

7.1 ENFORCEMENT AND COMPLIANCE

Policy No: 7.1

Policy Adopted: April 2013

Version No: 2 under Education and Care Services National Regulations under the Education and Care Services National Law

Review Date: September 2014

PURPOSE To ensure the service operates within the requirements of the Education and Care Services Law and Regulation so that children receive quality education and care

POLICY Child Care Services Taree & Districts Inc operates the family day care service Taree Great Lakes Gloucester Five Star in accordance with the Education and Care Services National Law Act 2010 and Education and Care Services National Regulations; and all funding requirements

PROCEDURES

1. Role of regulatory authority

- 1.1 the NSW Department of Education and Community is the regulatory authority responsible for the administration of the National Quality Framework, including monitoring and enforcing compliance with the National Law and the National Regulations
- 1.2 consistent with the objectives of the National Quality Framework, the approach to enforcement and compliance is to:
 - 1.2.1 ensure the safety, health and wellbeing of children
 - 1.2.2 improve children's educational and developmental outcomes
 - 1.2.3 promote continuous quality improvement in education and care services
- 1.3 regulatory Authorities have a range of approaches and tools to facilitate these objectives and consistently reinforce the requirements of the National Quality Framework
- 1.4 regulatory Authorities will educate and inform providers and services and empower them to understand and meet their obligations
- 1.5 regulatory Authorities are also guided by the principle of proportionality and will focus on achieving the desired outcome in the most efficient manner
- 1.6 when deciding how to respond to an incident or issue, Regulatory Authorities will consider the circumstances of each case and the risk to children (both short and long term).
- 1.7 they may also take into account the compliance history of the Approved Provider or Approved Service
- 1.8 regulatory Authorities will endeavour to take action that is proportionate to the issue and is most likely to achieve improved outcomes for children

2. **Infringement notices**

- 2.1 the National Law and National Regulations set out offences for which an infringement notice may be issued by the regulatory authority; an infringement notice operates like a fine
- 2.2 the National Law sets out three offences that are subject to an infringement notice:
 - 2.2.1 failure to display prescribed information
 - 2.2.2 failure to notify certain circumstances to the Regulatory Authority
 - 2.2.3 failure to comply with a compliance direction
- 2.3 the national Regulations set out offences which are also subject to an infringement notice Attachment B.
- 2.4 an authorised officer may issue an on the spot infringement notice which imposes an amount of 10% of the maximum penalty that could be enforced by a court for that offence. The use of infringement notices provides a more targeted enforcement option
- 2.5 offences that are suitable for applying an infringement notice are typically minor offences and are clear and unambiguous. They also provided an immediate sanction for a breach

3. **Enforceable undertaking**

- 3.1 if a person has allegedly breached the National Law or National Regulations, a Regulatory Authority may enter into a written agreement where the person agrees to take certain action, or refrain from taking certain action, to comply with the National Law or National Regulations
- 3.2 an enforceable undertaking could be used where strict compliance with the provision may not achieve the desired outcome; for example, where health and hygiene practices are not being followed, a Regulatory Authority might request an Approved Provider to agree to train staff in health and hygiene practices, rather than issuing a compliance notice
- 3.3 this is consistent with the principle of an 'outcomes focus' in regulatory actions

4. **Compliance Directions**

- 4.1 the regulatory authority may issue a compliance direction which is a written enforcement notice that directs an Approved Provider to take certain steps to comply with that provision, within a specified timeframe; this is a law order enforcement notice
- 4.2 the regulations that are subject to a compliance direction are set out in the table at Attachment B.

5. **Compliance Notice**

- 5.1 a regulatory authority may issue a compliance notice if it is satisfied that an Approved Provider is not complying with any provision of the National Law or National Regulations, and direct the Approved Provider to take certain steps within a specified period of time to comply with the provision, this is a high order enforcement notice

6. **Prohibition notice**

- 6.1 a regulatory authority may issue a prohibition notice to a person if it considers that there may be an unacceptable risk of harm to a child if the person was allowed to provide

education and care to a child or remain at a service

- 6.2 a prohibition notice may be given to an Approved Provider, certified supervisor, family day care educator, employee, contractor, volunteer or anyone else involved in the provision of education and care
- 6.3 a Regulatory Authority may also issue a prohibition notice without prior notification if there is immediate risk to the safety, health or wellbeing of a child or children
- 6.4 a prohibition notice prohibits the person to whom it applies from:
 - 6.4.1 providing education and care to children for an Approved Service
 - 6.4.2 being engaged as a supervisor, family day care educator, or staff member at an Approved Service
 - 6.4.3 carrying out any other activity relating to an Approved Service

