

Family day care educator

Compliance responsibilities under the
National Law and National Regulations



Australian Children's
Education & Care
Quality Authority

Family day care educator - compliance responsibilities under the National Law and National Regulations

In addition to regulatory authorities being able to prosecute or issue an infringement notice due to confirmed breaches of the National Law and/or National Regulations, regulatory authorities also have the power to give:

- Compliance notices under section 177 of the National Law in response to confirmed breaches of provisions of the National Law and/or National Regulations; and
- Compliance directions under section 178 of the National Law in response to confirmed breaches of the National Regulations.

The family day care educator is legally responsible for compliance with the following components of the National Law (Section) and National Regulations (Regulation)	What is required for compliance with this section or regulation?		
	The FDC educator must ensure that:	Prosecution in a court or tribunal	Issue infringement notice
		Penalty for non-compliance with section or regulation	Maximum fine associated with infringement notice











QA1: Educational program and practice

Regulation 74 Record of child assessments or evaluations for delivery of educational program (Section 175, Regulation 178)	<ul style="list-style-type: none"> • Documentation of assessments or evaluations for each child being educated and cared for at the residence or venue is available for inspection at the residence or venue (Section 175) • Documentation is accurate and is provided to the child's parents on request (Regulation 178) 	<input checked="" type="checkbox"/> \$4000 penalty if the documentation is not kept available for inspection (Section 175) \$2000 penalty if documentation is not accurate (Regulation 178) \$2000 penalty if documentation is not made available to the relevant child's parent on request (Regulation 178)	<input checked="" type="checkbox"/> \$200 fine if the record is not accurate \$200 fine if the record is not made available to the child's parent on request
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QA2: Children's health and safety

Section 165 Offence to inadequately supervise children	<ul style="list-style-type: none"> Any child being cared for by the educator as part of the service is adequately supervised 	<input checked="" type="checkbox"/> \$10 000 penalty	<input type="checkbox"/>
Section 167 Offence relating to protection of children from harm and hazards	<ul style="list-style-type: none"> Every reasonable precaution is taken to protect children being educated and cared for by the service from harm and any hazard likely to cause injury 	<input checked="" type="checkbox"/> \$10 000 penalty	<input type="checkbox"/>
Section 170 Offence relating to unauthorised persons on education and care service premises	<ul style="list-style-type: none"> An unauthorised person (i.e. visitor) does not remain at the residence or venue while the educator is educating and caring for children unless the unauthorised person is under the direct supervision of the educator 	<input checked="" type="checkbox"/> \$1000 penalty	<input type="checkbox"/>
Section 171 Offence relating to direction to exclude inappropriate persons	<ul style="list-style-type: none"> Any person deemed inappropriate by the regulatory authority is excluded from the residence or venue while children are in attendance 	<input checked="" type="checkbox"/> \$10 000 penalty	<input type="checkbox"/>
Regulation 77 Health, hygiene and safe food practices	<ul style="list-style-type: none"> They implement adequate health and hygiene practices and safe practices for handling, preparing and storing food 	<input checked="" type="checkbox"/> \$2000 penalty	<input checked="" type="checkbox"/> \$200 fine

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Regulation 78 Food and beverages	<ul style="list-style-type: none"> Children in attendance have access to safe drinking water at all times and are offered food and beverages regularly throughout the day 	 \$2000 penalty	
Regulation 79 Service providing food and beverages Note: Only relates to services that provide food or beverages to children in attendance	<ul style="list-style-type: none"> Food and beverages are nutritious and adequate in quantity and take into account each child's growth and development needs and any cultural or health requirements 	 \$2000 penalty	
Regulation 80 Weekly menu Note: Only relates to services that provide food or beverages to children in attendance	<ul style="list-style-type: none"> A weekly menu is displayed at a place in the residence or venue that is accessible to parents of children in attendance The menu accurately describes the food and beverages that will be provided by the service each day 	 \$1000 penalty	
Regulation 81 Sleep and rest	<ul style="list-style-type: none"> The needs for sleep and rest of children in attendance are met, with regard to the ages, development stages and individual needs of the children 	 \$1000 penalty	
Regulation 82 Tobacco, drug and alcohol free environment	<ul style="list-style-type: none"> Children attending the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol 	 \$2000 penalty	

