

Early Learning Commission

Service Approvals Policy

NSW Early Learning Commission

Version 1.0

26 February 2026



Early Learning
Commission

Acknowledgement of Country

The Early Learning Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Policy.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Service Approvals Policy

Published by NSW Early Learning Commission

<https://education.nsw.gov.au/early-childhood-education/regulation-and-compliance>

First published: February 2026

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1 Purpose

The NSW Early Learning Commission (the Commission) regulates more than 6,000 Early Childhood Education and Care (ECEC) services in NSW so that children attending those services receive safe and high quality care.

The protection of the rights and best interests of each child and the children attending education and care services must be the paramount consideration in giving effect to the National Law, including in making decisions or otherwise exercising functions under this Law. The protection of the rights and best interests of each child and the children attending education and care services prevails over the financial interests of approved providers; and other fiduciary duties owed by persons with management or control of education and care services.

The Commission expects all services to deliver safe, high-quality education and care and takes strong regulatory action where these expectations are not met. The Commission adopts a prevention-led and risk-informed approach to regulation to protect children from harm and acts with integrity, confidence and courage to ensure children's safety.

The Commission and the public have an expectation that approved providers will manage their services in accordance with the National Law and the National Regulations and will deliver quality services in line with the National Quality Standard.

The information in this policy is intended to clarify:

- what constitutes a complete and valid application in respect to service approval
- the circumstances under which the Commission will exercise its discretion in respect to service approvals, and the considerations it must and/or may consider when exercising that discretion.

This policy applies to all approved providers that intend on applying for a new or amended service approval in NSW, for any type of ECEC service.

2 Scope

The NSW Early Learning Commission is the Regulatory Authority for New South Wales (NSW) for regulating the ECEC sector. The Commissioner has delegated the exercise of powers and functions to officers across NSW in accordance with the Commissioner's delegations.

The Early Learning Commission exercises its regulatory functions under the following legislation:

National Legislation

- *Children (Education and Care Services) National Law (NSW) 2010* (the 'National Law')
- *Education and Care Services National Regulations (NSW) 2011* (the 'National Regulation')

NSW State-based Framework:

- [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)
- [Children \(Education and Care Services\) Supplementary Provisions Regulation 2024](#)

Most education and care services for children around Australia are regulated, under the National Quality Framework. Service types covered by the National Quality Framework are regulated under the National Law and National Regulations. These services include Family Day Care, Long Day Care, Out of School Hours Care and Preschools. The National Quality Framework also includes the [National Approved Learning Frameworks](#) and the [National Quality Standards](#) against which education and care services are assessed and rated. The [Guide to the National Quality Framework](#) is designed to support education and care providers, educators and authorised officers understand and apply the requirements of the National Quality Framework.

Occasional care services, Multifunctional Aboriginal Children's Services (MACS) and Mobile services are out of scope of the NQF and are regulated under the state-based framework. These types of services are referred to as 'state regulated' services. In NSW, this means they can expect the same regulatory oversight as other services. National Law Alignment Provisions are applicable to NSW state regulated education and care services.

The National Law allows the Commission to manage service approvals by assessing and approving or refusing applications for, or in relation to, service approvals, as well as managing existing service approvals, including by amending, suspending or cancelling service approvals.

3 Guiding Principles

The Commission's over-arching principles for the exercise of its powers and functions are set out in the [Guiding Principles policy](#).

In exercising its powers and functions, the Commission must uphold the objectives and guiding principles set out in section 3 of National Law. In accordance with the NSW Children (Education and Care Services National Law Application) Amendment Act 2025, the rights and best interests of each child attending ECEC services are the paramount consideration. The Commission ensures this paramountcy principle informs all its decisions and the exercise of all functions under the National Law.

The Commission is also guided by the [Child Safe Standards](#), which are regulated by the NSW Office of the Children's Guardian, and is committed to upholding the safety of children through its regulatory decision making.

4 Policy

4.1 General Application Information

Persons eligible to apply for a service approval

An approved provider may apply to the Commission for a service approval if they:

- operate, or will operate, an ECEC service for which the service approval is sought; and
- are, or will be, responsible for the management of the staff members and nominated supervisor of the service (Section 43 of the National Law).

More information on approved providers can be found in the Provider Approval Policy. A service approval authorises the holder to operate an ECEC service under the National Law and National Regulations. It is ongoing, unless it is cancelled or surrendered, and is recognised in all Australian jurisdictions.

If the applicant does not yet have a provider approval, the applicant may apply for a service approval at the same time as applying for a provider approval. However, the Commission cannot grant the service approval unless the provider approval is granted or received notice under section 16 that the Commission has refused to grant the person a provider approval, unless the Commission has notified the person that the person may apply for a service approval within 12 months after receiving the notice. If the Commission does not grant the provider approval, the service approval application will be invalidated. The applicant will be informed of this via email.

4.2 When is service approval required?

4.2.1 In scope services

A person must apply for a service approval where the intended service to be provided meets the definition of 'an education and care service' under the National Law. An ECEC service is any service providing or intending to provide education and care to children under 13 years of age on a regular basis.

If a service provides education and care to children over 13 years of age, it may still meet the definition of an ECEC service if it also provides care to children under 13 years of age. In these circumstances the service may only care for children up to and including the age of 17. Persons aged 18 years of age are not classified as children under the law and are not allowed on the service premises unless they are an authorised person.

A range of services are excluded from the definition of an 'ECEC service' even though they may provide education and care to children under 13 years of age (see Section 5 of the National Law and Regulation 5 of the National Regulations for more information).

4.2.2 Out of scope services

An out of scope service is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 6 years and who do not ordinarily attend school (excluding any children who are related to the person providing the care). Out of scope services include:

- mobile ECEC service – an education and care service that visits specific premises, areas or places at specified times for the purpose of providing the care.
- occasional ECEC service – an education and care service that is provided at fixed premises (other than the home of the approved provider of the service) primarily on an ad hoc or casual basis and that does not usually offer full-time or all-day education and care to children on an ongoing basis.

A range of services are excluded from the definition of an out of scope (or State regulated) ECEC service (see Section 3 of the Supplementary Provisions for more information)

4.2.3 Valid applications

An application is complete and valid when the applicant has submitted all of the prescribed information, including payment of a fee. The prescribed fees for applications are set out in Schedule 2 of the National Regulations. Fees are indexed each year according to published indexation figures. They are available on the ACECQA website before the beginning of each financial year. It should be noted that applications cannot be assessed until the prescribed fee has been paid.

An applicant should ensure that all information is complete, accurate and consistent before applying.

The timeframe for assessing an application will not commence until the Commission has received all prescribed information and has determined that the application is valid. If the applicant has not submitted all the prescribed information, the Commission will contact the applicant for information. If the applicant does not submit the information within 14 days of the Commission's written request, the Commission may invalidate the application and close the application.

If the only outstanding items are the final occupation certificate or evidence of a right to occupy, the Commission may, in some circumstances, commence an assessment of the application. However, as the application does not contain all the prescribed information, the timeframe for the assessment will not commence until all documents are received.

When making a decision to invalidate an application, the officer will consider the principles of procedural fairness. The Commission may re-open an invalid application or may waive the fee for a new application where exceptional circumstances exist.

If exceptional circumstances exist, an applicant must provide evidence for their claims, and all requests must be made in writing. The Commission will consider each request on a case-by-case basis.

Applicants may also decide to withdraw an application at any time prior to the Commission deciding on the application. The application may be withdrawn by notice in writing to the Commission.

If an approved provider withdraws an application, they may request a refund of the application fee. When determining whether a refund is applicable, the Commission will consider various factors, such as the reason for the request, the time and resources already expended in assessing the application and any other relevant matter. The Commission will notify an approved provider in writing once a decision is made on a refund request. For more information, see the [Fees and Charges Policy](#).

4.2.4 Application timeframes

The National Law sets out timeframes for each application type. It provides that the timeframe does not begin until the Commission has received a complete and valid application.

Clause 31 of schedule 1 of the National Law sets out how timeframes are calculated. When calculating the timeframe for processing an application, the day the Commission deems the application as valid is excluded. The last day of the timeframe is also excluded.

For this section, "days" refer to calendar days, including Saturdays, Sundays and public holidays. However, if the last day of the timeframe falls on a non-business day, the next business day will be the last day.

If further information is required from the applicant (in addition to the prescribed information), the time taken to provide the information is not included in the period for determining the application (Sections 45(2), 54(4), 89(2) and 96(2) of the National Law).

