the National Law.

Jurisdiction	Education law
Australian Capital Territory	Education Act 2004
New South Wales	Education Act 1990 Institute of Teachers Act 2004 Teaching Service Act 1980
Northern Territory	Education Act Teacher Registration (Northern Territory) Act
Queensland	Education (Accreditation of Non-State Schools) Act 2001 Education (General Provisions) Act 2006 Education (Queensland College of Teachers) Act 200
South Australia	Education Act 1972
Tasmania	Teacher's Registration Act 2005
Victoria	Education and Training Reform Act 2006
Western Australia	School Education Act 1999

Educator: An individual who provides education and care for children as part of an education and care service (*National Law*).

Eligible association: A parents and citizens association formed under Chapter 7 of the Education (General Provisions) Act 2006 of Queensland. A 'prescribed entity' means the Catholic Education Commission of Western Australia.

Emergency: In relation to an education and care service, includes an incident, situation or event where there is an imminent or severe risk to the health, safety and wellbeing of a person at the education and care service premises (*National Regulations*) e.g. flood, fire, a situation that requires the service to be shut down (*National Regulations*).

Evaluation of wellbeing and learning: In the school age education and care context, gathering knowledge about children's wellbeing and learning by reflecting and engaging in processes of scanning, monitoring, gathering and analysing information about how children feel and what children know, can do and understand (*Framework for School Age Care*, p. 16). This forms part of the ongoing assessment and planning cycle.

Every child: Used in the National Quality Standard when it is intended to suggest an inclusive approach. It implies that all children have the same opportunity regardless of their age, gender, background or abilities. An example is 'every child is supported to participate in the program'.

Excellent rating: The highest overall rating level under the National Quality Standard assessment and rating process, awarded by ACECQA (*National Regulations*).

Excursion: An outing organised by an education and care service or family day care educator, but does not include an outing organised by an education and care service provided on a school site if the child or children leave the education and care service premises in the company of an educator and the child or children do not leave the school site (*National Regulations*).

Family day care co-ordinator: A person employed or engaged by the approved provider of a family day care service to monitor and support the family day care educators who are part of the service (*National Law*).

Family day care educator: An educator engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue (*National Law*).

Family day care educator assistant: A person engaged by or registered with a family day care service to assist family day care educators (*National Law*).

Family day care residence: A residence at which a family day care educator educates and cares for children as part of a family day care service (*National Law*).

Family day care service: An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences (*National Law*).

Note: A family day care service that is an approved family day care service may provide education and care to children from a family day care residence or an approved family day care venue (*National Law*).

Family day care venue: See ***Approved Family Day Care Venue***

Family member: In relation to a child, means:

- a parent, grandparent, brother, sister, uncle, aunt, or cousin of the child, whether of the whole blood or half blood and whether that relationship arises by marriage (including a de facto relationship) or by adoption or otherwise; or
- a relative of the child according to Aboriginal or Torres Strait Islander tradition; or
- a person with whom the child resides in a family-like relationship; or
- a person who is recognised in the child's community as having a familial role in respect of the child (*National Law*).

Financial Declaration: A declaration made by a person who is not an individual, indicating whether the person is or has been declared insolvent or is or has been placed under external administration (*National Regulations*).

First tier review: Refers to the first level of review of a service by the regulatory authority, as set out in the National Law.

Former Approval: Paraphrased, it means an approval, licence or other authorisation issued under a former education and care services law (*National Law transitional provisions*).

Former education and care services law: Paraphrased, it means the state or territory law that applied to education and care services (now covered by the National Law) before 1 January 2012 (1 August 2012 in WA).

Guardian: Guardian, in relation to a child, means the legal guardian of the child (*National Law*).

In attendance at a centre-based service: An early childhood teacher is in attendance at a centre-based service if the teacher:

(a) is physically present at the service; and

(b) carries out education and care activities at the service including one or more of the following:

- working directly with children;
- planning programs;
- mentoring, coaching or supporting educators;
- facilitating education and care research;
- performing the role of educational leader of the service referred to in regulation 118 (*National Regulations*).

