Key obligations of a Family Day Care service

Overview
As the operator of an approved family day care (FDC) service, it is your responsibility to manage all aspects of the operations of your service, including the services provided by your educators.

This fact sheet provides a summary of your key responsibilities under the A New Tax System (Family Assistance) Act 1999, the A New Tax System (Family Assistance) (Administration) Act 1999, the Child Care Benefit (Eligibility for Approval and Continued Approval) Determination 2000, the Education and Care Services National Law and the Education and Care Services National Regulations (National Law and Regulations) and, if you have entered into it, your Community Support Program (CSP) funding agreement.

Details on where you can find more comprehensive information on your responsibilities are provided at the end of this fact sheet.

Managing your service

Compliance with licensing and CCB Approval
As the operator of a FDC service, you must have and maintain a ‘provider approval’, and your service must have and maintain a ‘service approval’ under the National Law. This is a prerequisite for approval and continued approval of your service under the family assistance law. It is an offence under the National Law to operate your service without approval under the National Law. Without approval for the purposes of the family assistance law, the families using your service cannot receive CCB or CCR.

Your service may be subject to periodic reviews to assess your ongoing compliance with the obligations under the National Law and the family assistance law.

Insurance
You must ensure that your service has the prescribed insurance cover required by the National Law. The family assistance law also requires your service to have workers compensation insurance and public liability insurance for the service. The CSP funding agreement specifies the amount of public liability cover required and also requires your service to have professional indemnity insurance.

If asked, you must be able to provide documentary evidence to show that you have all the necessary insurance coverage for your service and that the insurance policies are current. Your educators must also be able to produce evidence of the public liability insurance required under the National Law.

Suitability of Individuals
The operator and key personnel of your service must be, and continue to be, suitable people to operate a child care service. ‘Suitability’ refers to a range of factors:

- expertise and experience in providing child care
- ability to provide quality child care
- governance arrangements
- records of compliance with the family assistance law, quality standards and other laws
- records of financial management
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- convictions or findings of guilt for an offence or any relevant criminal charges pending before court, and
- any other matter relevant to the suitability.

You must also ensure that your staff, and any educators who are engaged as contractors of your service, are, and continue to be, suitable people to provide child care.

Under the National Law, you must ensure that each educator and educator assistant have a number of additional qualifications, including approved first aid qualifications and, after 1 January 2013, approved anaphylaxis management training and emergency asthma management training.

All jurisdictions except Tasmania have laws regarding persons working with children or working with vulnerable people. Your service must comply with these laws. The National Law and National Regulations have a range of particular obligations regarding this, which your service must comply with. These laws apply not only to educators but also to anyone regularly in contact with children your educators are caring for.

The National Regulations state that FDC services are required to meet the following minimum qualification standards by 1 January 2014:

- all coordinators will need to have an approved diploma-level early childhood education and care qualification or above, and
- all educators will be required to have (or be actively working towards) at least an approved Certificate III level early childhood education and care qualification.

Before employing or sub-contracting an educator, your service must inquire whether the educator has been subject to any recent sanctions, including termination from another service, to assist you to determine whether the educator would be considered a ‘suitable person’.

Employment Arrangements
You may choose whether staff at your service are hired as employees, or engaged as contractors, or a combination of both. Regardless of the employment arrangements, you must ensure that all staff of your service are suitable people to provide child care and are aware of, and comply with, all relevant legislative obligations.

Suitability of Care Environment
Under the National Law, you are required to conduct an assessment (including a risk assessment) of each residence and approved family day care venue of your service before education and care is provided to children in each residence or venue. You must also conduct another assessment at least once a year to ensure the health and wellbeing of children being educated and cared for by your services is protected. You must be able to provide documentary evidence of these assessments having being conducted, if asked as part of a compliance visit.

You must undertake regular contact visits with all educators, at least once a quarter, although many services undertake fortnightly visits. These visits can be unannounced or pre-arranged. Visits provide an opportunity for service co-ordinators and field workers to assist educators with their professional development and to ensure the quality of the service is at an appropriate level. Under the National Law, your service must ensure that there are sufficient persons appointed as co-ordinators to monitor and support the educators engaged or registered by your service.
Under the family assistance law you are required to notify DEEWR when certain events occur, including for example where the details provided on your service’s application for approval form change. This includes when an educator:

- commences with your service
- ceases providing care with your service, and/or
- changes their name, address or phone number.