As soon as the applicant is aware of any adverse or serious matters they are obligated to disclose this during the application process. The Commission will undertake inquiries in relation to these matters. The Commission may ask the applicant to provide further information under Section 45 of the National Law. The time taken to make these inquiries will not be considered in the legislated period within which the Commission must make a decision.

In some instances, the Commission may request further time from the applicant to process the application (Section 48(3) of the National Law).

4.2.5 Service approval

The Commission will decide on a service approval application within 90 calendar days of receiving a complete and valid application. If the Commission does not decide within this time, or within any extended period of time, the application will be deemed to be refused (section 48(5) of the National Law).

The Commission will give written notice to the applicant of its decision, and of the reasons for the decision, within 7 calendar days of making the decision (Section 50 of the National Law).

In line with the child paramountcy principle, that is that the interests, safety, health and wellbeing of children are the Commission's foremost consideration, the Commission will not grant a service approval if it is satisfied that permitting the service to operate would pose an unacceptable risk to children. The Commission will also refuse approval where it is satisfied that the applicant is not capable of operating the service in a manner that meets the requirements of the National Law, the Regulations, or the National Quality Standards. Where there is information outstanding relating to serious compliance matters including but not limited to, whether the approved provider is, or has been, the subject of an investigation, inquest or prosecution proceeding, the Commission will consider these matters. Depending on the evidence available, the Commission may consider refusing the application or determine that there is insufficient information to decide on the application until an outcome is known or the matter is finalised. If the Commission is unable to decide within legislative timeframes, the application is taken to be refused.

If an application is refused, an applicant may submit a new service approval application 12 months after receiving the notice of refusal, or if the Commission has notified the person that the person may apply for a service approval within 12 months of receiving the notice of refusal.

4.2.6 Amendment of service approval

The Commission will decide on an application to amend a service approval within 60 calendar days of receiving a complete and valid application. The Commission will give written notice to the approved provider of its decision, and of the reasons for the decision, within 7 calendar days of making the decision. The Commission may refuse to amend a service approval if the amendment would be contrary to the objectives and guiding principles of the National Quality Framework.

Where there is information outstanding relating to serious compliance matters, including but not limited to, whether the approved provider is or has been, the subject of an investigation, inquest or prosecution proceeding, the Commission will have regard to those matters.

Depending on the evidence available, the Commission may consider refusing the application or determine that there is insufficient information to decide on the application until an outcome is known or the matter is finalised.

4.2.7 Voluntary suspension of a service approval

The Commission must decide on an application to voluntarily suspend a service approval within 30 calendar days of receiving the application. The Commission will give written notice to the approved provider of its decision, and of the reasons for the decision, within 7 calendar days after making the decision.

4.3 Application Requirements for a Service Approval – In scope Services

4.3.1 Application requirements

Applications for a service approval must be made via the NQA ITS portal and must:

- be in writing;
- be made to the Commission if the service is located in NSW, even if the approved provider is not;
- include the prescribed information as set out in regulations 24 and 25 (centre-based) or regulation 26 (family day care) of the National Regulations;
- include the details of the nominated supervisor and their written consent to being the nominated supervisor; and
- include payment of the prescribed fee.

The prescribed information can be found in the appendix of this policy titled Checklist 1 for centre-based applications, Checklist 2 for family day care and Checklist 3 for public preschool applications.

4.3.2 Staffing

A service approval application requires the applicant to nominate one or more nominated supervisors for the proposed service. There is no maximum number of nominated supervisors (Section 44 of the National Law). The application must include written consent from each person nominated as a nominated supervisor of the proposed service that they agree to perform this role.

4.3.3 Premises (centre-based)

Further requirements relating to the application for service approval are set out below. Applicants must satisfy the requirements relating to the proposed premises including supplying plans, occupancy and planning permits, evidence of the right to occupy, a soil assessment and evidence of current insurance.

4.3.4 Plans

The approved provider must supply a copy of the plans for the proposed service premises. The plans must be prepared or certified by a building practitioner, and must clearly show all of the following information, as required by regulation 25(1)(b):

- the location of all buildings, structures, outdoor play areas and shaded areas;
- the location of all entries and exits;
- the location of all fences and gates, specifying the type of fence or gate used or to be used;
- the location of nappy change areas (if applicable), toilet and washing facilities and any food preparation areas;
- the boundaries of the premises;
- the landscape of, or landscaping plans for, outdoor spaces that will be used by the ECEC service, specifying the natural environments that are or will be provided;
- a floor plan, indicating the unencumbered indoor and outdoor space suitable for children;
- the location of any associated children's service;
- calculations carried out by a building practitioner of the areas referred to in regulations 107 and 108 relating to unencumbered indoor and outdoor space;
- the elevation plans of the premises.

Calculations must clearly state the 'unencumbered' areas for both indoor and outdoor space. Regulations 107 and 108 outline the areas that are to be excluded for the purposes of calculating unencumbered space. The applicant must ensure that the premises meets the space requirements. Further information on indoor and outdoor space requirements can be found in the [Department of Planning Child Care Planning Guideline](#)

The Commission must be able to verify that the plans and calculations have been prepared by a building practitioner. As such, plans and calculations must contain the full name and licence/registration/accreditation number of the building practitioner that prepared them.

A building practitioner is defined under regulation 4 of the National Regulations.

Before engaging a building practitioner, applicants should check their registration or accreditation with the appropriate body, for example:

- Architects – refer to [NSW Architects Registration Board](#)
- Landscape architects – refer to Australian Institute of Landscape Architects. Landscape Architects can only prepare or certify plans and calculations for outdoor spaces under Regulation 108.
- Surveyors – refer to [NSW Board of Surveying and Spatial Information](#)
- Certifiers – refer to [Fair Trading NSW – Building Certifiers](#)

For applicants that are seeking a service approval to operate from a school premises (and will be using school facilities eg school hall, the Commission may accept plans and calculations prepared by a licenced builder, or plans prepared by the NSW Department of Education Asset Management Unit. Soil statement.

4.3.5 Soil assessment

The Commission requires either:

- a soil assessment for the site of the proposed education and care service premises; or
- any soil assessments for the site of the proposed education and care service premises that have previously been undertaken

4.3.6 Building Requirements

Where applicable, an approved provider must supply a planning permit for the proposed ECEC service premises or, if a planning permit was not required, a letter from the local council (signed and dated) confirming that a planning permit was not required.

The Commission will not accept a planning permit where the building classification is not for an ECEC service. In NSW, a planning permit is often referred to as Development Application or 'DA' approval.

In accordance with NSW legislative requirements, an occupancy permit, also referred to as an occupation certificate is required as part of a complete and valid service approval application for a proposed centre-based service. This document ensures the building is fit to commence occupation and that it complies with any relevant planning and building codes (regulation 25(1)(g)).

In most cases, the Commission will only issue a service approval where the approved provider has submitted a final occupation permit.

The Commission may consider granting a service approval with an interim occupation permit or certificate, but only in the below circumstances:

- For a mixed-use development, where the portion of the building intended for the proposed service is completed to the building certifier's satisfaction and can house the approved use, but the wider building is not complete and therefore a final occupation permit or certificate is not available. For example, where the ECEC service premises is part of a shopping complex, and while the service is complete, the complex is still under construction.
- Where uncompleted building works, that do not affect the safety, health and wellbeing of children, are being undertaken and will be completed prior to the commencement of the proposed service. For example, if the car park is under construction.

In these circumstances the Commission may grant the service approval with a condition stipulating that the approved provider must supply the final occupation permit or certificate when it becomes available.

Where a service is a new building, the Commission will only accept an occupation certificate. The Commission will not accept a statement from a private certifier or a construction company stating that the proposed service premises complies with building requirements under a building law or planning and development law of NSW.

For existing buildings, the Commission may accept a statement made by a building practitioner that states that the proposed education and care service premises complies with building requirements under a building law or planning and development law of NSW.

4.3.7 Right to Occupy

An approved provider must also supply evidence that they have the right to occupy the proposed service premises. Evidence may include a lease agreement, contract for the sale of land or evidence of ownership, such as a copy of a land title search. Where applicable, evidence of the right to occupy must be appropriately signed and dated by all applicable parties and indicate a commencement date for the right to occupy. A rates notice is not an accepted form of evidence.

For services located on government school grounds, evidence must include a signed copy of any Licence Agreement issued by the Department of Education's Asset Management Unit. Approved Providers should not apply for service approval until they have been notified by Asset Management Unit of the successful outcome of their tender application. The exception are public preschools on public school sites where a licence agreement is not required.

