Being an Approved Provider of a NSW Long Day Care Centre or Preschool
This is a simple guide to the role of an Approved Provider under the National Quality Framework (NQF) for NSW long day care services and preschools.

All preschool or long day care services must be operated by an Approved Provider. An Approved Provider can be an individual or an entity such as a company, an association or a partnership.

This resource aims to simplify what an Approved Provider needs to know about the National Quality Framework, the Education and Care Services National Law and the Education and Care Services National Regulations and your role.

Glossary

Throughout this guide, we refer to DoE and ACECQA.

DoE is the NSW Department of Education. It is the ‘state regulatory authority’ in NSW - in other words, it assesses services under the National Quality Framework and is responsible for ensuring compliance with the Law and Regulations.

ACECQA is the Australian Children’s Education and Care Quality Authority. This is the national organisation which oversees the NQF.
What used to be generally known as a childcare service is referred to under the NQF as an education and care service. The terms preschools and long day care are still retained.

TO DO

You cannot operate a long day care or preschool service in NSW unless you are an Approved Provider. You need to submit an application for Provider Approval to the NSW Department of Education (DoE) via the ACECQA website: www.acecqa.gov.au/provider-approvals.

Existing services must amend their Provider Approvals with the Department of Education whenever the provider’s name changes, the provider changes address or new people take over management and control of the entity (e.g. when new committee members are elected).

What Is an Approved Provider?

An Approved Provider is a person or an entity who holds a Provider Approval granted under the Children (Education and Care Services) National Law (NSW). This approval authorises the Approved Provider to operate an approved education and care service.
National Quality Framework

In 2009 Australian Governments agreed to a National Quality Agenda for Early Childhood Education and Care. The National Quality Framework is the overarching name given to the elements of the reforms which came into law in 2012 and are designed to improve the quality of early education and care services.

The NQF consists of:

- The National Quality Standard (seven quality areas);
- A rating system (each service rated using 1 of 5 possible ratings from Excellent to Significant Improvement Required against the National Quality Standard);
- A streamlined, nationally consistent regulatory system.

READ MORE
Find out more about the NQF on Community Early Learning Australia’s website - www.cela.org.au and then go on to the Guide to the National Quality Framework at http://tinyurl.com/guide2nqf
The Laws

The laws under which a body is given a Provider Approval are the:

- Children (Education and Care Services) National Law (NSW)
- Education and Care Services National Regulations

The overall responsibility for ensuring a service complies with the Law and Regulations belongs to the Approved Provider. In most cases, if the service does not meet the requirements of the Law and Regulations, it is the Approved Provider who is legally responsible. The Approved Provider is responsible for a range of things from making sure children receive adequate food, to ensuring that staff ratios are met.

READ MORE

There is a Guide to the National Law and National Regulations on the ACECQA website at: http://tinyurl.com/ecsnatlaw
Approvals

You need two separate approvals to operate an education and care service: a Provider Approval and a Service Approval.

- **Provider Approval** – is nationally recognised and enables providers to apply for Service Approvals in any Australian state or territory.
- **Service Approval** – authorises an Approved Provider to operate a specific education and care service.

Who Exactly Is the Approved Provider?

This depends on the structure of your Preschool or Long Day Care centre. An Approved Provider can be a person or it can be a body corporate, an eligible association, a partnership or an entity such as a local council. The majority of preschools or long day care centres in NSW are run by some sort of body corporate of this type. Therefore, it is the organisation or company that is the Approved Provider. The company directors and members of management committees and boards of education and care services are responsible for ensuring that the organisation or company meets its responsibilities under the Law and Regulations.

**TO DO**

You must understand your legal obligations as an Approved Provider. You must pay an annual fee for your Service Approval. These fees are currently between $196 and $389 per year depending on your service size.
Conditions of Approval

A Service Approval is granted subject to the condition that the education and care service is operated in a way that:

(a) ensures the safety, health and wellbeing of the children being educated and cared for by the service; and

(b) meets the educational and developmental needs of the children being educated and cared for by the service.

Your Service or Provider Approval can be suspended or cancelled under the Law, for a range of offences. See page 13 for a list of offences for Approved Providers under the Law.

Keeping Your Approval

To be an Approved Provider DoE has to be satisfied that you are a ‘fit and proper person to be involved in the provision of an education and care service’. The effect of this for services run by committees or Boards is that when new members are appointed to the Executive of the Committee, or Board of Directors they will have to submit a range of documents to DoE to aid this assessment. These may include proof of identity, criminal history record and Working with Children Checks. DoE can also reassess the fitness of a Provider at any time.
Other Roles

Nominated Supervisor

All Approved Providers must appoint a Nominated Supervisor under the National Quality Framework. The Nominated Supervisor has a number of set responsibilities under the law and regulations.

As the Approved Provider has overall responsibility for ensuring children’s safety and wellbeing the Nominated Supervisor you appoint must have suitable skills and experience (consider their qualifications, experience and age).

