



the really simple guide to ...

MAY 2012

Being a Nominated Supervisor of a NSW long day care centre or preschool

From January 2012 a new national regulatory system has been put in place for education and care services – this is part of the National Quality Framework.

This guide is designed as a simple introduction for NSW long day care services and preschools to the role of *Nominated Supervisor* under this system for NSW long day care services and preschools.

A preschool or long day care service cannot operate unless it has a Nominated Supervisor appointed by the Approved Provider of the service.

This resource attempts to simplify the main information a Nominated Supervisor needs to know about the operation of the new system and your role.

USING THIS GUIDE



READ MORE

We know you have a lot to do, so this is an essential reading signpost.

WHAT YOU NEED TO DO

... Become familiar with the new Regulations.

WHAT YOU NEED TO DO

The actions you must take to comply with the new world of the National Quality Framework.

GOOD TO KNOW

The sections of the Regulations that have the parts you need to consult more regularly are Chapter 4, Operational Requirements and Chapter 7.3 which contains the specific parts which apply to NSW services.

GOOD TO KNOW

Snippets of handy information.

Throughout this guide, we refer to **DEC** and **ACECQA**. **DEC** is the NSW Department of Education and Communities. It is the 'state regulatory authority' in NSW — in other words, it will assess services under the National Quality Framework and is responsible for ensuring compliance with the *Regulations*. **ACECQA** is the Australian Children's Education and Care Quality Authority. This is the new national organisation which oversees the NQF.

This resource has been funded by the NSW Department of Education and Communities, specifically as a resource for state-funded services. The information applies to preschools and long day care services, community-based or for-profit.

Community Child Care would like to thank the Department and also the many people from the sector who helped us determine what services wanted to know about the role of Approved Providers.

**COMMUNITY
CHILD CARE
CO-OPERATIVE**
LTD. (NSW)



Building 21, 142 Addison Road
Marrickville NSW 2204
Phone: (02) 8922 6444
Fax: (02) 8922 6445
Email: info@cccnsw.org.au
Website: www.cccnsw.org.au

[What is a Nominated Supervisor?]

A Nominated Supervisor, in simple terms is the person with responsibility for the day-to-day management of an Approved Service. The Nominated Supervisor has a range of legal responsibilities under the Law and Regulations that govern the operation of education and care services.

The role of Nominated Supervisor is similar to the role of *Authorised Supervisor* under the previous NSW Children's Services Regulation 2004.

→ GOOD TO KNOW

A Nominated Supervisor needs to meet a range of relevant requirements under the Law and Regulations. For every requirement that relates to a Nominated Supervisor, there is generally an equivalent requirement for the Approved Provider.

[Becoming a Nominated Supervisor]

- ▶ To become a Nominated Supervisor, the Approved Provider of the service where you work must notify the Department of Education and Communities [DEC] that you are the Nominated Supervisor of a specific service.
- ▶ You have to consent to this nomination in writing.
- ▶ You can only be appointed as a Nominated Supervisor if you have a Supervisor Certificate.
- ▶ To get a Certificate you must have either 3-years' experience OR have approved early childhood teaching qualifications OR have approved diploma qualifications

→ GOOD TO KNOW

The Nominated Supervisor is responsible for the operation of a specific service, along with the Approved Provider.

→ GOOD TO KNOW

A knowledge of the Law and Regulations is an absolute must for a Nominated Supervisor. These are the documents that must guide your day to day decisions as a Nominated Supervisor. At a minimum you need to read the Law and the Regulations. CCCC also recommends you read the ACECQA Guide to the Law and Regulations.



- ▶ **Guide to the Education and Care Services National Law and the Education and Care Services National Regulations**
- ▶ **Children [Education and Care Services] National Law [NSW]**
- ▶ **Education and Care Services National Regulations**

All can be found on the CCCC website at www.ccccnsw.org.au/resources/nqf or at www.acecqa.gov.au/links-and-resources/national-quality-framework-resource

[What you must do under the Law]

Nominated Supervisors have specific responsibilities under the Law and under the Regulations. These are basic things that a service striving to offer quality education and care for children would do as a matter of course. As the Nominated Supervisor, however, **you** are responsible for ensuring that these things always happen.

YOU MUST ENSURE THAT:

- ▶ All children are adequately supervised at all times. [See Section 165]
- ▶ No child is subjected to corporal punishment or unreasonable discipline. [See Section 166]
- ▶ Every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury. [See Section 167]
- ▶ A program is delivered to all children based on the Early Years Learning Framework, in a manner that accords with the EYLF, based on the developmental needs, interests and experiences of each child, designed to take into account the individual differences of each child. [See Section 168]
- ▶ Minimum staffing requirements, including ratios and qualifications are met at all times. [See Section 169]
- ▶ No unauthorised person remains at the service unless they are under the direct supervision of an educator or other staff member [See Section 170 – it includes a list of who is an authorised person]; and
- ▶ You act on a direction from DEC to exclude a person they view as an inappropriate person to be at a service. [See Section 171]



Read the clauses of the Law listed at right – Children [Education and Care Services] National Law [NSW] at www.cccnsw.org.au/resources/nqf

WHAT YOU NEED TO DO ...