Inclusion: Involves taking into account all children's social, cultural and linguistic diversity (including learning styles, abilities, disabilities, gender, family circumstances and geographic location) in curriculum decision-making processes. The intent is to ensure that all children's experiences are recognised and valued. The intent is also to ensure that all children have equitable access to resources and participation, and opportunities to demonstrate their learning and to value difference (*Early Years Learning Framework*, p. 45; *Framework for School Age Care*, p. 41).

Inclusive environment: An indoor or outdoor education and care environment that supports every child's inclusion.

Infectious disease: Any disease designated under a law of the relevant jurisdiction or by a health authority as a disease that would require a person with the disease to be excluded from an education and care service (*National Regulations*).

Infringements law: Defined in the National Law.

Jurisdiction	Infringements law
Australian Capital Territory	Magistrates Court Act 1930, part 3.8
New South Wales	Fines Act 1996
Northern Territory	Education Regulations, part 7
Queensland	State Penalties Enforcement Act 1999
South Australia	Expiation of Offences Act 1996
Tasmania	Monetary Penalties Enforcement Act 2005
Victoria	Infringements Act 2006
Western Australia	Criminal Procedure Act 2004 Part 2

Intentional teaching: In the early childhood education and care context, involves educators being deliberate, purposeful and thoughtful in their decisions and actions. Intentional teaching is the opposite of teaching by rote or continuing with traditions simply because things have 'always been done that way' (*Early Years Learning Framework*, p. 45).

Intentionality: In the school age education and care context, involves educators being deliberate, purposeful and thoughtful in their decisions and actions (*Framework for School Age Care*, p. 41).

Interactions: Social engagement between children, educators, families and communities and play engagement between children, educators, families and communities and their environment. Interactions are an important part of the education and care curriculum/program.

Insurance: See *Prescribed insurance*

Learning: A natural process of exploration that children engage in from birth as they expand their intellectual, physical, social, emotional and creative capacities. Early learning is closely linked to early development (*Early Years Learning Framework*, p. 46). Life-long learning is acknowledged as self-motivated process that extends intellectual, vocational and personal horizons which begins in pre-school times, and is continued throughout life (*Framework for School Age Care*, p. 42).

Learning framework: See *Approved learning framework*

Learning outcome: A skill, knowledge or disposition that educators can actively promote in collaboration with children and families (*Early Years Learning Framework*, p. 46; *Framework for School Age Care*, p. 42).

Literacy: In the early years context, a range of modes of communication including music, movement, dance, story-telling, visual arts, media and drama, as well as talking, reading and writing (*Early Years Learning Framework*, p. 46).

Long day care service: Not defined in the National Law or Regulations. A centre-based form of service which provides all-day or part-time care for children aged birth to six who attend on a regular basis (*National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*, p. 6).

Meaningful leisure: In the school age context, meaningful leisure describes the opportunities for children to develop their imagination, social ability and the sense of community including participation, collaboration and responsibility (*Framework for School Age Care*, p. 42).

Medical condition: Not defined in the National Law or Regulations. May be described as a condition that has been diagnosed by a registered medical practitioner.

Medication: Medicine within the meaning of the Therapeutic Goods Act 1989 of the Commonwealth (*National Regulations*). Medicine includes prescription, over-the-counter and complementary medicines. All therapeutic goods in Australia are listed on the Australian Register of Therapeutic Goods, available on the Therapeutic Goods Administration website (www.tga.gov.au).

National Law: Unless otherwise specified, the Education and Care Services National Law Act 2010 or, in Western Australia, the Education and Care Services National Law (WA) Act 2012. This applied law system sets a national standard for children's education and care across Australia. See the ACECQA website for the Application Act or legislation that applies in each jurisdiction.

National Quality Agenda IT System: A web-based information system to assist state and territory regulatory authorities and ACECQA to manage the approval, monitoring and quality assessment of children's education and care services. The system also enables services, providers and educators to submit application and notification forms online to regulatory authorities and ACECQA.

