

# 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

<p><b>Regulation 74</b> Record of child assessments or evaluations for delivery of educational program (section 175, regulation 178)</p>	<ul style="list-style-type: none"> <li>• 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)</li> <li>• Documentation is accurate and is provided to the child's parents on request (regulation 178)</li> </ul>	<p><input checked="" type="checkbox"/></p> <p><b>\$4500</b> penalty if the documentation is not kept available for inspection (section 175)</p> <p><b>\$2200</b> penalty if documentation is not accurate (regulation 178)</p> <p><b>\$2200</b> penalty if documentation is not made available to the relevant child's parent on request (regulation 178)</p>	<p><input checked="" type="checkbox"/></p> <p><b>\$220</b> fine if the record is not accurate</p> <p><b>\$220</b> fine if the record is not made available to the child's parent on request</p>
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## QA2: Children’s health and safety

<b>Section 165</b> Offence to inadequately supervise children	<ul style="list-style-type: none"> <li>Any child being cared for by the educator as part of the service is adequately supervised</li> </ul>	<input checked="" type="checkbox"/> <b>\$11 400</b> penalty	<input type="checkbox"/>
<b>Section 167</b> Offence relating to protection of children from harm and hazards	<ul style="list-style-type: none"> <li>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</li> </ul>	<input checked="" type="checkbox"/> <b>\$11 400</b> penalty	<input type="checkbox"/>
<b>Section 170</b> Offence relating to unauthorised persons on education and care service premises	<ul style="list-style-type: none"> <li>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</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input type="checkbox"/>
<b>Section 171</b> Offence relating to direction to exclude inappropriate persons	<ul style="list-style-type: none"> <li>Any person deemed inappropriate by the regulatory authority is excluded from the residence or venue while children are in attendance</li> </ul>	<input checked="" type="checkbox"/> <b>\$11 400</b> penalty	<input type="checkbox"/>
<b>Regulation 77</b> Health, hygiene and safe food practices	<ul style="list-style-type: none"> <li>They implement adequate health and hygiene practices and safe practices for handling, preparing and storing food</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input checked="" type="checkbox"/> <b>\$220</b> fine

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<b>Regulation 78</b> Food and beverages	<ul style="list-style-type: none"> <li>Children in attendance have access to safe drinking water at all times and are offered food and beverages regularly throughout the day</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<b>Regulation 79</b> 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"> <li>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</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<b>Regulation 80</b> Weekly menu  Note: Only relates to services that provide food or beverages to children in attendance	<ul style="list-style-type: none"> <li>A weekly menu is displayed at a place in the residence or venue that is accessible to parents of children in attendance</li> <li>The menu accurately describes the food and beverages that will be provided by the service each day</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input checked="" type="checkbox"/> <b>\$110</b> fine
<b>Regulation 81</b> Sleep and rest	<ul style="list-style-type: none"> <li>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</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input type="checkbox"/>
<b>Regulation 82</b> Tobacco, drug and alcohol free environment	<ul style="list-style-type: none"> <li>Children attending the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol</li> </ul>	<input checked="" type="checkbox"/> <b>\$2000</b> penalty	<input type="checkbox"/>

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<b>Regulation 83</b> Staff members and family day care educators not to be affected by alcohol or drugs	<ul style="list-style-type: none"> <li>They do not consume alcohol or are affected by alcohol or drugs (including prescription medication) so as to impair their capacity to supervise or provide education and care for children at the service</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input checked="" type="checkbox"/> <b>\$220</b> fine
<b>Regulation 84A</b> Sleep and rest	<ul style="list-style-type: none"> <li>The needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input checked="" type="checkbox"/> <b>\$110</b> fine
<b>Regulation 87</b> Incident, injury, trauma and illness record (section 175, regulation 178)	<ul style="list-style-type: none"> <li>An incident, injury, trauma or illness record is kept and the includes all of the details specified in regulation 87</li> <li>This information is included in the record as soon as practicable and no later than 24 hours after the occurrence</li> <li>The record is available for inspection at the residence or venue (section 175)</li> <li>The record is accurate and is provided to the child's parents on request (regulation 178)</li> </ul>	<input checked="" type="checkbox"/> <b>\$4500</b> penalty if the record is not kept available for inspection (section 175)  <b>\$2200</b> penalty if record is not accurate (regulation 178)  <b>\$2200</b> penalty if the record is not made available to the relevant child's parent on request (regulation 178)	<input checked="" type="checkbox"/> <b>\$220</b> fine if the record is not accurate  <b>\$220</b> fine if the record is not made available to the child's parent on request
<b>Regulation 89</b> First aid kits	<ul style="list-style-type: none"> <li>They keep 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</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input checked="" type="checkbox"/> <b>\$220</b> fine