7. Notice to suspend a family day care educator

- 7.1 a regulatory authority may issue a notice directing the approved provider of a family day care service to suspend education and care by a family day care educator, if the regulatory authority is satisfied that, because of the conduct of, or the service provided by a family day care educator:
 - 7.1.1 the approved educator is not compliant with the National Law or National Regulations, or
 - 7.1.2 there is a risk to the safety, health or wellbeing of the children at the service

8. Offices under the National Law and Regulations

- 8.1 the National Law sets out a range of higher order offences, which relate to matters such as staffing arrangements, the educational programs inadequate supervision and failing to protect children from harm and hazards. See Attachment A
- 8.2 offences usually apply to the approved provider or nominated supervisor who is responsible for the service provision
- 8.3 offences can also apply to family day care educators, for example an educator could be held responsible for inappropriately disciplining children, if the service had a thorough induction and clear policies in place, but the educator did not follow these
- 8.4 the National Regulations also sets out a number of lower order offences. See Attachment B
- 8.5 in most cases the responsibility for complying with the regulations rests with the approved provider
- 8.6 some offences may apply to nominated supervisors, family day care educators or other staff members based on the person's control over the particular action or omission. For example an educator could be held responsible (and therefore subject to the penalty) for being affected by drugs or alcohol while providing education and care to children as part of the service

Source:

- Guide to the Education and Care Services National Law and The Education and Care Services
- National Regulations 2011—Australian Children’s Education and care Quality Authority
- National Law—sections 172, 173, 174, 175, 176, 177, 178, 180-188, 190, 291
- National Regulations—188, 189 schedules 3, 190

Attachment A

Summary of offences under the National Law

Offence	Reference	Approved Provider	Nominated Supervisor	Family Day Care Educator	Staff member	Infringement Notices
Provide an education and care service without service approval	Section 103	✓				
Advertise a service without service approval	Section 104	✓				
Claim to be a Certified Supervisor without a Supervisor Certificate	Section 132		✓		✓	
Operate a service without Nominated Supervisor	Section 161	✓				
Operate a service without responsible person present (Centre-based service only)	Section 162	✓				
Fail to employ or engage at least one family day care co-ordinator (Family day care service only)	Section 163	✓				
Fail to provide support to family day care educators	Section 164	✓				
Inadequate supervision	Section 165	✓	✓	✓		
Inappropriate discipline	Section 166	✓	✓	✓	✓	
Fail to protect children from harm and hazards	Section 167	✓	✓	✓		
Fail to provide required program	Section 168	✓	✓			
Fail to meet minimum staffing requirements, including ratios and qualifications	Section 169	✓	✓	✓		
Allow unauthorised person to remain on premises	Section 170	✓	✓	✓		
Fail to comply with direction to exclude inappropriate person	Section 171	✓	✓	✓		
Fail to display prescribed information	Section 172	✓				✓
Fail to notify circumstances to the Regulatory Authority	Section 173	✓				✓

Offence	Reference	Approved Provider	Nominated Supervisor	Family Day Care Educator	Staff member	Infringement Notices
Fail to notify information to the Regulatory Authority	Section 174	✓				
Fail to keep enrolment and other documents	Section 175	✓		✓		
Compliance Directions	Section 176	✓				✓
Engage person to whom prohibition notice applies	Section 188	✓				
Obstruct an authorised officer	Section 207	Any or all persons				
Fail to assist an authorised officer	Section 208	Any or all persons				
Destroy or damage notices or documents	Section 209	Any or all persons				
Impersonate an authorised officer	Section 210	Any or all persons				
Fail to comply with notice or requirement	Section 217	Any or all persons				
Hinder or obstruct Regulatory Authority	Section 218	Any or all persons				

Attachment B

Summary of offences under the National Regulations

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Quality Improvement Plans (Regulation 55)	✓				✓	
Offences in relation to giving false or misleading statements about ratings (Regulation 72)	✓				✓	\$2000
Record of child assessments or evaluations for delivery of education program (Regulation 74)	✓				✓	
Information about education program to be kept available (Regulation 75)	✓				✓	
Health and hygiene practices and safe food practices (Regulation 77)	✓	✓	✓	✓	✓	\$2000
Access to safe drinking water and regular food and beverages (Regulation 78)	✓	✓	✓		✓	\$2000
Service providing food and beverages (Regulation 79)	✓	✓	✓		✓	\$2000
Weekly menu (Regulation 80)	✓	✓	✓	✓	✓	\$1000
Sleep and rest (Regulation 81)	✓	✓	✓		✓	\$1000