National Regulations: The Education and Care National Regulations. The National Regulations support the National Law by providing detail on a range of operational requirements for an education and care service.

Nominated supervisor: In relation to an education and care service, means a person who:

- is nominated by the approved provider of the service under Part 3 to be a nominated supervisor of that service; and
- unless the individual is the approved provider, has provided written consent to that nomination (*National Law*).

Numeracy: Understandings about numbers, patterns, measurement, spatial awareness and data as well as mathematical thinking, reasoning and counting (*Early Years Learning Framework,* p. 46).

Occupancy permit: A certificate or permit issued under a building law or planning and development law of a participating jurisdiction that permits a building to be occupied (*National Regulations*).

Office: In relation to a family day care service, means:

- the principal office of the service; or
- the principal office of the approved provider of the service; or
- any other business office of the approved provider of the service; or
- any premises of the service from which the service's family day care educators are co-ordinated (*National Law*).

Officer: Section 9 of the Corporations Act 2001 states that an officer of a corporation means:

- a director or secretary of the corporation
- a person
  - who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation, or
  - who has the capacity to affect significantly the entity's financial standing, or
  - in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the corporation), or
- a receiver, or receiver and manager, of the property of the corporation, or
- an administrator of the corporation, or
- an administrator of a deed of company arrangement executive by the corporation
- a liquidator of the corporation, or
- a trustee/other person administering a compromise or arrangement between the corporation and someone else.

Outcome: See *Learning outcome*

Outside school hours care service: Not defined in the National Law or Regulations. A service that provides care for primary school aged children (typically 5 to 12 years) before and after school and can also operate during school holidays (vacation care) and on pupil free days (*National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*, p. 7).

Outside school hours care services are usually provided from primary school premises. Services may also be located in child care centres or community facilities. Outside school hours care services are often provided by parent associations or non-for-profit organisations.

Overseas criminal history statement: A statement made by an individual that:

- states whether the individual has been convicted outside Australia of any offences relevant to a person seeking to work with children, and
- includes details of those convictions (*National Regulations*).

Parent: In relation to a child, includes:

- a guardian of the child
- a person who has parental responsibility for the child under a decision or order of a court (*National Law*).

Parenting order: A parenting order within the meaning of section 64B(1) of the Family Law Act 1975 (*Commonwealth*).

Parenting plan: A parenting plan within the meaning of section 63C(1) of the Family Law Act 1975 (*Commonwealth*) and includes a registered parenting plan within the meaning of section 63C(6) of that Act.

Participating jurisdiction: A State or Territory in which—

- the Education and Care Services National Law applies as a Law of the State or Territory; or
- a law that substantially corresponds to the provisions of the Education and Care Services National Law has been enacted (*National Law*).

Pedagogy: Educators' professional practice, especially those aspects that involve building and nurturing relationships, curriculum/program decision-making, teaching and learning (*Early Years Learning Framework*, p. 46; *Framework for School Age Care* p. 42).

Person: Means:

- an individual; or
- a body corporate; or
- an eligible association; or
- a partnership; or
- a prescribed entity (*National Law*).

Person in day-to-day charge: A person is in day-to-day charge of an education and care service if:

- the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the service; and
- the person consents to the placement in writing (*National Regulations*). There are minimum requirements for the person in day-to-day charge.

Person with management or control: In relation to an education and care service, means:

- if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act 2001 of the Commonwealth who is responsible for managing the delivery of the education and care service; or
- if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service (*National Law*).

Philosophy: See *Statement of philosophy*

Planning cycle: See *Assessment and planning cycle*

Planning permit: A legal document that gives permission in principle for a certain use or development on a specific parcel of land (*National Regulations*).

Play based learning: A context for learning through which children organise and make sense of their social worlds, as they engage actively with people, objects and representations (*Early Years Learning Framework*, p. 46).

Preschool: Not defined in the National Law or Regulations. A service that provides an early childhood education program, delivered by a qualified teacher, often but not necessarily on a sessional basis in a dedicated service. Alternative terms used for preschool in some jurisdictions include kindergarten, pre-preparatory and reception (*National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*, p. 7).