... Draw up a checklist of the requirements you are responsible for as a Nominated Supervisor and check each of these on a regular basis. CCC members can access a compliance tool at www.cccnsw.org.au/wp-content/uploads/compliance-tool.pdf

[Other requirements under the Law]

You also need to make sure that you assist and not obstruct authorised officers from DEC. This means you have to answer questions that an authorised officer from DEC asks, provide them with information and show them any documents they ask for. You do have protection against self-incrimination however, so you are not required to answer questions that could show that you have committed an offence. You must always give your name and address when asked. You cannot destroy any notices or documents that the service has to keep under the Law. If DEC give you a written notice to provide something to them or to attend a meeting, you must do so. [See Part 9 especially Sections 195–219].

[What you must do under the Regulations]

The majority of responsibilities of a Nominated Supervisor are contained in Chapter 4 of the Regulations. As the Nominated Supervisor, you are responsible for ensuring that these things always happen. Remember that for every requirement that relates to a Nominated Supervisor, there is an identical requirement for the Approved Provider.

YOU MUST ENSURE THAT:

- ▶ All staff and volunteers of the service implement adequate health and hygiene practices; and safe practices for handling, preparing and storing food to minimise risks to children at the service. [See Regulation 77]
- ▶ Children have access to safe drinking water at all times; and are offered food and beverages on a regular basis throughout the day. [See Regulation 78]
- ▶ If your service provides food and beverages they are nutritious and adequate in quantity; and chosen having regard to the dietary requirements of individual children including each child's growth and development needs; and any specific cultural, religious or health requirements. You also must ensure that a weekly menu is displayed accessible to parents and that it accurately describes the food and beverages provided. [See Regulations 79 and 80]
- ▶ You take reasonable steps to ensure that the needs for sleep and rest of children are met, having regard to the ages, development stages and individual needs of the children. [See Regulation 81]
- ▶ You do not consume alcohol or be affected by alcohol or drugs in such a way that it impairs your capacity to provide education and care to children. [See Regulation 83]
- ▶ Medication is not administered to a child unless it is authorised; and administered in accordance with Regulation 95 or 96 [e.g. from original containers, checked by someone else, and according to instructions]. [See Regulation 93]
- ▶ A child does not leave the service unless they are given into the care of their parent, an authorised nominee who is on the child's enrolment record, a person authorised by a parent or nominee or when they are taken on an excursion. This does not apply if a child requires medical, hospital or ambulance care or there is another emergency. [See Regulation 99]
- ▶ A risk assessment is carried out in before an authorisation is sought for an excursion. See Regulation 101 and 102 for more on the requirements for risk assessments and excursions. [See Regulation 100]
- ▶ Children are not taken on an excursion unless written authorisation has been provided. [See Regulation 102]
- ▶ A parent of a child being educated and cared for by the service may enter the service whenever the child is there. [See Regulation 157]



READ MORE

Read the clauses of the Regulation listed at left – Education and Care Services National Regulations 2011 at www.cccnsw.org.au/resources/nqf

WHAT YOU NEED TO DO ...

... Make sure your service has policies and procedures in place that cover the issues listed in the bullet points on pages 4 and 5. Above all, make sure that these policies and procedures are implemented.

→ GOOD TO KNOW

Attachment A and B of the Guide to National Law and National Regulations are tables that outline a summary of possible offences under the Law and Regulations and who can be responsible for these offences.

[What if something goes wrong?]

DEC has a range of regulatory responsibilities both when things go wrong, but also in a prevention role – to stop things from going wrong. As a Nominated Supervisor, you can be subject to some of the actions that DEC may take.

DEC's major role in ensuring you and your service abide by the Regulations and Law is to:

- ▶ ensure the safety, health and wellbeing of children at services;
- ▶ help improve the educational and developmental outcomes of children at services and
- ▶ help services continue to improve the quality of service they offer.

The Law provides a range of tools to ensure your service complies with the Law or Regulations. They can: Issue an infringement notice [fine], require you to do something [enforceable undertaking], issue compliance directions or compliance notices, issue prohibition notices, issue an emergency action notice [to remove or reduce an immediate risk], remove children from the service, suspend or cancel an approval, prosecute for breaches of the Law.

In most cases the responsibility for complying with the Law and the Regulations rests with the Approved Provider. For some things the responsibility is shared by the Approved Provider and the Nominated Supervisor. There is a list of offences in *The Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011* (in Attachments A and B), which explains the respective responsibilities.

