

APPENDIX

Supply-side regulatory requirements and quality assessment procedures

1 SCOPE OF REGULATIONS GOVERNING CHILDCARE IN AUSTRALIA

* NOTE: Regulations concerning working with children are not included in this appendix as these apply to all occupations where necessary and are not specific to childcare.

The regulations governing childcare services are comprehensive right down to the finest details and remove any form of discretion. They cover the following areas:

- Educational program design, assessment, documentation and desired outcomes
- Health, hygiene and safety, including:
 - Safe drinking water
 - Nutritious food
 - Recognition of religious, health or cultural requirements
 - Provision of a weekly menu, and display thereof
 - Ensuring staff are not under the influence of alcohol or drugs
 - Protocols for adequate sleep and rest
 - Prohibition of bassinets on the premises
 - Accident and illness procedures
 - Risk assessments prior to excursions
 - Procedures for safe arrival and departure of children from the care facility
- Condition of premises, including assessment of:
 - Fencing, furniture, laundry, toilet and ventilation
 - Characteristics of the outdoor space, such as shade and vegetation
 - Dimensions of the indoor space (3.25 square metres minimum per child is required, excluding passageways, kitchen, etc.)
- Staff requirements
 - Childcare centres: educator-to-child ratio of 1:4 for children aged 0-24 months; 1:5 for children aged 24-36 months; and 1:11 for children 36 months to school-age. There are tighter rules in some states for some age groups (see section entitled Jurisdictional Variations below)¹.
 - Family day care: a limit of seven (7) children under the care of a family day care educator at any one time, of which only four (4) can be younger than school age.
 - For family day care, regulations also govern the ratio of family day care coordinators to family day care educators
- Other regulations relating to record-keeping, attendance and more.²

1.2 Staff qualification requirements under the National Quality Standards (NQS)

On top of the regulations regarding the operation of a childcare facility, there are regulations stipulating the qualifications of staff. I have listed below a summary of these regulations at the national level. There are jurisdictional variations between states/territories and between types of ownership (private versus government-owned) of a childcare facility, which are sketched later in this appendix.

- In a centre-based service, 50% of the number of staff required to meet educator-to-child ratios in centre-based services with children of preschool age and under must either already have an approved diploma in education and care or be actively working towards one. The remaining 50% of staff must have or be working toward a certificate III-level qualification. Typically, the certificate III in Early Childhood Education and Care takes between 12 and 18 months to complete, depending on the study load. In addition, 160 hours of vocational placement need to be completed.
- There is a heavy emphasis on children's education: the 50% of staff who have a diploma or are working toward one are expected to take a lead in children's learning and to design, implement and assess educational programs while following the approved learning framework.
- Each centre must engage or have access to a higher-qualified individual, namely an Early Childhood Teacher (ECT), whose role involves "pedagogical leadership" and "coaching, mentoring and supervising staff".³ There is an extra layer of rules around the ECT, with the amount of time required for attendance by the ECT varying depending on the number of children in the centre. The national standard is as follows:
 - If the day care centre has fewer than 25 children, it must have access to an ECT for a minimum of 20% of the time it is operating
 - Centres with 25 or more children must employ an ECT full-time or have one in attendance for six hours per day if operating less than 50 hours per week, or 60% of the time if the centre is operating more than 50 hours a week.
- In family day care services, educators must have attained a certificate III-level qualification. The applicant must also hold first-aid and CPR certificates, and have had training in emergency anaphylaxis and asthma management.

Since the certificate III-level qualification is the basic minimum required to be a childcare educator in either main form of childcare (family day care or long day care) and the course usually takes more than one year to complete, it is worth reviewing its basic content. As an example of a typical certificate III program, I chose TAFE NSW's Certificate III in Early Education and Care.⁴ The course consists of 15 core and 13 specialty units. It takes 18 months to complete with a time commitment of 17 hours per week of formal classes and five hours of additional study time. The cost to complete the program is \$10,880.

The 15 core course titles are as follows, listed here *verbatim*:

- Observe children to inform practice
- Support the holistic and learning development of children

- Provide experiences to support play and learning
- Support inclusion and diversity
- Develop positive and respectful relationships with children
- Nurture babies and toddlers
- Support children's health, safety and wellbeing
- Work effectively in children's education and care
- Meet legal and ethical obligations in children's education and care
- Use an approved learning framework to guide practice
- Encourage understanding of Aboriginal and/or Torres Strait Islander peoples' cultures
- Identify and report children and young people at risk
- Support children to connect with the natural environment
- Provide first aid in an education and care setting

Some of these course unit titles are sufficiently vague that almost anything could be included within them (e.g., “Nurture babies and toddlers”, “Provide experiences to support play and learning”, “Support children's health, safety and wellbeing”) and some seem to be an exercise in box-ticking (for example, “Support inclusion and diversity”, and “Encourage understanding of [indigenous] cultures”). Still others appear more suited to on-the-job learning (“Work effectively in children's education and care”, “Observe children to inform practice”) or a one-hour briefing on first day (“Meet legal and ethical obligations in children's education and care”). The goals used as some of these course titles can be better established during a comprehensive job interview process than via an educational process (e.g., “Develop positive and respectful relationships with children”).

