Compliance
for NSW Long Day Care Centres and Preschools
April 2017
This is a simple guide to compliance for NSW long day care services and preschools.

All preschools and long day care services must be compliant to a number of laws and regulations that govern their operations.

This resource aims to simplify what services need to know about compliance.

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 Is Compliance?

- Compliance is conforming to a rule or law.
- Services need to be compliant to ensure the service doesn’t inadvertently break a law or regulation about their operation.

Specific regulations and laws for education and care ensure the quality of the care. By making laws about things such as ratios, qualifications of educators and health and safety governments lay the groundwork to ensure that quality education and care is delivered.

Sometimes it can feel like compliance is arduous. Looking after babies and children is an important task, and regulating it is the major way that we as a society ensure that children are safe in our care.

**READ MORE**

Find out more about the law and regulations from ACECQA’s Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011: www.acecqa.gov.au
5 Critical Aspects of Compliance

1. The first step to compliance is understanding to what legislation your service needs to comply. For education and care services the main legislation is the Education and Cares Services National Law and the associated Regulations and if in receipt of childcare subsidies, Family Assistance Legislation.

2. All legislation gives those whom it covers both rights and responsibilities. At a base level the National Law gives your service the right to legally run an education and care service and the responsibility to keep children at the service safe.

3. Obviously, when you break a law or don’t comply with it, there are penalties or consequences for this.

4. Implementing compliance strategies and measures makes compliance a deliberate act that is planned for.

5. You could comply with every single law, but unless you have evidence to show that you do, you could still be at risk. Compliance is as much about showing how your service has complied with a law as much as actually complying.

KNOW THIS

The major areas of compliance for an education and care service are: Government payments and funding, child protection, health, employment and the education and care services’ specific legislation.
Community Early Learning Australia (CELA) has an interactive compliance tool, Compliance: Education & Care Service Compliance Tool at www.cela.org.au

Completing the tool on a regular basis – at least annually – may help you check your compliance as an education and care service in the key areas.

READ MORE


- Check the other simple guides in this series especially the Guide to Being a Nominated Supervisor and the Guide to Being an Approved Provider.

TO DO

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Knowing the Legislation!

It is important to know to what legislation the sector is subject. Essentially there are specific laws that govern how education and care services operate as well as what we have to do as a consequence of receiving government subsidies. There are also laws that affect the operation of businesses and organisations in general to which education and care services are also subject.

There is a difference between laws and regulations.

- Essentially a law is the big piece of legislation – this is created by a parliament passing a bill. It gives the broad overview of what is allowed under the law and what is not allowed. Since 2012 most services have been covered by a National Education and Care Services Law. This was passed by the NSW Parliament to cover services in NSW. The same law was passed in all other states and territories to cover services in those states and territories.

- The Regulations are what is known as subordinate legislation to that Law. Most Acts include a section providing general regulation making power. Regulations provide a lot of the detail within the framework that has been created by the Law. One way of thinking of it is that the Law says what should happen and the regulation says how it should happen.

Some of the other legislation that education and care services are subject to include:

- Workers’ Health and Safety Legislation and other employment laws
- Family Assistance Laws (This covers the laws for services who receive Child Care Benefit and Child Care Rebate payments on behalf of parents)
- Public health laws
- Child protection laws
- Governance laws that control how organisations and companies operate.
Why Do We Have Law and Regulations?

Why do we have the Education and Care Services Law & Regulations?

We have the law so we know:

- How education and care services are approved to operate
- How the assessment and rating system operates
- What the operational requirements for services are
- Who has what compliance, monitoring and enforcement powers
- The functions and powers of Regulatory Authorities (the Department of Education and Communities) and how these can be reviewed
- The functions and powers of the Australian Children’s Education and Care Quality Authority (ACECQA) and the Ministerial Council that oversees the National Quality Framework (NQF).
The Law sets out the objectives of the NQF. These 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 the levels of government
- 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 the states and the Commonwealth.

**TO DO**

Know the legislation! It is important to know the law and the regs. Services are legally required by the National Regulations to have a copy of both the National Law and National Regulations at their service. Many Directors find it useful to keep a copy of both on the desktop of their computer to refer to as needed.
What Is in the Regulations?

The Regulations cover:

- Educational program and practice—use of the Frameworks and assessment of children’s learning (Quality Area 1 of the NQS)
- Matters relating to children’s health and safety such as health, infection control, provision of food and drink, first aid, medical conditions, supervision, protection, emergency procedures, excursions and collection of children from the service. (Quality Area 2 of the NQS)
- The physical environment of the service such as fencing, equipment, space requirements, shade and facilities (Quality Area 3 of the NQS)
- Staffing arrangements services must follow in terms of ratios, qualifications, specific roles, staff records (Quality Area 4 of the NQS)
- Relationships with children—interactions and grouping of children. (Quality Area 5 of the NQS)
- Matters relating to creating relationships with families and communities (Quality Area 6)
- Leadership and service management—policies and records, etc. (Quality Area 7).

How to Use the Regulations

- Find which part of the National Regulations cover the topic on which you are working.
- The sections of the National Regulations that you will need to consult regularly are Chapter 4 of the National Regulations (Operational Requirements) and Chapter 7, which contains the specific parts applying to NSW services, along with the NQS.
- Use the index at the front to narrow down the pages and clauses (the name of the part will tell you the relevant quality area).
- Refer to the corresponding Quality Area of the NQS.
Rights and Responsibilities

Rights and Responsibilities of Approved Providers

Under the Act and National Regulations, an education and care service cannot operate unless it is operated by an Approved Provider. An Approved Provider can be an individual or an entity such as a company, an association or a partnership.