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Regulation 83 Staff members and family day care educators not to be affected by alcohol or drugs	<ul style="list-style-type: none"> He or she does not consume alcohol or be affected by alcohol or drugs (including prescription medication) so as to impair his or her capacity to supervise or provide education and care for children at the service 	<input checked="" type="checkbox"/> \$2000 penalty	<input checked="" type="checkbox"/> \$200 fine
Regulation 87 Incident, injury, trauma and illness record (Section 175, Regulation 178)	<ul style="list-style-type: none"> An incident, injury, trauma or illness record is kept and the includes all of the details specified in Regulation 87 This information is included in the record as soon as practicable and no later than 24 hours after the occurrence The record is available for inspection at the residence or venue (Section 175) The record is accurate and is provided to the child's parents on request (Regulation 178) 	<input checked="" type="checkbox"/> \$4000 penalty if the record is not kept available for inspection (Section 175) \$2000 penalty if record is not accurate (Regulation 178) \$2000 penalty if the record is not made available to the relevant child's parent on request	<input checked="" type="checkbox"/> \$200 fine if the record is not accurate \$200 fine if the record is not made available to the child's parent on request
Regulation 89 First aid kits	<ul style="list-style-type: none"> He or she keeps a first aid kit that is suitably equipped, easily recognisable and readily accessible to adults when educating and caring for children as part of the service 	<input checked="" type="checkbox"/> \$2000 penalty	<input checked="" type="checkbox"/> \$200 fine

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Regulation 92 Medication record (Section 175, Regulation 178)	<ul style="list-style-type: none"> A medication record is kept that includes all of the details specified in Regulation 92(3) for each child educated and cared for at the residence or venue for whom medication is or is to be administered The record is available for inspection at the residence or venue (Section 175) The record is accurate and is provided to the child's parents on request (Regulation 178) 	<input checked="" type="checkbox"/> \$4000 penalty if the record is not kept available for inspection (Section 175) \$2000 penalty if record is not accurate (Regulation 178) \$2000 penalty if the record is not made available to the child's parent on request	<input checked="" type="checkbox"/> \$200 fine if the record is not accurate \$200 fine if the record is not made available to the child's parent on request
Regulation 93 Administration of medication	<ul style="list-style-type: none"> Medication is not administered to a child being educated and cared for at the residence or venue unless: <ul style="list-style-type: none"> the administration is authorised, and the medication is administered in accordance with the procedure for administration at Regulation 95, or the procedure for self-administration at Regulation 96 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>
Regulation 94 Exception to authorisation requirement in the case of anaphylaxis or asthma emergency	<ul style="list-style-type: none"> If medication is administered to a child without authorisation because of anaphylaxis or an asthma emergency, the parent of the child and emergency services are notified as soon as practicable 	<input type="checkbox"/>	<input type="checkbox"/>

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Regulation 99 Children leaving the education and care service premises [Note: an equivalent provision at section 165(a) of the Western Australian Law]	<ul style="list-style-type: none"> A child in attendance does not leave the residence or venue except for one of the reasons outlined at Regulation 99(4) 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>
Regulation 100 Risk assessment must be conducted before excursion	<ul style="list-style-type: none"> He or she carries out a risk assessment in accordance with Regulation 101 before seeking authorisation for an excursion under Regulation 102 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>
Regulation 101 Conduct a risk assessment for excursion	<ul style="list-style-type: none"> A risk assessment for an excursion identifies and assesses risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion and specifies how these risks will be managed and minimised The risk assessment considers the items outlined at Regulation 101 	<input type="checkbox"/>	<input type="checkbox"/>
Regulation 102 Authorisation for excursions	<ul style="list-style-type: none"> A child who is being educated and cared for at the residence or venue is not taken outside the service premises on an excursion without written authorisation The written authorisation for each child includes the information outlined at Regulation 102 	<input checked="" type="checkbox"/> \$1000 penalty	<input type="checkbox"/>

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QA4: Staffing arrangements

Section 164A Offence relating to the education and care of children by family day care service	<ul style="list-style-type: none"> Any child being educated and cared for as part of the service is not educated and cared for by any person other than a family day care educator, except in the circumstances prescribed in the National Regulations 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>
Section 169(5) Offence relating to staffing arrangements	<ul style="list-style-type: none"> Ratio requirements at regulation 124 are maintained 	<input checked="" type="checkbox"/> \$10 000 penalty	<input type="checkbox"/>
Regulation 124 Educator-to-child ratios – family day care services Note: This regulation allows flexibility in exceptional circumstances, refer Regulation 124, Sections 5 and 6	<ul style="list-style-type: none"> No more than 7 children are educated and cared for at the residence or venue at any one time No more than 4 children are preschool age or under Note: ratios include the educator's own children or other children at the residence if those children are under 13 years age and no other adults are present and caring for the children	<input type="checkbox"/>	<input type="checkbox"/>

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QA5: Relationships with children

Section 166 Inappropriate discipline	<ul style="list-style-type: none"> He or she does not subject any child being educated and cared for by the service to any form of corporal punishment or any discipline that is unreasonable in the circumstances 	<input checked="" type="checkbox"/> \$10 000 penalty	<input type="checkbox"/>
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QA6: Collaborative partnerships with families and communities