For services located on registered private school grounds, an approved provider should submit a signed and dated letter from the school principal. The letter must list all indoor and outdoor areas the provider has permission to use, and must include the service address, the name of the entity that has the right to occupy the premises and a commencement date for the right to occupy.

4.3.8 Insurance

The applicant must supply evidence of a current insurance policy, which is required to be in place under regulation 29 of the National Regulations. The current insurance policy providing adequate cover against public liability as required under regulation 29(a) must provide a minimum cover of \$10,000,000 for each individual education and care service.

4.3.9 Premises (family day care principal office)

A family day care service is managed from a "principal office". The applicant must supply evidence that they have the right to occupy the proposed premises as a principal office. Evidence may include a lease agreement, contract for the sale of land or evidence of ownership, such as a copy of a land title search. Where applicable, evidence of the right to occupy must be appropriately signed and dated by all applicable parties and indicate a commencement date for the right to occupy.

4.3.10 Premises (Venue - family day care)

An applicant may apply to provide education and care to children from a venue other than a residence. However, the Commission will only grant this request in exceptional circumstances, including:

- where the proposed venue is 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 a 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 will depend on the circumstances of each case.

4.3.11 Family Day Care venue - Right to Occupy

The approved provider must supply evidence that they have the right to occupy the proposed family day care venue. Evidence may include a lease agreement, contract for the sale of land or evidence of ownership, such as a copy of a land title search. Where applicable, evidence of the right to occupy must be appropriately signed and dated by all applicable parties and indicate a commencement date for the right to occupy.

The approved provider must also supply an assessment, including any risk assessment, of the venue that the approved provider has conducted to ensure that the health, safety and wellbeing of children being educated and cared for by the service are protected. An assessment must include evidence that the approved provider has considered the matters set out in regulation 116(2).

4.4 Application Requirements for a Service Approval – Out Of Scope Services

4.4.1 Application requirements

Section 13 of the Supplementary Provisions states that the National Law Alignment Provisions provide for the grant of service approvals for out of scope services and other matters relating to service approvals. As such, an application for an out of scope service must be submitted to the Commission:

- in writing; and
- where applicable, include the prescribed information for centre based services; and
- include payment of the prescribed fee.
- Out of scope applications and supporting information are available on the website.
- Similar considerations as outlined above under the “Premises (centre-based)” section of this document apply to out of scope services.
- An application for a mobile education and care service must include:
 - the addresses of the premises at which the service will be provided; and
 - if an occupation certificate is required under the Environmental Planning and Assessment Act 1979 for the proposed use of the premises for a mobile education and care service, a copy of the certificate.

4.4.2 Venue management plan – mobile services

If a mobile education and care service is to be provided on premises that do not comply with any of regulations 80, 104–110 or 112–115 of the National Regulations, a venue management plan must be submitted to, and approved by, the Commission. Waivers are not required for these elements.

A venue management plan explains how the approved provider will ensure the safety and wellbeing of children at a premises used by a mobile education and care service, even though that premises does not meet certain requirements of the National Regulations.

The Commission will not grant a service approval for a mobile education and care service that requires a venue management plan unless that plan has been approved.

While an approved venue management plan is in place, and the service complies with it, the service is considered to meet the specific National Regulations identified in the plan.

4.4.3 Service approval applications for associated children's services

Under section 5 of the National Law an associated children's service is defined as 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. The Commission may dispense with the requirement to obtain a service approval for an associated children's service that is authorised by a service approval under the National Law on a case-by-case basis.

4.5 Assessing a Service Approval Application

This section sets out the steps involved in assessing and determining applications for a service approval for education and care services generally. Under the National Law and National Regulations, the Commission must have regard to:

- the National Quality Framework;
- the suitability of the education and care service premises and the site and location of the proposed service;
- the adequacy of the service's policies and procedures;
- whether the applicant has a provider approval;
- whether there is a nominated supervisor and they have consented in writing to be the nominated supervisor;
- any other matter the Commission thinks fit; and
- any other prescribed matter, which includes any suspension of the applicant's provider approval and any conditions of the applicant's provider approval.

4.5.1 The National Quality Framework

In considering the National Quality Framework, the Commission will have primary regard to the rights and best interests of children who may attend the service, including their safety, health and wellbeing and their developmental outcomes.

There is a public interest to ensure that the regulatory scheme is not undermined, and that the public can have confidence that approved providers will manage services in accordance with the National Law, and will deliver quality services in line with the National Quality Standard.

In assessing an application for service approval, the Commission will have regard to whether the application is consistent with the principles of the National Quality Framework.

4.5.2 Suitability of site

In most cases the Commission will only approve a service where the service premises is at a single location and the site satisfies the regulatory requirements.

More than one service may be located on a single site, provided that each service has its own separate indoor and outdoor space, and each service has the exclusive right to occupy that space. For example, there may be two outside school hours care services located on a school site.

The Commission may inspect a proposed education and care service premises prior to, or after approving the service. In most cases, the inspection will take place prior to the grant of an approval. This is to ensure the premises is safe and that the children have a quality learning environment. In order for a pre-approval visit to take place, the application must be complete and the proposed service premises must be ready for occupation, including all furniture and resources to be used in providing the proposed service.

In limited circumstances, a site visit may occur after the Commission has granted a service approval. This will generally occur to ensure continuity of care for children in cases where an existing premises has already been operating as an education and care service and where the Commission has deemed the new approved provider as low risk.

The Commission will also examine the plans and calculations to ensure the site is suitable for the intended number of children.

4.5.3 Space requirements

The approved provider must ensure that the proposed service meets the space requirements as set out in the National Regulations.

4.5.4 Indoor space requirements

Every child being educated and cared for within an education and care service must have a minimum of 3.25m² of unencumbered indoor space. All unencumbered indoor spaces must be safe and accessible to the children. The design of these spaces should also consider the adequate supervision of children.

For an area to be considered as indoor space it must have a proper roof, proper flooring, be enclosed on all sides to protect children from the elements, have adequate light and ventilation, and have adequate heating and cooling.

For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.

4.5.5 Outdoor space requirements

Every child being educated and cared for within an education and care service premises must have a minimum of 7m² of unencumbered outdoor space.

Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries, which are designed for landscaping purposes and not for children's play.

Verandahs may be used as outdoor space if they are open on at least one third of the perimeter, have a clear height of 2.1m, have a wall height of less than 1.4m where a wall with an opening forms the perimeter, have adequate flooring and roofing and be designed to provide adequate protection from the elements.

To support the outside school hours sector in NSW and in recognition of the uniqueness of the service type who cater for children aged 5 – 12 years an approved provider can apply for the requirements of 3.25 sq metres per child of indoor unencumbered space. A service waiver application must be submitted along with supporting documentation which will be assessed. More information can be found here [Out of School Hours Care \(OSHC\) Waiver Policy](#)

The Commission may grant a waiver in relation to the space requirements. More information can be found in the [Waiver Policy](#).

4.5.6 Policies and Procedures

An approved provider must ensure that the proposed service has prepared the policies and procedures outlined in regulation 168 and 169 of the National Regulations.

4.5.6.1 Policies outlined in Regulation 168

Policy Name
health and safety, including matters relating to – nutrition, food and beverages, dietary requirements sun protection water safety, including safety during any water-based activities the administration of first aid sleep and rest for children, including the matters set out in regulation 84B;
(b) incident, injury, trauma and illness procedures complying with regulation 85;
(c) dealing with infectious diseases, including procedures complying with regulation 88
(d) dealing with medical conditions in children, including the matters set out in regulation 90;
(e) emergency and evacuation, including the matters set out in regulation 97
(f) delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99;
(g) excursions, including procedures complying with regulations 100 to 102;
(ga) if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4;
(gb) the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB;
providing a child safe environment, including matters relating to the promotion of a culture of child safety and wellbeing within the service, by having policy and procedures that provide for the following – a commitment that for an action or decision that concerns a particular child, the safety, welfare and wellbeing of the child is paramount; ensuring requirements for child protection training under the Law, generally including under section 162A are met;

<p>a register of child protection concerns</p> <p>the reporting decision tree, including the requirements to keep the reporting decision tree in a place accessible by all staff;</p> <p>child protection risk assessments;</p> <p>day to day use of the attendance record required under regulation 158 and other practices to ensure children are accounted for throughout the day</p>
<p>(ha) the safe use of digital technologies and online environments at the service, including –</p> <p>(i) the taking, use, storage and destruction of images and videos of children being educated and cared for by the service; and</p> <p>(ii) obtaining authorisation from parents to take, use and store images and videos of children being educated and cared for by the service; and</p> <p>(iii) the use of any optical surveillance device at the service; and</p> <p>(iv) the use of any digital device issued by the service; and</p> <p>(v) the use of digital devices by children being educated and cared for by the service</p>
<p>staffing, including –</p> <p>(ia) child-safe recruitment practices, including a requirement for reasonable enquiries to be made about whether a prospective staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking; and</p> <p>(ib) ongoing child-safe employment practices, including a requirement for reasonable enquiries to be made about whether a staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking;</p> <p>a code of conduct for staff members;</p> <p>determining the responsible person present at the service; and</p> <p>the participation of volunteers and students on practicum placements;</p>
<p>(j) interactions with children, including the matters set out in regulations 155 and 156</p>
<p>(k) enrolment and orientation;</p>
<p>(l) governance and management of the service, including confidentiality of records;</p>
<p>(m) the acceptance and refusal of authorisations;</p>
<p>(n) payment of fees and provision of a statement of fees charged by the education and care service;</p>
<p>dealing with complaints, including matters relating to</p> <p>the provision of a complaint handling system at the service that is child focused; and</p>

the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.