Approved Providers of education and care services have major responsibilities of:

- Appointing a Nominated Supervisor
- Ensuring there is always a responsible person in charge of the service
- Provision of facilities and equipment
- Staffing
- The number of children provided with care
- Operational matters
- Administration of the education and care service

The major right that the Approved Provider has under the law and regulations is the right to operate an approved education and care service.
Rights and Responsibilities of Nominated Supervisors

A Nominated Supervisor, in simple terms, is the person with responsibility for the day-to-day management of an Approved Service. The Nominated Supervisor has a range of legal responsibilities under the National Law and National Regulations that govern the operation of education and care services. In NSW, a Director of a service is often appointed as the service’s Nominated Supervisor.

- All services are required to have a Nominated Supervisor under the National Regulations. The Approved Provider of an education and care service commits an offence by not appointing a Nominated Supervisor. The Approved Provider of a service must notify the Department of Education whenever a Nominated Supervisor of the service is appointed.

- The Nominated Supervisor must accept this appointment in writing.

- A Nominated Supervisor holds special responsibilities (and liabilities) under the National Law and National Regulations. Nominated Supervisors, or people who are considering this role, must educate themselves about the responsibilities they hold and the potential liabilities they could face.

- The things that a Nominated Supervisor is responsible for are basic matters that a service striving to offer quality education and care for children would do as a matter of course. The Nominated Supervisor is responsible for ensuring that these things always happen.
Consequences or Penalties of Non Compliance

The Department of Education is the NSW Regulatory Authority for the National Law and National Regulations in NSW. Department of Education Assessment and Compliance Officers monitor education and care services in accordance with the Law and Regulations.

- Under the National Law, the Department of Education has a range of different mechanisms to use for ensuring services comply with the National Regulations.
- The National Law and National Regulations contain certain offences, for example, failing to adequately supervise children.
- The Department of Education has a range of compliance powers that are set out in the National Law (for example, 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 can also issue infringement notices.
- The Department also uses education and awareness strategies to increase knowledge of responsibilities of services and individuals under the National Regulations and Law.

READ MORE

There are two appendices in the ACECQA Guide to the Law and Regulations – Offences under the National Law & Regulations – Attachment A and Attachment B. Keep this summary of offences under the National Law and National Regulations handy – they neatly summarise the main offences and penalties for these offences.
The only penalty that can be issued to educators in long day care and preschool services is for inappropriately disciplining a child. A wider range of penalties exists for Nominated Supervisors and Approved Providers. See Regulation 190 of the National Regulations and Section 291 of the National Law.

READ MORE

The online compliance tool at www.cela.org.au is designed to enable a service to check the compliance of their service under the Regulations and under other key legislation. CELA recommends Nominated Supervisors use this checklist on a regular basis to ensure their service meets compliance requirements.
Implementing Risk Management

Implementing a risk management process to identify the most critical areas of compliance is another important aspect to consider. This can be undertaken just as one would conduct a hazard identification and assessment during workplace health and safety checks.

- The first part of risk assessment is identification. Services need to identify foreseeable areas of non-compliance, as well as the most critical areas of compliance.
- The second part is assessing the risk from possible non-compliance (examining how significant the risk is). For example, could it lead to the service losing its licence or CCB approval and how likely is this to occur?
- The third step is eliminating the risk of non-compliance or, if this is not possible, controlling the risk by implementing strategies, procedures and/or policies to minimise the risk and ensure the service is operating as appropriately as possible within the level of risk.
- The final step is reviewing the risk assessment – monitoring and improving the control measures the service has implemented.

The benefit of using a risk management approach to compliance is that it saves a service from responding to each piece of legislation in isolation. The ‘risk management’ concept is an ongoing operational work practice that provides services with the means to ensure they are adhering to the most important elements of compliance.

The best way for Directors to implement a risk management approach to compliance is by ensuring that the service adopts and implements policies and procedures that fit the requirements of the National Law and National Regulations.
How to Make Sure Your Service Is Compliant

The best ways for services to be compliant are:

- Be aware of both the Nominated Supervisors’ and Approved Providers’ responsibilities under the National Law and National Regulations.

- Have clearly documented policies and procedures. The Approved Provider is legally obliged to have a range of policies and procedures. Ensuring these are updated in line with the National Regulations and the NQS and ensuring they are followed will ensure your service is doing what it should do under the National Law and National Regulations.
Appoint a knowledgeable and skilled Nominated Supervisor. The Nominated Supervisor should be very familiar with the regulatory requirements. They are responsible to the Approved Provider for ensuring that the policies and procedures a service has in place are followed. The Nominated Supervisor ensures compliance with the relevant requirements at all times and is responsible for the care and education of each individual child attending the service.

Have clear systems of communication in place for everyone. Good communication allows you to address issues as they arise and ensures everybody is working together.

Recruit great staff, providing them with the professional development they need and do what is required to retain them.

Set up systems to maintain communication and compliance. These will include having set agendas for meetings to ensure all important areas are discussed, recommend compliance calendars and or checklists for the service.

Regularly using the CELA online compliance tool.
Documenting Evidence of Compliance

One of the main areas of legislative compliance that services neglect is keeping and archiving the documentation needed to prove they comply with the law. It is not valid in a court of law to merely state that a service is doing what is required – it must be demonstrated.

Documented and sourced policies and procedures are the most basic form of ‘documentation’ a service needs; however, they must be combined with ‘documentary evidence’ of implementation. For example, a policy on administering medication that states the service only administers paracetamol to children when it has written parental permission is not sufficient unless accompanied by a folder of permission slips.

Documentation also needs to be saved for certain periods of time under the different pieces of legislation.

TO DO

Completing the CELA online Compliance Tool (www.cela.org.au) and keeping the report it generates is a good way of documenting compliance.