To be appointed as a Nominated Supervisor a person must give their written consent to their nomination by the Approved Provider as the Nominated Supervisor for the service or to be placed in day to day charge of the service.

Responsible Person

The Approved Provider must ensure their service has a “responsible person” in charge at all times – present whenever there are children being educated and cared for by the service. This can be an Approved Provider, Nominated Supervisor or a Certified Supervisor who has been placed in day-to-day charge of the service.

READ MORE
A Nominated Supervisor’s responsibilities can be explored at http://tinyurl.com/nomisuper

TO DO
As an Approved Provider, it is your responsibility to inform DoE whenever your service appoints a new Nominated Supervisor. You need to take reasonable steps to ensure a person is suitable to be the Nominated Supervisor for the service or to be the Responsible Person placed in day-to-day charge.
Certified Supervisors

Your service has a Service Supervisor Certificate. This Certificate applies to any person working at the service who has been identified by you as Approved Provider as:

- responsible for the day-to-day management of the service or
- exercising supervisory and leadership responsibilities for part of the service

When your Nominated Supervisor or the Approved Provider is not on the premises of the service, the Nominated Supervisor must place a Certified Supervisor in day-to-day charge of the service.

Educational Leader

Every service must also nominate, in writing, a suitably qualified and experienced educator or co-ordinator to ‘lead the development and implementation of education programs in the service’.

TO DO

- appoint a Nominated Supervisor
- ensure your service has a process in place to ensure there is a responsible person present at the service at all times;
- appoint an Educational Leader (in writing).

READ MORE

A person must give their written approval to be the responsible person in charge of the service.
Other Responsibilities of an Approved Provider

A Quality Improvement Plan (or QIP)

An Approved Provider must ensure that the service has a Quality Improvement Plan (QIP). This Quality Improvement Plan is based on a self-assessment. A QIP will identify the quality areas where improvements are needed and the proposed strategies and timeframes to achieve them. The QIP must be updated each year, kept at the service premises and be available for review by staff, families and DoE Officers as requested. The Quality Improvement Plan is submitted to DoE when formally requested prior to assessment against the National Quality Standard.

Waivers

An Approved Provider can apply to DoE for a waiver from a requirement to comply with an element or elements of the National Quality Standard and the Regulations that a service cannot meet. A temporary waiver means your service is not required to comply with the element/s or regulation/s that have been temporarily waived. A service waiver means the service is taken to comply with the element/s or regulation/s that have been specified in the service waiver.

Guides

ACECQA has published a range of guides to support the National Quality Framework. These include a Guide to the National Quality Framework. It can also be downloaded from http://tinyurl.com/guide2nqf

TO DO

- ensure your service meets the Regulations and the National Quality Standard or has a waiver in place;
- be part of the process of creating and implementing your service’s Quality Improvement Plan.
Rating, Assessment and the NQS

All services are rated against the seven areas of the National Quality Standard. Obviously, you would like your service’s rating to be as high as possible!

The seven Quality Areas are:
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. Leadership and service management

The rating scale is a five-point scale:
- Excellent
- Exceeding National Quality Standard
- Meeting National Quality Standard
- Working towards National Quality Standard
- Significant Improvement Required

Services are rated by DoE at one of the four lower levels. If you are rated as Exceeding National Quality Standard, you may then apply under a separate process to be recognised as ‘Excellent’.

The Department of Education undertakes the rating of your service. Until your service is assessed for the first time it is rated as Provisional – Not Yet Assessed under the National Quality Framework.

READ MORE
Is your service a member of Community Early Learning Australia?
We provide guides to all the aspects of the NQF to support you in making your service the best it can be. Go to www.cela.org.au
Offences Under the Law and Regulations

The National Law sets out a range of serious offences for which an Approved Provider can be responsible. These generally relate to the crucial elements of running a service. Not meeting these requirements would mean, for example, that you failed to ensure that your service was staffed as required, or that your service was not providing appropriate educational programs, or that your service was not protecting children from harm and hazards.

The National Law and National Regulations prescribe penalties which are the maximum penalty a court might apply to the offence outlined in the Law. Many of these offences apply to the Approved Provider because this is the person or entity with the overall responsibility for making sure that the service complies with the National Law and the National Regulations. Some of these offences can also apply to Nominated Supervisors and a limited few to educators.
# Offences for Approved Providers Under the Law