**Quality of Care**

Your educators are part of your service and you are responsible for the quality of care they provide. You are required to ensure that education, support and training are available to your educators. You are also responsible for the provision of advice, support and information for parents accessing your service.

The monitoring of your educator’s activities includes conducting visits to the premises where the care is being provided. This monitoring is essential to ensure that your educators are, and remain, compliant for your continued CCB approval under family assistance law. The CSP funding you receive from DEEWR is a contribution towards your operational expenses in monitoring and providing support to your network of educators.

Your service should be familiar with the Early Years Learning Framework and Framework for School Age Care, as these are essential resources for implementing the National Quality Standards.

The monitoring activities you must undertake are governed by your CSP funding guidelines, the National Law and the National Regulations.

**Quality Improvement Plans**

Under the National Law, you must develop and submit a Quality Improvement Plan (QIP) within three months of becoming an Approved Provider. This QIP must:

- include an assessment of the quality of the practices of the service against the National Quality Standards and the Regulations
- identify any areas that you consider may require improvement, and
- contain a statement of the philosophy of your service.

The QIP must be kept at the principal office of your service and made available:

- for inspection by the Regulatory Authority or an authorised officer, and
- on request, to parents of a child who is enrolled at your service, or who are seeking to enrol a child at your service.

You must review and revise the QIP for your service, having regard to the National Quality Standards at least annually, and at any time when directed by the Regulatory Authority.

**Number of children in care**

The National Law limits the number of children an educator may care for at any one time. Generally speaking, educators may not provide approved care for more than seven children at a time. The educator’s own children and other children in the premises count towards the limit of seven if they are under the age of 13 and there is no other adult caring for these children. Educators must also provide care to no more than four children at a time who are preschool age or under. These limits take effect:
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- from 1 January 2012 in the ACT, SA and VIC, and
- from 1 January 2014 in NSW, NT, SA, TAS and WA – the applicable state ratios apply prior to this date.

When on an excursion educators must meet the requirements in the National Law about the number of children they are allowed to care for. Educators must also consider if they will need extra people to provide adequate supervision at all times. A risk assessment should be completed before an excursion. A template excursion risk management plan is available on the Australian Children’s Education and Care Quality Authority website.

Making a care arrangement with a family
While educators may enter into care arrangements with families directly, they should not make their own care arrangements without involving you as the coordinator of the service. As your service is legally responsible for the actions of your educators, if you don’t have any involvement in the care arrangements, you may have difficulties ensuring your service remains compliant.

It is best practice to have families approach you directly rather than individual educators making the arrangement. At an absolute minimum, you as the coordinator should have a full understanding and knowledge of the contract for care between the educator and the family, including the agreed fee and hours of care.

You must abide by the Priority of Access Guidelines when filling vacant places within your service.

Privacy
Information you or your educators collect through the delivery of education and care may be considered protected information under the family assistance law and/or personal information under the Commonwealth’s Privacy Act 1988. In handling such information, you are required to comply with the relevant obligations of these laws.

As an example, information you collect about a child attending your service, for instance the child’s name or Customer Reference Number (CRN) should not be disclosed to others except where required under the law.

Please note that the family assistance law has penalties for the unauthorised use or disclosure of protected personal information.

Reporting and Notification to CCMS
Reporting correctly to the Child Care Management System (CCMS) is one of the key obligations of approved child care services. These reports determine how much CCB, CCR or Jobs, Education and Training Child Care Fee Assistance (JETCCFA) is paid by the Australian Government for eligible families, so the accuracy of these reports is essential.

Enrolments
You must notify the enrolment of a child for care at your service within seven days of the child starting care and you must do this through the CCMS. You must also update enrolment information given through the CCMS, including for instance where the information in the enrolment notice becomes incorrect.

You may also be required to provide further information about enrolled children to DEEWR on request.
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Attendances
You must check the accuracy of attendance records received from your educators before you submit data to the CCMS via your software product. These reports must be submitted for all the children enrolled at your service within 14 days of the end of the week in which care was provided.