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<p><b>Regulation 92</b> Medication record (section 175, regulation 178)</p>	<ul style="list-style-type: none"> <li>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</li> <li>The record is available for inspection at the residence or venue (section 175)</li> <li>The record is accurate and is provided to the child's parents on request (regulation 178)</li> </ul>	<p><input checked="" type="checkbox"/></p> <p><b>\$4500</b> penalty if the record is not kept available for inspection (section 175)</p> <p><b>\$2200</b> penalty if record is not accurate (regulation 178)</p> <p><b>\$2200</b> penalty if the record is not made available to the child's parent on request</p>	<p><input checked="" type="checkbox"/></p> <p><b>\$220</b> fine if the record is not accurate <b>\$220</b> fine if the record is not made available to the child's parent on request</p>
<p><b>Regulation 93</b> Administration of medication</p>	<ul style="list-style-type: none"> <li>Medication is not administered to a child being educated and cared for at the residence or venue unless: <ul style="list-style-type: none"> <li>the administration is authorised, and</li> <li>the medication is administered in accordance with the procedure for administration at regulation 95, or the procedure for self-administration at regulation 96</li> </ul> </li> </ul>	<p><input checked="" type="checkbox"/></p> <p><b>\$2200</b> penalty</p> <p><input type="checkbox"/></p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p><b>Regulation 94</b> Exception to authorisation requirement in the case of anaphylaxis or asthma emergency</p>	<ul style="list-style-type: none"> <li>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</li> </ul>		

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<p><b>Regulation 99</b> Children leaving the education and care service premises</p> <p>[Note: an equivalent provision at section 165(a) of the Western Australian Law]</p>	<ul style="list-style-type: none"> <li>A child in attendance does not leave the residence or venue except for one of the reasons outlined at regulation 99(4)</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<p><b>Regulation 100</b> Risk assessment must be conducted before excursion</p>	<ul style="list-style-type: none"> <li>They carry out a risk assessment in accordance with regulation 101 before seeking authorisation for an excursion under regulation 102</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<p><b>Regulation 101</b> Conduct a risk assessment for excursion</p>	<ul style="list-style-type: none"> <li>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</li> <li>The risk assessment considers the items outlined at regulation 101</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Regulation 102</b> Authorisation for excursions</p>	<ul style="list-style-type: none"> <li>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</li> <li>The written authorisation for each child includes the information outlined at Regulation 102</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input type="checkbox"/>

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<b>Regulation 102B</b> Transport risk assessment must be conducted before service transports child	<ul style="list-style-type: none"> <li>A risk assessment is carried out in accordance with regulation 102C before an authorisation referred to in regulation 102D(4) is sought to transport a child.</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<b>Regulation 102C</b> Conduct of risk assessment for transporting of children by the education and care service	<ul style="list-style-type: none"> <li>The risk assessment identifies and assesses risks that the transportation of a child may pose to the safety, health or wellbeing of the child, and specifies how the identified risks will be managed and minimised.</li> <li>The risk assessment considers the items outlined at regulation 102C</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Regulation 102D</b> Authorisation for service to transport children	<ul style="list-style-type: none"> <li>A child being educated and cared for by the service is not transported by the service or on transportation arranged by the service unless written authorisation has been given under subregulation (4).</li> <li>The written authorisation for each child includes the information outlined at regulation 102D</li> </ul>	<input checked="" type="checkbox"/> <b>\$1100</b> penalty	<input type="checkbox"/>



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#### QA4: Staffing arrangements

