

Child care insights

Family Day Care Law: avoiding breaches of the National Law and Regulations

Meridian Lawyers acts for a wide range of childcare providers including family day care services who may on occasion need to respond to a complaint or regulatory investigation concerning compliance with the Education and Care Services National Law and Regulations ('National Law').

The National Law was enacted with specific objectives including to:

- ensure the safety, health and wellbeing of children attending education and care services;
- improve the educational and developmental outcomes for children attending education and care services; and
- promote continuous improvement in the provision of quality education and care services.

Given the statutory requirement for family day care services to meet the above statutory objectives and principles, and the increased compliance checks currently being conducted by the regulatory authority, we strongly advise family day care services to focus resources on auditing their (and their educators') compliance with the National Law.

The regulatory authority is empowered to carry out spot checks on approved providers including family day care services and educators, and services may find themselves subject to an investigation without prior warning.

Where the regulator identifies issues of non-compliance, family day care services may face a range of potential regulatory action and penalties including a direction by the regulator requiring compliance, an infringement notice including a financial penalty, and for more serious breaches – prosecution.

The regulatory authority may also decide that an approved provider is no longer a suitable person to operate a child care service and may suspend or cancel a provider approval.

Based on our extensive work with family day care providers and managing and advising on compliance with the National Law, it is evident that it will not be sufficient to satisfy a regulator for an approved provider to respond to a compliance breach by asserting that it has proper policies and procedures in place, or that it was unaware of a compliance issue.



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In these circumstances, in our experience the regulatory authority is likely to assess and conclude that if educators are failing to comply with the policies of a family day care service, then the service also must, as a consequence:

- have failed to ensure that educators understand those policies and the fact that compliance is essential; and
- have failed to verify that the educator is complying in practice when operating away from the coordination unit.

How can approved providers help to achieve compliance?

Based on our extensive industry experience, in order to mitigate the risk of non-compliance in the circumstances described above, as a guide we recommend the following seven steps to help family day care service providers and educators achieve compliance with the National Law:

- (i) educators are tested on their understanding of the National Law prior to registration with a family day care service and that records of their testing and results are kept as evidence of compliance;
- (ii) family day care services develop a thorough induction process and checklist for new educators including briefing educators on all of the service's policies and procedures (possibly on a stepped basis rather than all in one go) and all of the service's forms;
- (iii) educators should acknowledge, confirm and sign an induction checklist as evidence they have read and understood the family day care service's policies and procedures and they have been given a copy of the checklist for use at their residence together with a copy of the National Law;
- (iv) family day care services should issue a regular e-newsletter to educators to update them on key areas of National Law and CCB compliance;
- (v) family day care services provide regular compulsory training on the National Law and the National Quality Standards to educators and that a record of attendance is maintained – noting that a professional training program by a registered training organisation may be more persuasive to regulatory authorities;
- (vi) family day care services verify that educators are complying with the National Law and the service's policies and procedures when the educator is operating in their own residence and providing education and care – the regulator is unlikely to be satisfied that there has been compliance if educators are dispatched following an induction process with no follow up or monitoring;
- (vii) family day care services implement very strong monitoring procedures for educators including frequent unannounced visits and communication – this may mean increasing the number of coordinators employed by the family day care service in order to carry out these visits and telephone calls.

We are aware of a number of instances where an approved provider's records show that an educator's residence complies with the National Law during monthly home safety visits, but upon receiving a random inspection visit from either the approved provider or the regulatory authority, there may be several areas of non-compliance, which threaten the safety, health and wellbeing of children, such as chemicals left out of cupboards and accessible to children in bathroom areas, and children having access to kitchens or laundry areas where hazards exist.

Express statutory and other duties are imposed on approved providers to ensure that educators comply with the National Law and other legislation.

In our view, if non-compliant issues or conduct are identified then the family day care service must take immediate or pro-active steps (depending on the nature of the problem) to rectify a potential breach and to ensure compliance, particularly if there is a threat to children's safety, health and wellbeing. Such steps may include consideration of suspending the provision of care by an educator until such time as the non-compliant issues or conduct is rectified and the family day care service verifies proper rectification via an on-site visit.

In the event of a regulatory investigation, an approved provider facing threat of suspension or cancellation of approved provider status will be given the opportunity to respond to the regulatory authority's allegations.

MERIDIAN LAWYERS HAS EXTENSIVE EXPERIENCE IN ADVISING AND ASSISTING APPROVED PROVIDERS INCLUDING FAMILY DAY CARE SERVICES IN PREPARING THEIR RESPONSE TO THE REGULATOR AND IN IMPLEMENTING COMPLIANCE WITH THE NATIONAL LAW, INCLUDING MAKING AN APPLICATION FOR REVIEW OF A DECISION BY THE REGULATOR WHERE A SUSPENSION OR CANCELLATION NOTICE HAS BEEN ISSUED.

FOR FURTHER INFORMATION OR ASSISTANCE PLEASE CONTACT:

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