4.5.6.2 Additional policies for Family Day Care outlined in Regulation 169

Policy Name
169 (2) (a) Assessment of proposed FDC venues and residences and reassessment of approved FDC venues and residences
R169(2)(b) Engagement or registration of FDC educators
R169(2)(c) Keeping a register of FDC educators
R169 (2) (d) monitoring, support and supervision of FDC educators
R169 (2) (e) Assessment of FDC educators
R169 (2) (f) visitors to FDC residences
R169 (2) (g) The provision of information, assistance and training to FDC educators
R169 (2) (h) the engagement or registration of FDC assistance

Policies and procedures are an important aspect in the delivery of safe and quality education and care services, and as such the Commission will assess the adequacy of the service policies and procedures prior to granting a service approval.

The Commission may ask approved providers to supply a copy of their policies during the application process, prior to the pre-approval visit. The adequacy of policies and procedures provides information as to whether the approved provider is capable of operating the proposed education and care service.

In assessing a service application, the Commission may have regard to the following:

- whether the applicant is capable of operating the education and care service having regard to its financial capacity, management capability and any other matter the Commission considers relevant; and
- the applicant's history of compliance with the National Law and Regulations, including in relation to any other education and care service it operates, and the compliance history of services operated by other entities which have Persons with Management or Control in common with the applicant.

4.5.7 Compliance with the National Law

Compliance with the National Law and National Regulations is an important aspect of assessing an application as it provides an indication of potential risks to the safety, health and wellbeing of children, and to the quality of care that may be provided.

As such, the Commission will have regard to factors relevant to the approved provider's compliance history (including the compliance history of separate entities with Persons with Management or Control in common). This includes having regard to the quality ratings of any existing education and care services, and other matters relevant to an assessment of

whether the granting of the service approval would be in the best interests of children and 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, or, whether the approved provider is capable of operating the service in a way that meets the requirements of the National Quality Framework. The assessment will consider, but is not limited to, whether the approved provider or Persons with Management or Control is, or has been, the subject of an investigation, inquest or prosecution proceeding and any other evidence relevant to the assessment.

The Commission will also consider factors such as:

- the severity of any issues;
- how recently they occurred;
- the risks posed to the safety, health and wellbeing of children, including their developmental outcomes;
- any pattern of non-compliance;
- the approved provider's willingness to comply, for example, whether escalation was required to resolve compliance issues.

As part of the assessment, the Commission may undertake inquiries and investigations (Section 46 of the National Law) and/or ask the applicant to provide further information that is reasonably required to assess the application and make a decision (Section 45 of the National Law). This may involve requesting further documents or inviting the applicant to participate in an interview.

During an interview, applicants may be asked questions relating to any non-compliance identified at their other services, the quality ratings of their other services or any other matter upon which the Commission requires clarification.

4.6 Assessing a Service Approval Application

4.6.1 Making a Decision on an Application

The Commission may either grant or refuse an application for a service approval (Section 48 of the National Law).

4.6.2 Approval

Where the Commission grants a service approval, it is subject to the standard conditions contained in section 51 of the National Law. When granting a service approval, the Commission may place conditions (or additional requirements) on that approval (section 51(5)). Decisions made at the time of service approval may result in conditions being added to the provider approval. A person holding a service approval must comply with the conditions on the approval – both those automatically imposed under the National Law and any additional conditions imposed by the Commission to avoid committing an offence under the National Law (s51(8) of the National Law).

For more information about conditions on service approvals, see the Conditions on Approvals and Waivers policy.

Where the Commission grants a service approval, it will provide a copy of the service approval to the approved provider (Section 52 of the National Law).

When issuing a service approval, the Commission will ensure the approval includes the following details:

- the name of the approved service;
- the location of the education and care service or, if the education and care service is a family day care service, the location of the principal office of the service;
- the location of any approved family day care venue for the service (if applicable);
- any conditions imposed on the service approval;
- the date on which the service approval becomes effective;
- the service approval number;
- the name of the approved provider/s;
- for a service other than a family day care service, the maximum number of children who can be educated and cared for by the service at any one time;
- the maximum number of educators allowed by a family day care scheme;
- any waivers granted in relation to the service approval;
- The approving officer of the Commission under whose delegation the service approval is granted.

ACECQA will publish the register of approved services on its website, and the Commission will meet its obligation to publish the register by placing a link on its website to the ACECQA website.

4.6.3 Maximum numbers

Centre-based –when determining the maximum number of children that may be educated and cared for at any one time by an education and care service, the Commission will have regard to the objectives of the National Law. It will have regard to space and safety requirements and may also consider the requirements of other regulatory bodies, such as the maximum number of children approved in the development consent of local councils. Where appropriate, the Commission will align the maximum number specified in service approvals with the maximum number approved in the relevant development consent.

Family day care - the Commission will use a risk based approach to determining the number of family day care educators that may provide education and care as part of the family day care service.

4.6.4 Refusal

The Commission may refuse an application where:

- it is satisfied that the service, if permitted to operate, would not be in the best interests of children and constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the service;
- the applicant does not have a provider approval;
- if a condition has been placed on the provider approval limiting the number of service approvals, or service approvals of a particular kind.
- it is not satisfied that the applicant is capable of operating the service in a way that meets the requirements of the National Quality Framework;

- it is not satisfied that the applicant is entitled to occupy the proposed service premises (for centre-based services).
-

4.7 Amending a Service Approval

4.7.1 Amending a service approval with application by approved provider

An approved provider may, at any time after the grant of a service approval, apply to amend the service approval (Section 54 of the National Law). Amendments can be made to:

- remove or vary a condition on the service approval;
- increase the maximum number of children at a service;
- add a place other than a residence as a family day care venue;
- change the location of the Principal Office of a family day care service.

In general, an amendment cannot be made to change the physical location of an education and care service.

4.7.2 Application requirements

When an approved provider applies to amend their approval, they must apply in writing and include the prescribed information. All applications must be submitted online via the NQA ITS portal. The prescribed information is set out in Appendix , Checklist 4.

When applying to amend a service approval, the applicant must provide reasons for the amendment and may sometimes be required to provide further evidence.

4.7.3 Assessment of application

Once an applicant has submitted a complete application, the Commission will assess the application having regard to the prescribed information and the points outlined below. The Commission may request additional information from an applicant if it is not satisfied that the applicant has provided sufficient information to support the amendment.

While there are no specific provisions outlining the matters that the Commission must consider for the purposes of determining an application to amend a service approval, in exercising its functions under the National Law, the Commission must have regard to the objectives and guiding principles of the National Law, for example, to:

- keeping the rights and best interests of children as a paramount consideration
- 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.

In considering whether the principles of the Law will be met, the Commission may have regard to the quality ratings of the services operated by the approved provider and its history of compliance with the regulatory regime.

The Commission will also consider any provisions of the National Law and National Regulations that may be relevant to the particular application. For example, if the

application is to increase the maximum number of children that may be educated and cared for at any one time, the Commission will consider the space requirements set out in regulations 107 and 108. It may also have regard to the requirements imposed by other Regulatory bodies such as local council, to ensure the objectives of the National Law and National Regulations are met. Where appropriate, the Commission will align the maximum number specified in service approvals with the maximum number approved in the relevant development consent.

4.7.4 Decision on application

Once the Commission has assessed the application, it will determine the application by:

- amending the service approval in the way that was applied for; or
- amending the service approval in another way, with the applicant's written agreement; or
- refusing to amend the service approval.