Preschool program: An early childhood educational program delivered by a qualified early childhood teacher to children in the year that is two years before grade 1 of school (*National Law*).

Prescribed entity: The following are prescribed entities for the purposes of paragraph (e) of the definition of person in section 5(1) of the Law:

- the Catholic Education Commission of Western Australia
- a body politic (*National Regulations, Regulation 9*).

Prescribed insurance: Insurance required as a condition of service approval. See *sections 29–30* of the National Regulations.

Previous service statement: A statement made by an individual that states:

- whether or not the individual has held any role within an education and care service or a children's service in the previous three years; and
- includes the following details for each role
  - the name of the service
  - the state or territory in which the service was located, and
  - the nature of the role (*National Regulations*).

Program: See *Educational program*

Protected disclosure: A disclosure of information or provision of documents to the regulatory authority:

- pursuant to a request under the National Law, or
- where the person making the disclosure has a reasonable belief that:
  - an offence against the National Law has been or is being committed, or
  - the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk (*National Law*).

Provider: See *Approved provider*

Provider approval: A provider approval:

- granted under Part 2 of the National Law or the National Law as applying in another participating jurisdiction, and

- as amended under the National Law or the National Law as applying in another participating jurisdiction.

It does not include a provider approval that has been cancelled (*National Law*).

Public sector law: Defined in the National Law

Jurisdiction	Law
Australian Capital Territory	Public Sector Management Act 1994
New South Wales	Public Sector Employment and Management Act 2002
Northern Territory	Public Sector Employment and Management Act
Queensland	Public Service Act 2008
South Australia	Public Sector Act 2009 Public Sector (Honesty and Accountability) Act 1995
Tasmania	State Service Act 2000
Victoria	Public Administration Act 2004
Western Australia	Public Sector Management Act 1994

Quality Improvement Plan (QIP): A document created by an approved provider to help services self-assess their performance in delivering quality education and care and to plan future improvements. Regulatory authorities consider the service's QIP as part of the quality assessment and rating process. The QIP includes three components:

1. An assessment of the quality of service practices against the NQS and the National Regulations
2. Identified areas for improvement
3. A statement of the philosophy of the service (*National Regulations*)

Reflective practice: A form of ongoing learning that involves engaging with questions of philosophy, ethics and practice. Its intention is to gather information and gain insights that support, inform and enrich decision-making about children's learning. As professionals, early childhood educators examine what happens in their settings and reflect on what they might change (*Early Years Learning Framework*, p. 13).

Registered medical practitioner: A person registered under the Health Practitioner National Law to practise in the medical profession (other than as a student) (*National Regulations*).

Regular outing: In relation to an education and care service, means a walk, drive or trip to and from a destination:

- that the service visits regularly as part of its educational program, and
- where the circumstances relevant to the risk assessment are the same on each outing (*National Regulations*).

Regulatory authority: A person declared by a law of a participating jurisdiction to be the regulatory authority for that jurisdiction or for a class of education and care services for that jurisdiction (*National Law*).

Relevant tribunal or court: Defined in the National Law:

Jurisdiction	Tribunal or court for enforcement	Tribunal or court for reviews
Australian Capital Territory	Magistrates Court	ACT Civil and Administrative Tribunal (ACAT)
New South Wales	District Court	Administrative Decisions Tribunal
Northern Territory	Local Court	Local Court
Queensland	Magistrates Court	Queensland Civil and Administrative Tribunal (QCAT)
South Australia	Magistrates Court	District Court
Tasmania	Magistrates Court	Magistrate Court (Administrative Appeals Division)
Victoria	Magistrates Court	Victorian Civil and Administrative Tribunal (VCAT)
Western Australia	State Administrative Tribunal	State Administrative Tribunal

Residence: The habitable areas of a dwelling (*National Law*).

Responsible person: The responsible person is an individual who is physically present and is responsible for the operation of a centre-based service for an agreed period of time. A responsible person must be present at all times that the approved service operates and can be:

- the approved provider or a person with management or control of the service;
- a nominated supervisor of the service; or
- a person placed in day-to-day charge of the service in accordance with the National Regulations (*National Law*).