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Tobacco, drug and alcohol free environment (Regulation 82)	✓		✓		✓	\$2000
Staff members not to be affected by alcohol or drugs (Regulation 83)	✓	✓	✓	✓	✓	\$2000
Awareness of child protection law (Regulation 84)	✓				✓	\$1000
Notification to parents of incident, injury, trauma and illness (Regulation 86)	✓			✓		\$2000
Infectious diseases (Regulation 88)	✓			✓		\$2000
First aid kits (Regulation 89)	✓		✓	✓	✓	\$2000
Medical conditions policy to be provided to parents (Regulation 91)	✓				✓	
Administration of medication (Regulation 93)	✓	✓	✓			\$2000
Emergency and evacuation procedures (Regulation 97)	✓			✓	✓	\$2000
Telephone or other communication equipment (Regulation 98)	✓			✓	✓	\$1000
Children leaving the education and care service premises (Regulation 99)	✓	✓	✓			\$2000

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Risk assessment must be conducted before excursion (Regulation 100)	✓	✓	✓			\$2000
Authorisation for excursions (Regulation 102)	✓	✓	✓			\$1000
Premises, furniture and equipment to be safe, clean and in good repair (Regulation 103)	✓				✓	\$2000
Fencing and security (Regulation 104)	✓			✓	✓	\$2000
Access to sufficient furniture, materials and developmentally appropriate equipment (Regulation 105)	✓				✓	
Laundry and hygiene facilities (Regulation 106)	✓				✓	
Space requirements- indoors (Regulation 107)	✓				✓	\$2000
Space requirements- outdoor space (Regulation 108)	✓				✓	\$2000
Ventilation and natural light (Regulation 110)	✓				✓	\$2000
Administrative space (Regulation 111)	✓				✓	
Nappy change facilities (Regulation 112)	✓			✓	✓	\$1000

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Outdoor space-natural environment (Regulation 113)	✓				✓	
Outdoor space-shade (Regulation 114)	✓				✓	\$1000
Premises designed to facilitate supervision (Regulation 115)	✓				✓	
Assessments of family day care residences and approved venues (Regulation 116)	✓				✓	\$2000
Glass (Regulation 117)	✓				✓	
Educational leader (Regulation 118)	✓				✓	
Family day care educator to be at least 18 years old (Regulation 119)	✓				✓	\$1000
Educators who are under 18 to be supervised (Regulation 120)	✓				✓	\$1000
Relationships in groups (Regulation 156)	✓				✓	
Access for parents (Regulation 157)	✓	✓	✓		✓	\$1000
Residents at family day care residence and family day care educator assistants to be fit and proper persons (Regulation 163)	✓				✓	\$2000

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Requirement for notice of new persons at residence (Regulation 164)	✓				✓	\$2000
Children not to be alone with visitors (Regulation 166)	✓		✓			\$2000
Policies and procedures in place (Regulation 168)	✓				✓	\$1000
Additional policies and procedures for family day care (Regulation 169)	✓				✓	\$1000
Policies and procedures to be followed (Regulation 170)	✓				✓	\$1000
Policies and procedures to be available (Regulation 171)	✓				✓	\$1000
Notification of change to policies and procedures (Regulation 172)	✓				✓	
Prescribed enrolment and other documents to be kept by approved provider (Regulation 177)	✓			✓	✓	\$2000
Prescribed enrolment and other records to be kept by family day care educator (Regulation 178)			✓	✓		\$2000

Offence	Approved Provider	Nominated Supervisor	Family Day Care Educator	Infringement Notice	Compliance Direction	Max Penalty
Confidentiality of records kept by approved provider (Regulation 181)	✓					\$2000
Confidentiality of records kept by family day care educator (Regulation 182)			✓			\$2000
Storage of records and other documents (Regulation 183)	✓				✓	
Law and regulations to be available (Regulation 185)	✓				✓	
Prescribed form of identity card (Regulation 187)	Applies to an authorised officer					\$1000
False or misleading documents (Regulation 191)	Applies to an authorised officer					\$2000