Where the Commission considers that approving the application for amendment would be inconsistent with the requirements of the National Law, or inconsistent with the objectives and guiding principles of the National Law, it may refuse the application.

The Commission will provide written notice of its decision to the approved provider, including the reasons for the decision, within 7 days of making the decision. Where the Commission has approved the application for amendment, it will send the approved provider a copy of the amended service approval with the decision letter.

4.7.5 Amending a service approval without an application from the approved provider

The Commission may amend a service approval at any time without an application from an approved provider. An amendment is a change to the terms of the approval.

The Commission may amend a service approval by:

- placing a new condition (an additional requirement) on the approval, varying a condition or removing an existing condition (section 55(2) of the National Law);
- removing a place (other than a residence) as a family day care venue;
- amending the number of children that may be educated and cared for at any one time by the service, including in situations arising from emergency placements of more than 2 days;
- amending the number of family day care educators that may be engaged with or registered by the service.

The Commission will only amend a service approval without an application where there is a proper purpose to do so and having regard to the guiding principles of the National Law.

The Commission will provide written notice of its decision to the approved provider, including the reasons for the decision, within 7 days of making the decision. The notice will include a copy of the amended service approval, which will take effect 14 days after the notice is given, or at the end of another period as specified by the Commission.

4.7.6 Application requirements

When an approved provider applies to amend their service approval, they must apply in writing and include the prescribed information. All applications must be submitted online via the NQA ITS portal. The prescribed information is set out in the Appendix, Checklist 4.

When applying to amend a service approval, the applicant must provide reasons for the amendment and may sometimes be required to provide further evidence.

4.7.7 Assessment of application

Once an applicant has submitted a complete application, the Commission will assess the application having regard to the prescribed information and the points outlined below. The Commission may request additional information from an applicant if it is not satisfied that the applicant has provided sufficient information to support the amendment.

While there are no specific provisions outlining the matters that the Commission must consider for the purposes of determining an application to amend a service approval, in exercising its functions under the National Law, the Commission must have regard to the principle that the best interests, rights, safety, health and wellbeing of children is paramount. and to:

- 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.

In considering whether the objectives and guiding principles of the National Law will be met, the Commission may have regard to the quality ratings of the services operated by the approved provider and its history of compliance with the regulatory regime.

The Commission will also consider any provisions of the National Law and National Regulations that may be relevant to the particular application. For example, if the application is to increase the maximum number of children that may be educated and cared for at any one time, the Commission will consider the space requirements set out in regulations 107 and 108. It may also have regard to the requirements imposed by other Regulatory bodies such as local council, to ensure the objectives of the National Law and National Regulations are met. Where appropriate, the Commission will align the maximum number specified in service approvals with the maximum number approved in the relevant development consent.

4.7.8 Decision on application

Once the Commission has assessed the application, it will determine the application by:

- amending the service approval in the way that was applied for; or
- amending the service approval in another way, with the applicant's written agreement; or
- refusing to amend the service approval.

Where the Commission considers that approving the application for amendment would be inconsistent with the requirements of the National Law, or inconsistent with the objects and guiding principles of the National Law, it may refuse the application.

The Commission will provide written notice of its decision to the approved provider, including the reasons for the decision, within 7 days of making the decision. Where the

Commission has approved the application for amendment, it will send the approved provider a copy of the amended service approval with the decision letter.

4.7.9 Notification of change of information about an approved service

An approved provider must notify the Commission of certain information about the operation of their service, as outlined in sections 173(1)(c), 173(2), 174(2) and regulation 175(2).

In general, a notice of change to the service's premises cannot change the physical location of the service.

4.7.10 Temporary relocation

The National Law and National Regulations allow for approved providers to apply to the Commission for a service approval to temporarily relocate a centre-based service. This generally occurs if the service premises becomes unfit for use, for example, during renovations or because of a natural disaster.

The Commission will assess the application in a similar way to that of a new service approval. The approved provider must satisfy the Commission that the new site is safe and fit for purpose.

If the relocation is for a period of less than 12 months, the Commission may determine that the requirements of regulation 25(1)(b) or (g) do not apply to the application.

If the relocation is occurring due to exceptional circumstances the Commission may waive the requirement to provide certain documents as part of the initial application but will require the approved provider to supply the information as soon as possible.

4.8 Suspending a Service Approval

A service approval may be suspended for a period of up to 12 months. During this time the service may not operate but still retains its approval. A suspension can be either voluntary or involuntary, and the requirements vary significantly between the two.

4.8.1 Voluntary suspensions

An approved provider may apply to suspend their service approval at any time, for a period of up to 12 months (Section 85 of the National Law).

Application requirements

The approved provider must submit their application to voluntarily suspend a service approval in writing via the NQA ITS portal. The application must include:

- the name of the service and service approval number;
- the details of a contact person for the application;
- the reasons for suspension;
- the date on which the suspension is proposed to take effect;
- the intended duration of the suspension;

- evidence that the approved provider has notified the parents of enrolled children who attend the service at least 14 days prior to the proposed suspension taking effect (Section 85 of the National Law);
- payment of the prescribed fee.

4.8.2 Assessment and decision

The Commission will decide whether to grant the application, having regard to whether the suspension is reasonable in the circumstances. The Commission will give notice of its decision in writing and, where approved, it will stipulate the duration of the suspension.

The suspension will remain in force for the period specified in the written notice of the suspension. The approved provider may apply at any time prior to the end date of the suspension to revoke the suspension.

4.8.3 Effect of suspension

Suspension does not necessarily prevent the Commission from taking compliance action against an approved provider for a contravention of the National Law or National Regulations while the service was operating. However, the Commission will have regard to the directions given, noting the capacity of the approved provider to comply while the service is not operating.

When a service approval is voluntarily suspended, another approved provider may not operate from the same premises as the suspended service.

The Commission will monitor services who have voluntarily suspended and contact them prior to the suspension end date to discuss their intentions. Services may elect to operate again once the suspension ceases, or they may wish to surrender the service approval.

A provider must not operate the service, or any other education and care service, from the service premises or from any other premises during the period of suspension. A provider will be in breach of their service approval if they continue to operate any education and care service while a voluntary suspension is in effect.

4.8.4 Completion of suspension

An approved provider can commence operating from:

- the date the suspension was revoked; or
- the completion of the suspension period, as indicated by the date on the written application for voluntary suspension, provided that the Commission has not taken action that would prevent the provider from re-commencing operations.

4.8.5 Involuntary suspensions

The Commission may suspend a service approval for up to 12 months (Sections 72 or 73 of the National Law). A suspension of a service approval is a significant compliance action.

The Commission may suspend a service approval for any of the following reasons (section 70 of the National Law):

- the Commission reasonably believes that it would not be in the rights and best interests of children being educated and cared for by the service for the service to continue;
- a condition of the service approval has not been complied with;

- the service is not being managed in accordance with this Law;
- the service has operated at a rating level as not meeting the National Quality Standard and (i) a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and (ii) there has been no improvement in the rating level;
- the approved provider has contravened this Law as applying in any participating jurisdiction;
- the approved provider has failed to comply with a direction, compliance notice or emergency order under this Law as applying in any participating jurisdiction in relation to the service;
- the approved provider has
 - ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and
 - within 6 months of ceasing to operate the service, has not transferred the service to another approved provider;
- the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service;
- the approved provider has not paid the prescribed annual fee for the service approval.

The Commission may reduce the period of suspension if the Commission is satisfied that there is no longer a risk to children's health safety and wellbeing.

4.8.6 Show cause notice

Where the suspension is not immediate, the Commission will give the approved provider a Show Cause Notice (Section 71 of the National Law).

The notice must outline:

- the intention of the Commission to suspend the service approval;
- the proposed period of the suspension;
- the reasons for the proposed suspension;
- that the approved provider has 30 days to respond in writing, to the proposed suspension.

An approved provider's response to the show cause notice should set out the reasons why the Commission should not suspend the approval and include any documentation or other evidence necessary to support those reasons. The Commission will consider any response it receives.

4.8.7 Decision after issuing show cause notice

After considering any response to the show cause notice or, if no response is received prior to the conclusion of the 30 days from the date the Show Cause Notice was issued, the Commission will decide to either suspend or not to suspend the service approval (Section 72 of the National Law). In making its decision, the Commission will have regard to the Guiding Principles as set out in this policy and will ensure the decision is consistent with the objectives of the National Law and Regulations.