Responsive teaching: The educational practice of attending and responding to children's strengths, abilities, interests, ideas and play and a key pedagogical practice of the approved learning frameworks.

Rest pause: A short break taken by a person from duties of the person's employment (*National Regulations*). Please see ***National Regulations*** for educator to child ratios during a rest pause.

Rest period condition: A condition on a service approval providing for 1 or more periods during a day, totalling not more than 2 hours during the day, to be rest periods for an approved education and care service (*National Regulations*).

Rights of the child: Human rights belonging to all children, as specified in the United Nations Convention on the Rights of the Child.

Routines: Regular, everyday events in an education and care service such as meal times, sleep/rest times, groups times, nappy change/ toileting, hygiene, arriving and departing. Routines are a key component of the curriculum/program. Effective routines provide children with a sense of predictability and consistency that help children to feel safe, secure and supported.

Scaffold: The educators' decisions and actions that build on children's existing knowledge and skills to enhance their learning (*Early Years Learning Framework* p. 46).

School age: See *School children*

School children: Includes children attending school in the year before grade 1 (*National Law*).

Second tier review: Refers to ratings review by a panel set up by ACECQA, following a first tier review.

Self-regulation: The ability to manage energy states, emotions, behaviour and attention: the ability to return to a balanced, calm and constant state of being. Self regulation is a key factor for mental health, wellbeing and learning (*Kidsmatter*).

Serious incident: A serious incident (Regulation 12) is defined as any of the following:

- the **death of a child** while that child is being educated and cared for at the service or following an incident while that child was being educated and cared for at the service
- any **incident involving a serious injury or trauma to a child** while that child is being educated and cared for by the 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 e.g. broken limb
- any **incident involving serious illness of a child** while that child is being educated and cared for by the service for which the child attended, or ought reasonably to have attended, a hospital e.g. severe asthma attack, seizure or anaphylaxis reaction
- any emergency for which **emergency services** attended. NOTE: This means an incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person at an education and care service. It does not mean an incident where emergency services attended as a precaution
- a child appears to be **missing or cannot be accounted** for at the service
- a child appears to have been **taken or removed** from the service in a manner that contravenes the National Regulations
- a child is mistakenly **locked in or locked out of the education and care service** premises or any part of the premises (*National Regulations*).

Service approval: A service approval:

- granted under Part 3 of the National Law or the National Law as applying in another participating jurisdiction; and
- as amended under the National Law or the National Law as applying in another participating jurisdiction but does not include a service approval that has been cancelled (*National Law*).

Service waiver: An exemption from a requirement that an approved education and care service comply with a prescribed element(s) of the National Quality Standard or regulation(s) of the National Regulations. While a service waiver is in force, the approved service is taken to comply with the element(s) or regulation(s) specified in the waiver.

Soil assessment: An analysis of soil conducted by an environmental consultant, environmental consulting firm, or environmental auditor for the purposes of determining:

- the nature, extent and levels of contamination, and
- the actual or potential risk to human health resulting from that contamination (*National Regulations*).

Specified person: In relation to an education and care service:

(a) a staff member or volunteer who is at least 18 years of age; or

(b) a staff member or volunteer who is at least 17 years of age and who holds or is actively working towards one of the following qualifications:

(i) unless subparagraph (ii) applies, an approved certificate III level education and care qualification; or

(ii) if the centre-based service educates and cares only for children over preschool age:

(A) a certificate III or IV in community services under the Australian Qualifications Framework; or

(B) a 1 year qualification in a relevant area of study; or

(C) a qualification that is higher than a qualification referred to in sub-subparagraph (A) or (B) (*National Regulations*).

Staff member: In relation to an education and care service, means any individual (other than a nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as a family day care co-ordinator, educator or otherwise (*National Law*).

Staffing arrangements: The management and organisation of the staff of an education and care service.