<p><b>Section 164A</b> Offence relating to the education and care of children by family day care service</p>	<ul style="list-style-type: none"> <li>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</li> </ul>	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>
<p><b>Section 169(5)</b> Offence relating to staffing arrangements</p>	<ul style="list-style-type: none"> <li>Ratio requirements at regulation 124 are maintained</li> </ul>	<input checked="" type="checkbox"/> <b>\$11 400</b> penalty	<input type="checkbox"/>
<p><b>Regulation 124</b> Educator-to-child ratios – family day care services</p> <p>Note: This regulation allows flexibility in exceptional circumstances, refer regulation 124, sections 5 and 6</p>	<ul style="list-style-type: none"> <li>No more than 7 children are educated and cared for at the residence or venue at any one time</li> <li>No more than 4 children are preschool age or under</li> </ul> <p>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</p>	<input type="checkbox"/>	<input type="checkbox"/>

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### QA5: Relationships with children

<b>Section 166</b> Inappropriate discipline	<ul style="list-style-type: none"> <li>They do 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</li> </ul>	<input checked="" type="checkbox"/> <b>\$11 400</b> penalty	<input type="checkbox"/>
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**QA6: Collaborative partnerships with families and communities**

<p><b>Regulation 157</b> Access for parents</p>	<ul style="list-style-type: none"> <li>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"> <li>(a) Permitting the parent’s entry would:                 <ul style="list-style-type: none"> <li>i. Pose a risk to the safety of the children and staff of the education and care service; or</li> <li>ii. Conflict with any duty of the supervisor under the Law; or</li> </ul> </li> <li>(b) The educator reasonably believes that permitting the parent’s entry would contravene a court order.</li> </ul> </li> </ul>	<p><input checked="" type="checkbox"/></p> <p><b>\$1100</b> penalty</p>	<p><input type="checkbox"/></p>
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### QA7: Leadership and service management

<p><b>Regulation 159</b> Children’s attendance record to be kept by family day care educator (Section 175, Regulation 178)</p>	<ul style="list-style-type: none"> <li>A record of attendance is kept that records: <ul style="list-style-type: none"> <li>the full name of each child being educated and cared for at the residence or venue</li> <li>the date and time each child arrives and departs the residence or venue</li> </ul> </li> <li>The record of attendance is signed each time the child arrives or departs by: <ul style="list-style-type: none"> <li>the person who delivers or collects the child from the residence or venue, or</li> <li>the educator, if the signature of the person who delivers or collects the child cannot be reasonably obtained</li> </ul> </li> <li>The record is available for inspection at the residence or venue (section 175)</li> <li>The record is accurate and is provided to the child’s parents on request (regulation 178)</li> </ul>	 <p><b>\$4500</b> penalty if the record is not kept available for inspection (section 175)</p> <p><b>\$2200</b> penalty if record is not accurate (regulation 178)</p> <p><b>\$2200</b> penalty if the record is not made available to the child’s parent on request (regulation 178)</p>	 <p><b>\$220</b> fine if the record is not accurate</p> <p><b>\$220</b> fine if the record is not made available to the child’s parent on request</p>
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<p><b>Regulation 160</b> Children's enrolment record to be kept (section 175, regulation 178)</p>	<ul style="list-style-type: none"> <li>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</li> <li>The record is available for inspection at the residence or venue (section 175)</li> <li>The record is accurate and is provided to the child's parents on request (regulation 178)</li> </ul>	<input checked="" type="checkbox"/> <p><b>\$4500</b> penalty if the record is not kept available for inspection (section 175),</p> <p><b>\$2200</b> penalty if record is not accurate (regulation 178)</p> <p><b>\$2200</b> penalty if the record is not made available to the child's parent on request</p>	<input checked="" type="checkbox"/> <p><b>\$220</b> fine if the record is not accurate</p> <p><b>\$220</b> fine if the record is not made available to the child's parent on request</p>
<p><b>Regulation 161</b> Authorisations to be kept in enrolment record</p>	<ul style="list-style-type: none"> <li>The required authorisations are kept in the enrolment record for each child educated and cared for by the educator</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Regulation 162</b> Health information to be kept in enrolment record</p>	<ul style="list-style-type: none"> <li>The required health information is kept in the enrolment record for each child educated and cared for by the educator</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