Where the Commission decides to suspend the service approval, it will base the length of the suspension time on the following considerations:

- the risk posed to the health, safety or wellbeing of a child or children;
- the approved provider's compliance history;
- the approved provider's willingness and ability to rectify any incidences of non-compliance.

4.8.8 Immediate suspension

The Commission may suspend a service approval without issuing a show cause notice if it is satisfied that there is an immediate risk to the health, safety or wellbeing of a child or children being educated and cared for by the education and care service (section 73 of the National Law). Notice The Commission must give the approved provider written notice of its decision to suspend a service approval (Section 74 of the National Law).

The Commission will include the following information in such a notice:

- the period of the suspension;
- the date on which the suspension takes effect;
- information about the right to internal review (when a show cause notice has not been issued) or external review (when a show cause notice has been issued).

Generally, the suspension will take effect 14 calendar days from when the decision was made, or at the end of any other period specified by the Commission.

However, if a service approval is suspended without a show cause notice having been issued, the suspension takes effect from when the Commission gives notice of the suspension.

The Commission will take all necessary steps to ensure that parents of the enrolled children are notified within 24 hours of a service approval being suspended.

4.8.9 Completion of suspension

The Commission will determine on a case-by-case basis the appropriate course of action once the period of suspension is served. This may include placing a condition on the service approval or issuing a show cause notice to cancel the service approval.

A suspension of a service approval, automatically suspended where the provider approval is suspended, ceases if the Commission approves a transfer of the service approval (Section 30(6) of the National Law). Similarly, the suspension of a service approval suspended under section 72 or 73 ceases if the Commission approves a transfer of the service approval (Section 76(2) of the National Law).

4.8.10 Out of scope/Associated service

In some circumstances, the Commission may consider that a service approval should be suspended only to the extent that it relates to an associated children's service but not in relation to the education and care service.

4.9 Cancelling a Service Approval

A service approval may be cancelled under the National Law. This means that the approved provider is no longer allowed to operate the service. The decision to cancel a service approval is permanent. A service approval may be surrendered voluntarily by the approved provider, or cancelled by the Commission, and the requirements vary significantly between the two.

4.9.1 Surrender of a service approval

A surrender occurs when an approved provider no longer wishes to operate an approved education and care service. The decision to surrender a service approval is permanent and the Commission cannot re-instate an approval that has been surrendered once the surrender has taken effect. If an approved provider wishes to commence operating an education and care service at the same site, the provider will need to apply for a new service approval.

The approved provider must notify the Commission in writing of their intention to surrender a service approval. The written notice must specify a date on which the surrender is intended to take effect. This date must be after written notice is given to the Commission and at least 14 calendar days after parents of children enrolled at the service are notified of the intention to surrender the service approval (Section 86 of the National Law).

Under section 86 of the National Law, the effect of surrendering a service approval is that the service approval is cancelled. This cancellation will occur on the date specified in the provider's written notice of the surrender of the service approval.

4.9.2 Cancellation of a service approval

The Commission may cancel a service approval under Section 79 of the National Law. Cancelling a service approval is a significant compliance action.

The Commission may cancel a service approval for any of the following reasons (section 77 of the National Law):

- the Commission reasonably believes that the continued operation of the education and care service would not be in the best interests of children and constitute an unacceptable risk to the health, safety or wellbeing of any child or class of children being educated and cared for by the education and care service; or
- the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension;
- the service approval was obtained improperly;
- a condition of the service approval has not been complied with.

4.9.3 Show cause notice

The Commission will give the approved provider a show cause notice (Section 78 of the National Law) prior to cancelling the approval. The notice must outline:

- the intention of the Commission to cancel the service approval;
- the reasons for the proposed cancellation;
- that the approved provider has 30 days to respond in writing, to the proposed cancellation.

An approved provider's response to the show cause notice should set out the reasons why the Commission should not cancel the approval and include any documentation or other evidence necessary to support those reasons. The Commission will consider any response it receives.

4.9.4 Decision after issuing show cause notice

After considering any response to the show cause notice or, if no response is received prior to the conclusion of the 30 days from the date the show cause notice was issued, the Commission will decide to either cancel, suspend or not to cancel the service approval (Section 79 of the National Law).

In making its decision, the Commission will have regard to the rights and best interests of children, the Guiding Principles as set out in this policy and the objectives of the National Law and National Regulations. The Commission will also consider factors such as:

- where applicable, whether any risks posed to children have been largely mitigated; and
- where applicable, whether the approved provider has developed a plan and has taken tangible steps to rectify any non-compliance;
- the serious nature of the non-compliance and the outcome of any investigations or enquiries made by other agencies;
- whether the response from the approved provider has demonstrated circumstances that do not warrant cancellation;
- whether taking an action other than to cancel the approval would be inconsistent with the objects and guiding principles of the National Law;
- whether cancellation is an appropriate and proportionate sanction in the circumstances of the case.

4.9.5 Notice

The Commission must give the approved provider written notice of its decision. (Section 79 of the National Law). If the Commission has decided to suspend instead of cancelling the approval, see the "notice" provisions in section 4.6 above. If the Commission has decided to cancel the approval, the notice must set out the date on which the cancellation will take effect.

The Commission will also take steps to ensure the parents of the enrolled children at the service are notified of the cancellation within 24 hours of making the decision to cancel the approval. The Commission may request information from the approved provider (Section 83 of the National Law) to enable the Commission to notify the parents and/or it may require the approved provider to give notification to parents.

The decision to cancel a service approval takes effect at the end of 14 calendar days after the date of the decision. Alternatively, it will take effect at the end of another period specified by the Commission.

4.9.6 Operating a service without approval

Section 103 of the National Law and section 8 of the Supplementary Provisions state that a person must not provide an education and care service unless the education and care service is an approved education and care service. A person must not operate a service if it

has not been approved, or if the service approval for the education and care service premises has been suspended or cancelled, and it is an offence to do so.

If the Commission identifies that a person is operating an education and care service without an approval, or while the service approval for the premises is suspended or cancelled, it may take appropriate legal action, which could include the commencement of prosecution proceedings. The type of action taken will be determined by the extent of the non-compliance and the willingness of the person operating the service to comply with the Commission's directives.

4.9.7 Cancellation of a service approval for an associated children's service

In some circumstances, the Commission may consider that a service approval should be cancelled only to the extent that it relates to an associated children's service but not in relation to the education and care service.

4.10 Review

A person affected by the Commission's decision regarding a service approval may be able to challenge that decision by applying to have it reviewed.

For more information on rights of review, including application processes, the types of review available and the principles that apply to conducting reviews, see the [Review of Decisions Policy](#).

5 Enquiries

For enquiries about this policy, please contact the NSW Early Learning Commission Information and Enquiries team 1800 619 113 (toll free) or information@earlylearningcommission.nsw.gov.au

6 Approval

Approved by: Daryl Currie, A/Commissioner, NSW Early Learning Commission

Signed: Approval via signed briefing note

Dated: 26 February 2026

7 Document history

Table 1. Document information

Document title	Service Approvals Policy
Document type	Policy
Version number	1.0

8 Terms and definitions

Table 7. Terms and definitions

Term	Definition
Application of Exceptional Circumstances	There is no absolute definition of exceptional circumstances. Under the National Law, the notion of exceptional circumstances applies to a range of situations, such as family day care venues or temporary relocations. The Commission considers whether or not exceptional circumstances exist on a case-by-case basis. Exceptional circumstances are limited to circumstances that are unusual, not typical, or unable to be foreseen or planned for in advance.

9 Appendices

9.1.1 Checklist 1: Information required for service approval application: Centre-based service (excluding public preschools)

Tick	Information required related to regulation 24
<input type="checkbox"/>	The applicant's full name and provider approval number (or the applicant's contact details if the applicant has applied for a provider approval but that application has not yet been determined).
<input type="checkbox"/>	The name of the proposed education and care service.
<input type="checkbox"/>	The proposed date on which the education and care service will start operating.
<input type="checkbox"/>	If known, the contact details for the proposed service, including an after-hours telephone number.
<input type="checkbox"/>	The proposed ages of children to be educated and cared for by the service.
<input type="checkbox"/>	The proposed maximum number of children.
<input type="checkbox"/>	The proposed hours and days of operations.
<input type="checkbox"/>	A description of the nature of the service.
<input type="checkbox"/>	The details of any associated children's service for which approval is sought.