It is important to remember that you are ultimately responsible for the accuracy of the data submitted to the CCMS, with the consequences for incorrect or false reporting resting with you. If you suspect that an attendance record is not accurate, in any way, then you should investigate further or confirm with the family about their attendance, the actual fee that they are liable to pay and the care arrangements they have agreed to with the educator, before submitting an attendance report to the CCMS.

Absences
CCB is not payable before a child has physically attended care or after a child has physically ceased care at your service. This means that you cannot report an absence for a child before they start attending care at your service or after a child has physically ceased care at your service.

You must:
- report the details of child care usage for all the children enrolled at your service within 14 days of the end of the week in which care was provided
- report any sessions where a child was absent, including the type of absence (i.e. initial or additional), and
- cancel all the absences after their last day of attendance. This includes where you have reported absences for a child because you are expecting them to return to care but they do not come back
- make sure the parent provides supporting documentation for all additional absences and keep this for your records.

Your service should, as one of its policies, place a reasonable limit on the period of time that you will consider and report to the CCMS that a child is absent and will return to care before you end their enrolment and cancel and correct any previously submitted attendance records. If the child does not return to care, any CCB paid for this period should be returned to DEEWR.

Providing care for the full session
Where your service charges an individual a fee for providing a session of care, your service must be able to provide care for that whole session. For example, you must not report sessions of 8 hours per day, unless your service is actually able to provide care for the full 8 hours. A child may not actually attend for the full 8 hours, but you must be able to provide care for the whole period if a family require it.

If your service cannot provide care for the full session, for example when an educator is not available for the full session, you must reduce the length of the sessions you report to reflect the period in which care was able to be provided.

Payments types, charging fees and providing statements

Charging fees
You are responsible for setting your service’s fee schedule and charging policies. It is best practice to have a formal fee charging policy, and you should review each educator’s fee schedule to ensure that it meets...
your service’s policy. In addition, you are required to notify DEEWR when your fees change. Recent enhancements to the CCMS allow you to report your fees through your CCMS software – this can be reported as a minimum and maximum range.

In order for CCB to be payable, there must be a direct commercial relationship between the family that is paying for the care, and your service. Importantly, it is not your educator that is charging the family for the care, it is your service that is charging the fee.

The fee your service charges a family must be a real fee – that is, it must be the fee that the family is actually liable to pay. You must not report a fee to the CCMS unless the family is liable to pay that fee under the commercial arrangement between the family and your service.

If a family using your service is receiving Special Child Care Benefit (SCCB), Grandparent Child Care Benefit (GCCB) or JETCCFA, you must not charge this family a higher fee than you would have charged this family if they were not eligible to receive one of these payments. It is an offence to charge a family a lower fee, for example if an educator claims that a family simply couldn’t afford the usual fee, and then to charge a higher fee once SCCB, GCCB or JETCCFA is approved. Further information about SCCB, GCCB and JETCCFA is available in the Child Care Services Handbook.

When you report the attendance of children through your CCMS approved software, including the fees charged, you are responsible for the accuracy of the data reported.

**Fee reductions**

You must pass on the full amount of fee reductions amounts to families within 14 days of being notified of the amount by DEEWR. You must use all practicable means to pass to families the fee reduction amounts advised by DEEWR. It is an offence not to pass on the amounts within 14 days.

If your service charges fees in advance and has reduced the amount it charged to a family based on an estimate of the fee reduction before DEEWR advises your service of the fee reductions for the family, and the family leaves the service, your service is taken to have passed on the amount of the fee reduction to the family.

**Statements**

You must regularly provide each family using your service with a statement about their child care usage, fees and CCB paid to families. This informs families about their use of care, how much it costs and how much financial assistance they are getting from the Australian Government.

At a minimum, you must issue a statement at least once every three months. Your service can issue statements more frequently if that suits your business and the needs of your families. It is up to you whether you issue statements to all your families at the same time or to groups of families at different times. New services must issue their first batch of statements no later than a month after the end of the first statement period. This is the three month period starting from your service’s CCB approval date.

Statements must be provided in writing. You can issue them electronically (for example, by email) if the family agrees to receive them that way. Statements must be provided to the child’s parent/guardian or, if a person other than a parent pays a child’s fees and requests a copy of the statements, you must provide them to that person.