The major tools DEC can use to ensure a Nominated Supervisor does what is required include:

Infringement Notices: For a small range of offences DEC could issue an infringement notice or fine to a Nominated Supervisor. These offences are failure to comply with: Regulation 77 [health, hygiene and safe food practices], Regulation 83 [being affected by drugs or alcohol]. The amount of the infringement notice would be 10 per cent of the maximum penalty that could be enforced by a court for that offence. Therefore the maximum a nominated supervisor would be liable for an infringement notice is \$200.

Prohibition Notices: DEC can issue a prohibition notice to a service if it considers that there may be an unacceptable risk of harm to a child if a person was allowed to provide education and care to a child or remain at a service.

Prosecution: The National Regulations provide for two tiers of penalty—\$1,000 or \$2,000.

- ▶ offences relating to a risk to the health, safety or wellbeing of a child or children carry the maximum penalty of \$2,000.
- ▶ matters relating to records, policies and procedures have a maximum penalty of \$1,000.

The Offences a Nominated Supervisor can commit [and therefore could be prosecuted for] are those listed on page 5. It is the courts that determine the amount of the penalty that must be paid, following a prosecution.

WHAT YOU NEED TO DO ...

- ▶ You are required to let DEC enter and inspect your service, obtain information, documents and evidence and inspect and copy documents.
- ▶ You are also required to provide evidence of your age, name and address if requested.

→ GOOD TO KNOW

Before a DEC officer requires you to answer a question or provide information they need to tell you that if you don't it means you are committing an offence.

[Other roles]

As well as the roles for Nominated Supervisors, there are also specified roles under the Law for Approved Providers, Certified Supervisors and responsible persons.

Approved Providers: An Approved Provider is the individual, company or body corporate who holds a provider approval granted under the Children [Education and Care Services] National Law [NSW]. This approval authorises the Approved Provider to operate an approved education and care service [as long as they also hold a service approval for that service]. Approved Providers were formerly known as licensees of children's services.

Certified Supervisors: A Certified Supervisor is a person with a Supervisor's Certificate. They can be placed in day-to-day charge of the service. This does not mean they are acting in the role of a Nominated Supervisor.

Responsible Person: Under the National Law, you must have a responsible person present whenever there are children being educated and cared for by the service.

A responsible person can be:

- ▶ The Approved Provider – if this is an individual. If it is an organisation or company then someone with management and control of the service;
- ▶ The Nominated Supervisor;
- ▶ A Certified Supervisor placed in day-to-day charge.

The main reason the concept of responsible person exists is to ensure that there is always a person at the service that has been assessed by DEC as being a fit and proper person to be in charge of an education and care service.

→ GOOD TO KNOW

A Certified Supervisor placed in day to day charge of a service does not have any statutory responsibilities under the National Law and Regulations. Although they are responsible for ensuring the service continues to follow the law and regulations as well as the service's own policy and procedures, they are not the equivalent of a Nominated Supervisor and the Nominated Supervisors' responsibilities do not pass to them in the Nominated Supervisor's absence.



[Changes]

Once you have been appointed as a Nominated Supervisor, you retain this role until you:

- ▶ are no longer employed by the service, or
- ▶ withdraw your consent to the nomination.

It is the responsibility of the Approved Provider to notify DEC at least seven days before a new certified supervisor is to become the Nominated Supervisor [or as soon as practicable and not more than 14 days after they take up the role]. Community Child Care Co-operative recommends that Nominated Supervisors also keep a copy of any letter withdrawing their consent to being a service's Nominated Supervisor.

What if you are going on leave?

Generally you would retain your responsibilities [and legal liabilities] if you are on leave from the centre. If you are going on leave, such as annual leave, maternity leave or long service leave, Community Child Care recommends that you get the Approved Provider to appoint another Certified Supervisor as the Nominated Supervisor in your absence – this means that you can leave with no liability for what happens in your absence. As your service probably has a number of people holding Supervisor's Certificates, this should not be a difficult undertaking.

→ GOOD TO KNOW

Your service is required to have a specific staff record of the Nominated Supervisor that includes the Nominated Supervisor's:

- ▶ Name
- ▶ Address
- ▶ Date of Birth
- ▶ Qualifications and training [including first aid and child protection]
- ▶ WWC check.

→ GOOD TO KNOW

Your service also must ensure that the name of the Nominated Supervisor (along with a range of other information) is displayed "so that it is clearly visible to anyone from the main entrance" to the premises. [See S 172 of the Law].



The following forms can be found on the ACECQA website and are required when a service appoints a new Nominated Supervisor.

- ▶ Nominated Supervisor Consent Form NS01
- ▶ Notification of Change to Nominated Supervisor Form NS02