Tick Information required related to regulation 24	
□	<p>A copy of the proposed policies and procedures as required by Regulation 168 of the National Regulations. Regulation 168 requires policies and procedures regarding each of the following:</p> <ul style="list-style-type: none"> health and safety, including matters relating to: <ul style="list-style-type: none"> nutrition, food and beverages, dietary requirements sun protection water safety, including safety during any water-based activities the administration of first aid sleep and rest for children, including the matters set out in regulation 84B incident, injury, trauma and illness procedures complying with regulation 85 dealing with infectious diseases, including procedures complying with regulation 88 dealing with medical conditions in children, including the matters set out in regulation 90 emergency and evacuation, including the matters set out in regulation 97 delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99 excursions, including procedures complying with regulations 100 to 102 if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4 the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB providing a child safe environment, including matters relating to the promotion of a culture of child safety within the service by having policies and procedures relating to: <ul style="list-style-type: none"> a commitment that for an action or decision that concerns a particular child, the safety, welfare and wellbeing of the child is paramount ensuring requirements for child protection training under the Law, generally, including under section 162A, are met a register for child protection concerns the reporting decision tree, including the requirement to keep the reporting decision tree in a place accessible by all staff child protection risk assessments day-to-day use of the attendance record required under regulation 158 and other practices to ensure children are accounted for throughout the day; the safe use of digital technologies and online environments, including:

Tick	Information required related to regulation 24
	<p>the taking, use, storage and destruction of images and videos of children being educated and cared for by the service</p> <p>obtaining authorisation from parents to take, use and store images and videos of children being educated and cared for by the service</p> <p>the use of any optical surveillance device at the service</p> <p>the use of any digital device issued by the service</p> <p>the use of digital devices by children being educated and cared for by the service</p> <p>staffing, including:</p> <p>child-safe recruitment practices, including a requirement for reasonable enquiries to be made about whether a prospective staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking</p> <p>ongoing child-safe employment practices, including a requirement for reasonable enquires to be made about whether a staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking</p> <p>a code of conduct for staff members</p> <p>determining the responsible person present at the service</p> <p>the participation of volunteers and students on practicum placements</p> <p>interactions with children, including the matters set out in regulations 155 and 156</p> <p>enrolment and orientation</p> <p>governance and management of the service, including confidentiality of records</p> <p>the acceptance and refusal of authorisations</p> <p>payment of fees and provision of a statement of fees charged by the education and care service</p> <p>dealing with complaints, including matters relating to:</p> <p>the provision of a complaint handling system at the service that is child focused</p> <p>the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.</p>
<input type="checkbox"/>	<p>In relation to the person who will be the nominated supervisor for the service:</p> <p>their full name and contact details</p> <p>their written consent to being the nominated supervisor for the service.</p>

Tick	Information required related to regulation 25
<input type="checkbox"/>	The location and street address of the proposed service premises.
<input type="checkbox"/>	<p>Plans prepared by the building practitioner (to be accepted, a building practitioner must meet the definition set out under regulation 4 of the National Regulations) of the proposed service premises that show:</p> <p>the location of all buildings, structures, outdoor play areas and shaded areas</p> <p>the location of all entries and exits</p> <p>the location of all fences and gates, specifying the types of fence or gate used or to be used</p> <p>the location of toilet and washing facilities, nappy changing areas and any food preparation areas</p> <p>the boundaries of the premises</p> <p>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</p> <p>a floor plan indicating unencumbered indoor and outdoor spaces suitable for children</p> <p>the location of any associated children's service</p> <p>calculations, carried out by a building practitioner, relating to unencumbered indoor and outdoor space (as set out in regulations 107 and 108)</p> <p>the elevation plans of the premises.</p>
<input type="checkbox"/>	If a swimming pool or other water hazard is situated on the proposed service premises, a copy of the service's water safety policy.
<input type="checkbox"/>	<p>One of the following:</p> <p>a soil assessment for the site of the proposed service premises</p> <p>Any soil assessments for the site of the proposed education and care service premises that have previously been undertaken</p>
<input type="checkbox"/>	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.
<input type="checkbox"/>	A statement that the applicant has the right to occupy and use the premises, and any document evidencing this.
<input type="checkbox"/>	<p>Unless the service premises is a government or registered school, one of the following:</p> <p>a copy of the occupancy permit, certificate of final inspection, certificate of classification, or a building surveyor's statement for the final construction and fit-out of the service premises</p> <p>a statement from a building practitioner that the service premises complies</p>

Tick Information required related to regulation 25	
	with the building requirements under state or territory building law or planning development law.
<input type="checkbox"/>	Provide evidence of a current insurance policy as required under regulation 29. The current insurance policy providing adequate cover against public liability as required under regulation 29(a) must provide a minimum cover of \$10,000,000 for each individual education and care service. If this is not currently available please advise so in writing, however, please note the Commission must obtain evidence of insurance prior to issuing a service approval.

9.1.2 Check list 2: Information required for service approval application: Family day care

Tick Information required for service approval	
<input type="checkbox"/>	The applicant's full name and provider approval number (or the applicant's contact details if the applicant has applied for a provider approval but that application has not yet been determined).
<input type="checkbox"/>	The name of the proposed family day care service.
<input type="checkbox"/>	The proposed date on which the family day care service will commence operation.
<input type="checkbox"/>	If known, the contact details for the proposed principal office of the service, including an after-hours telephone number.
<input type="checkbox"/>	The proposed hours and days of operation of the service, including whether the service proposes to engage or register family day care educators who will provide overnight or weekend care.
<input type="checkbox"/>	The proposed location and street address of the principal office of the service.
<input type="checkbox"/>	A statement that the applicant has the right to occupy and use the proposed premises as a principal office and any document evidencing this (for example, a lease of the premises).
<input type="checkbox"/>	The proposed number of family day care educators expected to be engaged by, or registered with, the service within 6 months of its commencement.
<input type="checkbox"/>	A statement that each family day care residence that will be part of the service and each place other than a residence that provides education and care to the children as part of the service will be located in NSW.
<input type="checkbox"/>	The proposed local government areas in which the family day care educators will provide education and care.

Tick	Information required for service approval
<input type="checkbox"/>	The proposed number of family day care co-ordinators expected to be engaged by the service within six months of its commencement.
<input type="checkbox"/>	<p>A copy of the proposed policies and procedures as required by Regulation 168 of the National Regulations. Regulation 168 requires policies and procedures regarding each of the following:</p> <ul style="list-style-type: none"> health and safety, including matters relating to: <ul style="list-style-type: none"> nutrition, food and beverages, dietary requirements sun protection water safety, including safety during any water-based activities the administration of first aid sleep and rest for children, including the matters set out in regulation 84B incident, injury, trauma and illness procedures complying with regulation 85 dealing with infectious diseases, including procedures complying with regulation 88 dealing with medical conditions in children, including the matters set out in regulation 90 emergency and evacuation, including the matters set out in regulation 97 delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99 excursions, including procedures complying with regulations 100 to 102 if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4 the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB providing a child safe environment, including matters relating to the promotion of a culture of child safety within the service by having policies and procedures relating to: <ul style="list-style-type: none"> a commitment that for an action or decision that concerns a particular child, the safety, welfare and wellbeing of the child is paramount; ensuring requirements for child protection training under the Law, generally, including under section 162A, are met; a register for any child protection concerns; the reporting decision tree, including the requirement to keep the reporting decision tree in a place accessible by all staff; child protection risk assessments; day-to-day use of the attendance record required under regulation 158 and

Tick	Information required for service approval
	<p>other practices to ensure children are accounted for throughout the day;</p> <p>the safe use of digital technologies and online environments at the service, including —</p> <p>the taking, use, storage and destruction of images and videos of children being educated and cared for by the service;</p> <p>obtaining authorisation from parents to take, use and store images and videos of children being educated and cared for by the service;</p> <p>the use of any optical surveillance device at the service;</p> <p>the use of any digital device issued by the service;</p> <p>the use of digital devices by children being educated and cared for by the service</p> <p>staffing, including:</p> <p>a code of conduct for staff members</p> <p>determining the responsible person present at the service</p> <p>the participation of volunteers and students on practicum placements</p> <p>child-safe recruitment practices, including a requirement for reasonable enquiries to be made about whether a prospective staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking; and</p> <p>ongoing child-safe employment practices, including a requirement for reasonable enquires to be made about whether a staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking</p> <p>interactions with children, including the matters set out in regulations 155 and 156</p> <p>enrolment and orientation</p> <p>governance and management of the service, including confidentiality of records</p> <p>the acceptance and refusal of authorisations</p> <p>payment of fees and provision of a statement of fees charged by the education and care service</p> <p>dealing with complaints, including matters relating to:</p> <p>the provision of a complaint handling system at the service that is child focused</p> <p>the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.</p>