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<p><b>Regulation 165</b> Record of visitors (section 175, regulation 178)</p>	<ul style="list-style-type: none"> <li>• 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</li> <li>• The record includes the signature of the visitor and the time of the visitor’s arrival and departure</li> <li>• The record is available for inspection at the residence or venue (section 175)</li> <li>• The record is accurate (regulation 178)</li> </ul>	<input checked="" type="checkbox"/>  <b>\$4500</b> penalty if the record is not kept available for inspection (section 175), and  <b>\$2200</b> penalty if record is not accurate (regulation 178)	<input checked="" type="checkbox"/>  <b>\$220</b> fine if the record is not accurate
<p><b>Regulation 166</b> Children not to be alone with visitors</p>	<ul style="list-style-type: none"> <li>• They do not leave a child being educated and cared for with a visitor to the residence or venue</li> </ul>	<input checked="" type="checkbox"/>  <b>\$2200</b> penalty	<input type="checkbox"/>

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<p><b>Regulation 178</b> Prescribed enrolment and other documents to be kept by family day care educator</p>	<ul style="list-style-type: none"> <li>• They keep documents prescribed in regulation 178(1) for each child they educate and care for as part of a family day care service and take reasonable steps to ensure the documents are accurate</li> <li>• The documents relating to a child are made available to a parent of the child on request (unless limited by a court order)</li> <li>• They ensure that if any of the documents disclose the personal information of a person specified in regulation 178(6), they obtain the written consent of that person before they or the approved provider disclose the information.</li> <li>• NOTE: Personal information is defined in the Privacy Act 1988 (Cth) and includes any information about an identified individual, such as their home address, email address, telephone number, date of birth, medical records, bank account details, and tax file number.</li> </ul>	<input checked="" type="checkbox"/>  <b>\$4500</b> penalty if the record is not kept available for inspection (section 175), and  <b>\$2200</b> penalty if record is not accurate (regulation 178)	<input checked="" type="checkbox"/>  <b>\$220</b> fine if the record is not accurate
<p><b>Regulation 179</b> Family day care educator to provide documents on leaving service</p>	<ul style="list-style-type: none"> <li>• 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</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Regulation 180</b> Evidence of prescribed insurance</p>	<ul style="list-style-type: none"> <li>• Evidence of the current public liability insurance is kept at the residence or venue and is made available for inspection to the regulatory authority</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

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<p><b>Regulation 182</b> Confidentiality of records kept by family day care educator</p>	<ul style="list-style-type: none"> <li>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</li> </ul>	<input checked="" type="checkbox"/>  <b>\$2200</b> penalty	<input type="checkbox"/>
<p><b>Section 174A (Regulation 176A)</b> Family day care educator to notify certain information to approved provider</p>	<p>They notify the approved provider of the following —</p> <ul style="list-style-type: none"> <li>any serious incident that occurs while a child is being educated and cared for by the educator as part of the service</li> <li>any complaints alleging that:             <ul style="list-style-type: none"> <li>a serious incident has occurred or is occurring while a child was or is being educated and cared for by the educator; or</li> <li>that the National Law has been contravened;</li> </ul> </li> <li>any circumstances arising at the family day care residence or approved venue that may pose a risk to the health, safety and wellbeing of children attending or likely to attend the family day care residence</li> <li>relevant circumstances include any of the following:             <ul style="list-style-type: none"> <li>any renovations or other changes to the residence or venue</li> <li>an infectious disease outbreak at the residence or venue</li> <li>a bushfire, flood or other natural</li> <li>a disaster that may affect the residence or venue</li> </ul> </li> </ul> <p>** Please check the legislation for the commencement date in WA.</p>	<input checked="" type="checkbox"/>  <b>\$2200</b> penalty	<input type="checkbox"/>



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<b>Section 164(2)</b> Requirement for notice in relation to persons at residence	They notify the approved provider of the following — <ul style="list-style-type: none"> <li>any person aged 18 years or over who resides, or intends to reside, at the educator's family day care residence</li> <li>any circumstance relating to a person who resides, or intends to reside, at the educator's family day care residence that may affect whether the person is a fit and proper person to be in the company of children.</li> </ul> ** Please check the legislation for the commencement date in WA.	<input checked="" type="checkbox"/> <b>\$2200</b> penalty	<input type="checkbox"/>



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