Statement of philosophy: A statement the approved provider of an education and care service must develop and include in their Quality Improvement Plan. It is designed to guide all aspects of the service's operations. It must be available to the staff members of the service and on request to parents of children enrolled at the service or who are seeking to enrol a child at the service (*National Regulations*).

Suitably qualified person: A person who has:

- a qualification for the education and care of children generally or children of a specified age that is approved by ACECQA and included in the list of approved qualifications for suitably qualified persons published under Regulation 137; or
- a qualification approved by ACECQA as a higher qualification for suitably qualified persons and included in the list of approved qualifications for suitably qualified persons published under Regulation 137 (*National Regulations*).

Temporary waiver: An exemption from a requirement that an approved education and care service comply with a prescribed element(s) of the National Quality Standard or regulation of the National Regulations. While a temporary waiver is in force, the approved service is not required to comply with the element(s) or regulation(s) specified in the waiver.

Texts: Things read, viewed and listened to and that are created in order to share meaning. Texts can be print-based, such as books, magazines and posters or screen-based, such as internet sites and DVDs. Many texts are multimodal, integrating images, written words and/or sound.

Transitions: The process of moving between home and the education and care setting, between a range of different education and care settings or from the education and care setting to full-time school adapted from the *Early Years Learning Framework*, p. 46). In the early childhood context, transitions can also refer to the process of:

- moving from one age-grouping or room to another e.g. from babies to toddlers
- moving between spaces or experiences during the one day e.g. from indoors to the outdoor environment; or between experiences e.g. from free play to a group experience; or between an experience and a routine e.g. free play to lunch.

Upkeep: Upkeep of the physical environment of an education and care service refers to the responsibility of services to implement effective maintenance, cleaning and appropriate safety precautions, which also helps prevent injuries and the spread of infectious diseases. Premises, furniture and equipment should be safe, clean and well maintained to ensure the safety of children and service staff.

Vacation care services providing education and care for no more than twenty-eight days: Services providing a total of no more than 28 days of education and care during school holidays within one calendar year are excluded from the National Law definition of education and care service (*National Regulations*). The time period was previously expressed as four weeks, but has been clarified to be 28 days.

Wellbeing: Sound wellbeing results from the satisfaction of basic needs – the need for tenderness and affection; security and clarity; social recognition; to feel competent; physical needs and for meaning in life (adapted from Laevers 1994). It includes happiness and satisfaction, effective social functioning and the dispositions of optimism, openness, curiosity and resilience (*Early Years Learning Framework*, p. 46; *Framework for School Age Care*, p. 42).

Working directly with children: A person is working directly with children at a given time if at that time the person:

- is physically present with the children, and
- is directly engaged in providing education and care to the children (*National Regulations*).

Working with children check: A notice, certificate or other document granted to, or with respect to, a person under a working with children law to the effect that:

- the person has been assessed as suitable to work with children; or
- there has been no information that if the person worked with children the person would pose a risk to the children; or
- the person is not prohibited from attempting to obtain, undertake or remain in child-related employment (*National Law*).

Working with children law: Defined in the National Law:

Jurisdiction	Working with children law
Australian Capital Territory	Working with Vulnerable People (Background Checking) Act 2011
New South Wales	Commission for Children and Young People Act 1998
Northern Territory	Care and Protection of Children Act, Part 3.1 Commission for Children and Young People and Child Guardian Act 2000 Children's Protection Act 1993
Queensland	Commission for Children and Young People and Child Guardian Act 2000
South Australia	Children's Protection Act 1993
Tasmania	N/A
Victoria	Working with Children Act 2005 Working with Children (Criminal Record Checking) Act 2004
Western Australia	Working with Children (Criminal Record Checking) Act 2004

Working with vulnerable people check: A check of a person under a working with vulnerable people law of a participating jurisdiction (*National Regulations*).

Working with vulnerable people law: Defined in the National Law.

Jurisdiction	Working with vulnerable people law
Australian Capital Territory	Working with Vulnerable People (Background Checking) Act 2011
New South Wales	N/A
Northern Territory	N/A
Queensland	N/A
South Australia	N/A
Tasmania	N/A
Victoria	N/A
Western Australia	N/A