Tick	Information required for service approval
<input type="checkbox"/>	<p>A copy of the proposed policies and procedures required by regulation 169, namely:</p> <ul style="list-style-type: none"> assessment and approval of family day care venues and residences and reassessment of approved family day care venues and residences, including matters to meet the requirements of regulation 116 engagement or registration of family day care educators keeping a register of family day care educators, family day care co-ordinators and family day care educator assistants under regulation 153 monitoring, support and supervision of family day care educators, including how the service will manage educators at remote locations assessment of family day care educators, family day care educator assistants and persons residing at family day care residences, including the matters required under regulation 163 visitors to family day care residences and venues while education and care is provided to children provision of information, assistance and training to family day care educators engagement or registration of family day care educator assistants.
<input type="checkbox"/>	<p>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.</p>
<input type="checkbox"/>	<p>The full name and contact details (including after-hours telephone number) of each nominated supervisor of the service.</p>
<input type="checkbox"/>	<p>The written consent of each nominated supervisor of the service to their nomination (unless the nominated supervisor is the approved provider and the approved provider is an individual).</p>
<input type="checkbox"/>	<p>If the application includes a request for venue approval*:</p> <ul style="list-style-type: none"> the location and street address of the venue 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 (for example, 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 being educated and cared for by the service are protected. The assessment must consider the matters set out in regulation 116(2) which are: <ul style="list-style-type: none"> the suitability of the venue according to the number, ages and abilities of children attending, or likely to attend

Tick	Information required for service approval
	<p>the suitability of nappy change arrangements for children attending, or likely to attend the venue</p> <p>the existence of any water hazards, water features or swimming pool at or near the venue</p> <p>the risk posed by any animals at the venue</p> <p>the requirements set out in regulation 117 of the National Regulations related to ensuring the safety of glass at the venue</p> <p>the requirements set out in division 1 of the National Regulations related to family day care services.</p> <p>If the proposed family day care venue will be located within a multi-storey, it must include -</p> <p>The total number of storeys in the building</p> <p>The storey or storeys on which the venue will be located</p> <p>If the venue will be located on more than one storey, the ages of the children who will attend on each storey</p> <p>In the case of a venue, the Commission will ask the provider to supply a statement as to any exceptional circumstances.</p>

9.1.3 Checklist 3: Information required for service approval application: Public preschools

Tick	Information required related to regulation 24
<input type="checkbox"/>	The applicant's full name and provider approval number.
<input type="checkbox"/>	The name of the proposed education and care service.
<input type="checkbox"/>	The proposed date on which the education and care service will start operating.
<input type="checkbox"/>	If known, the contact details for the proposed service, including an after-hours telephone number.
<input type="checkbox"/>	The proposed ages of children to be educated and cared for by the service.
<input type="checkbox"/>	The proposed maximum number of children.
<input type="checkbox"/>	The proposed hours and days of operations.
<input type="checkbox"/>	A description of the nature of the service.
<input type="checkbox"/>	The details of any associated children's service for which approval is sought.

□	<p>A copy of the proposed policies and procedures as required by Regulation 168 of the National Regulations. Regulation 168 requires policies and procedures regarding each of the following:</p> <ul style="list-style-type: none"> health and safety, including matters relating to: <ul style="list-style-type: none"> nutrition, food and beverages, dietary requirements sun protection water safety, including safety during any water-based activities the administration of first aid sleep and rest for children, including the matters set out in regulation 84B incident, injury, trauma and illness procedures complying with regulation 85 dealing with infectious diseases, including procedures complying with regulation 88 dealing with medical conditions in children, including the matters set out in regulation 90 emergency and evacuation, including the matters set out in regulation 97 delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99 excursions, including procedures complying with regulations 100 to 102 if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4 the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB providing a child safe environment, including matters relating to the promotion of a culture of child safety within the service by having policies and procedures relating to: <ul style="list-style-type: none"> : a commitment that for an action or decision that concerns a particular child, the safety, welfare and wellbeing of the child is paramount; and ensuring requirements for child protection training under the Law, generally, including under section 162A, are met; and a register for any child protection concerns; and the reporting decision tree, including the requirement to keep the reporting decision tree in a place accessible by all staff; and child protection risk assessments; and day-to-day use of the attendance record required under regulation 158 and other practices to ensure children are accounted for throughout the day;
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	<p>the safe use of online environments at the service the safe use of digital technologies and online environments at the service, including –</p> <p>the taking, use, storage and destruction of images and videos of children being educated and cared for by the service;</p> <p>obtaining authorisation from parents to take, use and store images and videos of children being educated and cared for by the service; and</p> <p>the use of any optical surveillance device at the service; and</p> <p>the use of any digital device issued by the service; and</p> <p>the use of digital devices by children being educated and cared for by the service</p> <p>staffing, including:</p> <p>a code of conduct for staff members</p> <p>determining the responsible person present at the service</p> <p>the participation of volunteers and students on practicum placements</p> <p>child-safe recruitment practices, including a requirement for reasonable enquiries to be made about whether a prospective staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking; and</p> <p>ongoing child-safe employment practices, including a requirement for reasonable enquires to be made about whether a staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking</p> <p>interactions with children, including the matters set out in regulations 155 and 156</p> <p>enrolment and orientation</p> <p>governance and management of the service, including confidentiality of records</p> <p>the acceptance and refusal of authorisations</p> <p>payment of fees and provision of a statement of fees charged by the education and care service</p> <p>dealing with complaints, including matters relating to:</p> <p>the provision of a complaint handling system at the service that is child focused</p> <p>the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.</p>
<input type="checkbox"/>	<p>In relation to the person who will be the nominated supervisor for the service:</p> <p>this is a position with title at the school, e.g. School principal</p> <p>their written consent to being the nominated supervisor for the service.</p>

Tick Information required related to regulation 25	
<input type="checkbox"/>	The location and street address of the proposed service premises.
<input type="checkbox"/>	Plans prepared by the building practitioner (to be accepted, a building practitioner must meet the definition set out under regulation 4 of the National Regulations) of the proposed service premises that show: the location of all buildings, structures, outdoor play areas and shaded areas the location of all entries and exits the location of all fences and gates, specifying the types of fence or gate used or to be used the location of toilet and washing facilities, nappy changing areas and any food preparation areas the boundaries of the premises 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 a floor plan indicating unencumbered indoor and outdoor spaces suitable for children the location of any associated children's service calculations, carried out by a building practitioner, relating to unencumbered indoor and outdoor space (as set out in regulations 107 and 108) the elevation plans of the premises. .
<input type="checkbox"/>	If a swimming pool or other water hazard is situated on the proposed service premises, a copy of the service's water safety policy.
<input type="checkbox"/>	Service premises on government school sites (new or existing) - one of the following: a copy of the completion certificate, occupancy permit, certificate of final inspection or a building surveyor's statement for the final construction and fit-out of the service premises 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.
<input type="checkbox"/>	Provide evidence of a current insurance policy as required under regulation 29. The current insurance policy providing adequate cover against public liability as required under regulation 29(a) must provide a minimum cover of \$10,000,000 for each individual education and care service If this is not currently available

please advise so in writing, however, please note the Commission must obtain evidence of insurance prior to issuing a service approval.

9.1.4 Checklist 4: Information required for an application to amend a service approval

Tick	
<input type="checkbox"/>	Name of the education and care service
<input type="checkbox"/>	Service approval number
<input type="checkbox"/>	Name and contact details of the contact person for the application
<input type="checkbox"/>	The details of the amendment applied for
<input type="checkbox"/>	Sufficient information or documents to support the application for amendment
<input type="checkbox"/>	<p>If the amendment application relates to the approval of a place as a family day care venue for the service:</p> <ul style="list-style-type: none"> • The location and street address of the family day care venue • 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 (for example, a lease of the premises) • An assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the safety and wellbeing of children being educated and cared for by the service are protected. This assessment must consider the matters set out in Regulation 116(2) of the National Regulations, which are: <ul style="list-style-type: none"> ○ The suitability of the venue according to the number, ages and abilities of children attending, or likely to attend ○ The suitability of nappy change arrangements for children attending, or likely to attend the venue ○ The existence of any water hazards, water features or swimming pool at or near the venue

Tick

- The risk posed by any animals at the venue
- The requirements set out in Regulation 117 of the National Regulations related to ensuring the safety of glass at the venue

The requirements set out in Division 1 of the National Regulations related to family day care centres.

NSW Early Learning Commission Service Approvals Policy

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