Regulation 157 Access for parents	<ul style="list-style-type: none"> A parent may enter the residence or venue at any time that their child is in attendance at the residence or venue except if: <ul style="list-style-type: none"> (a) Permitting the parent's entry would: <ul style="list-style-type: none"> i. Pose a risk to the safety of the children and staff of the education and care service; or ii. Conflict with any duty of the supervisor under the Law; or (b) The educator reasonably believes that permitting the parent's entry would contravene a court order. 	<div>✓</div> <p>\$1000 penalty</p>	<div>✕</div>
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QA7: Leadership and service management

Regulation 159 Children's attendance record to be kept by family day care educator (Section 175, Regulation 178)	<ul style="list-style-type: none"> A record of attendance is kept that records: <ul style="list-style-type: none"> the full name of each child being educated and cared for at the residence or venue the date and time each child arrives and departs the residence or venue The record of attendance is signed each time the child arrives or departs by: <ul style="list-style-type: none"> the person who delivers or collects the child from the residence or venue, or the educator, if the signature of the person who delivers or collects the child cannot be reasonably obtained The record is available for inspection at the residence or venue (Section 175) The record is accurate and is provided to the child's parents on request (Regulation 178) 	 <p>\$4000 penalty if the record is not kept available for inspection (Section 175)</p> <p>\$2000 penalty if record is not accurate (Regulation 178)</p> <p>\$2000 penalty if the record is not made available to the child's parent on request (Regulation 178)</p>	 <p>\$200 fine if the record is not accurate</p> <p>\$200 fine if the record is not made available to the child's parent on request</p>
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Regulation 160 Children's enrolment record to be kept (Section 175, Regulation 178)	<ul style="list-style-type: none"> An enrolment record is kept that includes the information set out at Regulation 160(3) for each child educated and cared for by the educator The record is available for inspection at the residence or venue (Section 175) The record is accurate and is provided to the child's parents on request (Regulation 178) 	<input checked="" type="checkbox"/> \$4000 penalty if the record is not kept available for inspection (Section 175), \$2000 penalty if record is not accurate (Regulation 178) \$2000 penalty if the record is not made available to the child's parent on request	<input checked="" type="checkbox"/> \$200 fine if the record is not accurate \$200 fine if the record is not made available to the child's parent on request
Regulation 161 Authorisations to be kept in enrolment record	<ul style="list-style-type: none"> The required authorisations are kept in the enrolment record for each child educated and cared for by the educator 	<input type="checkbox"/>	<input type="checkbox"/>
Regulation 162 Health information to be kept in enrolment record	<ul style="list-style-type: none"> The required health information is kept in the enrolment record for each child educated and cared for by the educator 	<input type="checkbox"/>	<input type="checkbox"/>

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Regulation 165 Record of visitors (Section 175, Regulation 178)	<ul style="list-style-type: none"> A record is kept of all visitors to the residence or approved venue while children are being educated and cared for at that residence or venue The record includes the signature of the visitor and the time of the visitor's arrival and departure The record is available for inspection at the residence or venue (Section 175) The record is accurate (Regulation 178) 	<input checked="" type="checkbox"/> \$4000 penalty if the record is not kept available for inspection (Section 175), and \$2000 penalty if record is not accurate (Regulation 178)	<input checked="" type="checkbox"/> \$200 fine if the record is not accurate
Regulation 166 Children not to be alone with visitors	<ul style="list-style-type: none"> He or she does not leave a child being educated and cared for with a visitor to the residence or venue 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>
Regulation 179 Family day care educator to provide documents on leaving service	<ul style="list-style-type: none"> All documents referred to in Regulation 178(1) must be provided to the approved provider when the educator ceases to be engaged by or registered with the service 	<input type="checkbox"/>	<input type="checkbox"/>
Regulation 180 Evidence of prescribed insurance	<ul style="list-style-type: none"> Evidence of the current public liability insurance is kept at the residence or venue and is made available for inspection to the regulatory authority 	<input type="checkbox"/>	<input type="checkbox"/>
Regulation 182 Confidentiality of records kept by family day care educator	<ul style="list-style-type: none"> Information kept in a record required under the National Regulations is not divulged or communicated to another person other than in the circumstances outlined at Regulation 181 	<input checked="" type="checkbox"/> \$2000 penalty	<input type="checkbox"/>

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Section 174A (Regulation 176A) Family day care educator to notify certain information to approved provider	<ul style="list-style-type: none"> They notify the approved provider of the following — <ul style="list-style-type: none"> any serious incident that occurs while a child is being educated and cared for by the educator as part of the service any complaints alleging that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the educator or that the National Law has been contravened; any renovations or other changes to the family day care residence or venue that create a serious risk to the health, safety and wellbeing of children 	 \$2000 penalty	
Regulation 164(2) Requirement for notice of new persons at residence	<ul style="list-style-type: none"> They notify the approved provider of the following — <ul style="list-style-type: none"> any person aged 18 years or over who resides, or intends to reside, at the educator's family day care residence any circumstance relating to a person residing at the family day care residence that may affect whether the person continues to be a fit and proper person to be in the company of children 	 \$2000 penalty	



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