<table>
<thead>
<tr>
<th>Offence</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide an education and care service without service approval</td>
<td>Fail to notify circumstances to the Regulatory Authority</td>
</tr>
<tr>
<td>Advertise a service without service approval</td>
<td>Fail to keep enrolment and other documents</td>
</tr>
<tr>
<td>Operate a service without Nominated Supervisor</td>
<td>Fail to notify information to the Regulatory Authority</td>
</tr>
<tr>
<td>Operate a service without responsible person present</td>
<td>Engage person to whom prohibition notice applies</td>
</tr>
<tr>
<td>Inadequate supervision</td>
<td>Compliance Directions</td>
</tr>
<tr>
<td>Inappropriate discipline</td>
<td>Obstruct an authorised officer</td>
</tr>
<tr>
<td>Fail to protect children from harm and hazards</td>
<td>Fail to assist an authorised officer</td>
</tr>
<tr>
<td>Fail to provide required program</td>
<td>Destroy or damage notices or documents</td>
</tr>
<tr>
<td>Fail to meet minimum staffing requirements, including ratios and qualifications</td>
<td>Impersonate an authorised officer</td>
</tr>
<tr>
<td>Allow unauthorised person to remain on premises</td>
<td>Fail to comply with direction to exclude inappropriate person</td>
</tr>
<tr>
<td>Fail to comply with notice or requirement</td>
<td>Hinder or obstruct Regulatory Authority</td>
</tr>
<tr>
<td>Fail to display prescribed information</td>
<td></td>
</tr>
</tbody>
</table>
The Regulations also have a number of offences an Approved Provider can commit such as not ensuring a Quality Improvement Plan is prepared, misrepresenting your service rating, not ensuring that your service provides children regular access to clean drinking water or not carrying out a risk assessment before an excursion.

**Who Can Bring Proceedings for an Offence?**

- The Department of Education
- A person authorised by the Department
- A police officer

**Summary of Offences**

There is a summary of offences under the National Law in the Guide to the National Law and National Regulations. Offences under the Regulation can be found on following pages of the same document. Go to: http://tinyurl.com/ecnatlaw

**TO DO**

Ensure your service is aware of the Law and Regulations and is compliant with them (operating lawfully).

**READ MORE**

Is your service a member of Community Early Learning Australia? We host an online Compliance Tool for members to assess their compliance with the Regulations and the Law.

Go to www.cela.org.au
Enforcement and Compliance

Under the National Law, DoE has different mechanisms to use for ensuring services comply with the Law and Regulations (as well as the rating system of course!).

- The Department of Education has a range of compliance powers which are set out in the National Law, (e.g. prosecution, infringement notices and compliance notices).
- The maximum penalty for an offence is set out under each offence provision.
- It is the courts that determine the amount of the penalty that must be paid, following a prosecution.
- The Department also uses education and awareness strategies to increase knowledge of service and individual responsibilities under the Regulations and Law.
Keeping on Track

How do you ensure your service stays on track? That it complies with regulation? You can’t be there all the time, so how can you be sure your service is being provided in accordance with the Law and Regulations?

▸ **Be aware of your responsibilities under the Law and Regulations.** This is required of you as an Approved Provider and is the best way to ensure that your service is abiding by the Law and Regulations.

▸ **Have clear and documented policies and procedures.** You are legally obliged to have a range of policies and procedures. Ensuring these are updated in line with the new Regulations and the National Quality Standard and that they are followed, will ensure your service is doing what it should do under the Regulations and Law. The Approved Provider of a service must also take reasonable steps to ensure that the Nominated Supervisor and staff members of, and volunteers at, the service follow the policies and procedures required.

▸ **Appoint a knowledgeable and skilled Nominated Supervisor.** Your Nominated Supervisor should be very familiar with the current regulatory requirements. They are responsible to you as the Approved Provider for ensuring that the policies and procedures that a service has in place are followed. They ensure compliance with the relevant requirements at all times and are responsible for the care and education of each individual child attending the service. Some of the legal responsibilities of running a service fall jointly on the Approved Provider and the Nominated Supervisor. Support your Nominated Supervisor with training, professional development and suitable time to understand the role.
Have clear systems of communication with both your Nominated Supervisor and other people who have management and control of the service. Good communication allows you to address issues as they arise and ensures everybody is working together.

Recruit great staff, provide them with the professional development they need and do what is required to retain them. Did you know that research has shown a clear link between the qualifications that staff hold and the quality of education and care a service provides? The higher the qualifications, the better the education and care children will receive. Continuity of staff is also very important. Provide a budget for professional development to ensure your staff can become familiar with changed requirements.

Have regular contact and involvement with the service. If you see what is happening, if you are part of the service in a meaningful way, you can be comfortable that the service is compliant.

Set up systems to maintain communication and compliance. These could include having set agendas for your meetings with your Nominated Supervisor to ensure all important areas are discussed, and recommend compliance calendars and/or checklists for your service.

Organise professional development for yourself and other people who have management control of your service. Good professional development opportunities exist for management committees and owners of services. Avail yourself of these to ensure you are equipped to assist your service provide the best quality education and care possible to children. See www.cela.org.au for professional development options.

TO DO

- Download and read the summary of offences under the National Law and under the Regulations in the Guide to the National Law and National Regulations at http://tinyurl.com/ecnatlaw
- If you are a member of Community Early Learning Australia use the Online Compliance Guide at www.cela.org.au to check your service’s compliance to the regulations and the law.