You do not have to provide a statement for any period where the parent is receiving SCCB because the child was ‘at risk of serious abuse or neglect’.
Keeping records
Under the family assistance law you are required to keep the records specified in the A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006. This includes the following kinds of records:

- enrolment forms
- attendance records for each child who attends your service, including records for any absences from care
- supporting documents for ‘additional’ absence(s)
- supporting documents for Special Child Care Benefit (SCCB) and 24-hour care
- copies of receipts issued to people who have paid for child care fees
- the full name, residential address and contact telephone number for each educator employed or contracted by your service and address and telephone number of premises where care is provided, and
- insurance policies and any documentation relating to insurance.

The family assistance law requires that you keep these records for at least 36 months from the end of the calendar year in which the care was provided to which the record relates. These record keeping obligations also extend to former operators of a service.

It is also a condition for continued CCB approval that you comply with the relevant record keeping requirements set out in the National Law and Regulations relating to records. As an example, the National Law and Regulations require that attendance records:

- record the full name of each child being educated and cared for and that date and time each child arrives and leaves, and
- are signed by the person who delivers/collects the child at the time this occurs, or where the signature of this person cannot be reasonably attained, by the educator.

Telling DEEWR about your operations
On your service’s approval application form, you provided a range of information to DEEWR. If any of these details change, you must notify DEEWR. These are known as ‘Notifiable Events’ and some examples include:

- if you are closing your service or changing the legal operator
- changes to your service’s physical address, postal address, hours of operation, phone number or hours of operation
- changes to your service’s fee schedule
- changes to your bank account details, or
- changes to the suitability of your personnel.

You will be able to report most changes to DEEWR through your CCMS Registered Software. Updating the information DEEWR holds about your service via the CCMS means it will be much easier for you to ensure your Notifiable Event obligations are met in the time frames that are required by family assistance law.

You cannot report changes to your financial email address, or bank account details through the CCMS. The form to advise DEEWR of these changes in writing can be found on the DEEWR website.
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You are also required to notify DEEWR in writing of any serious incidence or circumstance that could have resulted in the occurrence of a serious incident within 24 hours. This could include the death or serious injury of a child requiring medical treatment while they are in care or any circumstance where the child appears missing or cannot be accounted for while in care.

Reporting suspicious or fraudulent behaviour
Fraud against the Commonwealth is an extremely serious matter and may constitute a criminal offence. Making false statements and/or providing misleading information has serious consequences.

If you receive a complaint, find or have suspicions that any of your staff are behaving fraudulently, you must take action immediately by investigating the situation and notifying DEEWR. You can do this by contacting DEEWR’s Child Care Support Line 1800 664 231.

Consequences of non-compliance
The law provides serious penalties if you do not comply with your obligations. These penalties range from financial penalties to sanctions such as the suspension or cancellation of your service’s CCB approval or criminal investigation.

In addition to potential penalties under the family assistance law, you need to be aware that if your service does not comply with the terms of your Community Support Program (CSP) funding agreement, DEEWR may suspend or cancel program funding until your service meets its obligations under the family assistance law.

More information
The main laws governing your family day care service’s obligations are set out below.

Commonwealth family assistance law:
- A New Tax System (Family Assistance) Act 1999
- A New Tax System (Family Assistance) (Administration) Act 1999
- Child Care Benefit (Eligibility for Approval and Continued Approval) Determination 2000
- and other legislative instruments made under the two acts above.

All these are available at: http://www.comlaw.gov.au/Home

The National Law (administered by your state or territory):
- Education and Care Services National Law Act
- Education and Care Services National Regulations

The CSP Funding Agreement, if you have entered into it. Your service should have a copy of this document.

Further general information and guidance on your obligations can be found in the Child Care Service Handbook, located on the www.deewr.gov.au website.

For further information on the following items, visit the Australian Children’s Education and Care Quality Authority website www.acecqa.gov.au:
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- National Quality Framework
- Quality Improvement Plans
- Early Years Learning Framework
- State and Territory licensing, including the details for your state or territory

Disclaimer

This fact sheet is a general guide to some of the legal obligations of family day care services approved for the purposes of the family assistance law. This fact sheet is not a complete description of your legal obligations. This fact sheet also does not cover all the legal obligations of approved family day care services. You should consult the relevant legislation for full details of your legal obligations. You may also wish to obtain your own independent legal advice.

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