At a minimum, these course titles invite scepticism about the connection of what will be learned in this expensive, time-consuming program to the actual quality of care that children will receive from the eventual graduate. Prospective family day carers, who in a large fraction of cases will be parents themselves already, may well view at least some of these courses as mildly demeaning, carrying as they do the assumption that the enrollee does not know how to be an effective parent – and this may serve as a barrier to entering the family day care market. Not even foster carers, who in expectation will spend even more time nurturing children who are on average even more vulnerable than the average child placed in paid care, are required to undertake this certificate III training.⁵

It should also be noted that completion of this training program requires 160 hours of vocational placement in an existing childcare service, constituting a further barrier to prospective family day carers.

1.3 Procedure for opening a childcare service

The regulations described above apply to all operating childcare services. First, however, it is necessary to negotiate the various hurdles for opening the service. To appreciate the burdensome nature of the regulatory system, consider the following list of procedures for opening a family day care service:

- The applicant must ensure that educators hold the appropriate minimum qualifications (see under ‘Staff qualification requirements’ above)
- The applicant must lodge an application through the National Quality Agenda IT System (NQAITS) portal on the ACECQA website. As part of determining the outcome of the

application, the applicant “may be asked to complete an online multiple-choice knowledge assessment and/or interview determining [their] understanding of the requirements under the National Law and Family Assistance Law.

- The 75-minute National Law assessment consists of 46 multiple choice questions.
- The 110-minute Family Assistance Law assessment consists of 25 multiple choice questions.”⁶

To prepare for this test, it is recommended that the applicant undertake another course consisting of five modules. The regulatory authority has 60 days to deliberate on whether to give the provider approval.

- Service approval (contra provider approval) is a separate requirement, referring to approval to open a day care operation in a specific location. This requires the submission of the following documents:
 - Site compliance plans
 - Nomination of a supervisor
 - Soil assessment
 - Evidence of required insurance
- The applicant must determine a business structure and register her business (sole trader, partnership or company).
- The applicant must design a curriculum in accordance with the learning framework for approval by the regulator.
- Once operating a service, the provider must maintain documentation about his or her own qualifications and day care site(s).
- Family day care services must nominate a coordinator who manages the standards of education and care provided by individual educators, assisting in the design and implementation of their educational programs.⁷ Family day care coordinators must hold a diploma-level qualification.

Collectively, the qualification standards and the highly prescriptive regulatory control can be seen as a burdensome barrier to entry, acting as a disincentive to new childcare providers entering the market.

2 EVALUATION OF QUALITY

Once in operation, a childcare service is subject to quality oversight under the NQS. The NQS includes seven quality areas against which all centres and family day care services are assessed, beginning nine to 18 months after commencement of operation. These assessments are administered by each state/territory’s regulatory authority.

The seven quality areas are as follows:

1. Educational program and practice: “to ensure that the educational program and practice is stimulating and engaging, and enhances children’s learning and development”.
2. Children’s health and safety: “to safeguard and promote children’s health and safety, minimise risks and protect children from harm, injury and infection”.

3. Physical environment: “to ensure that the physical environment is safe, suitable and provides a rich and diverse range of experiences that promote children’s learning and development”.
4. Staffing arrangements: “to ensure the provision of qualified and experienced educators, coordinators and nominated supervisors who are able to develop warm, respectful relationships with children, create safe and predictable environments and encourage children’s active engagement in the learning program”.
5. Relationships with children: “to promote relationships with children that are responsive, respectful and promote children’s sense of security and belonging. Relationships of this kind free children to explore the environment and engage in play and learning”.
6. Collaborative partnerships with families and communities: “to recognise that collaborative relationships with families are fundamental to achieving quality outcomes for children and that community partnerships that are based on active communication, consultation and collaboration are also essential”.
7. Governance and leadership: “to support effective leadership and management of the service that contributes to quality environments for children’s learning and development. Well-documented policies and procedures, well-maintained records, shared values, clear direction and reflective practices enable the service to function as a learning community”.⁸

Each service receives a grade on each of these aspects on a continuum of one (1) to five (5), ranging from ‘Significant improvement required’ to ‘Excellent’.

The assessment process is as follows:

1. The provider first conducts a self-assessment, identifying strengths and weaknesses and areas where improvement is desirable. This is all documented in a Quality Improvement Plan (QIP) or Self-Assessment Document and submitted to the regulator prior to any on-site visit.
2. There is an assessment visit with five days’ prior notice by the regulator, which then gives the provider a draft report.
3. The provider gives feedback, which is considered by the regulator prior to issuing the final report. The Quality Rating is published in the national registers on the ACECQA website.⁹ The registers are searchable by the public.
4. The provider updates the QIP or Self-Assessment Document to be consistent with the ratings from the regulator. A copy of the QIP or Self-Assessment Document is kept at the provider’s premises and must be made available to parents and families upon request. It must also be available for inspection by the regulator.¹⁰
5. Once in operation, the provider may update its own QIP or Self-Assessment Documents at will.

Unfortunately, as well-intentioned as these quality oversight tools are, there are significant problems. Among these problems are that the regulators’ inspections are scheduled well in advance and the provider has plenty of time to prepare and make sure the optimal conditions are in place at the time of the inspection. One source reports that unscheduled visits, which tend to be only the result of complaints, incidents or events notified by others, occur about three times more often than scheduled visits. The decision by ABC *Four Corners* to focus in a March 2025 episode on quality breaches at Australian childcare centres¹¹ demonstrates the level of alarm in the public at large about the actual quality of care that children are receiving in

the present system. In addition, supposing one felt that qualification requirements were important in producing quality services, the regulatory loophole that allows 50% of staff to be ‘working towards’ a qualification (with “evidence” of this progress required since 2018) enables centres to hire staff at lower rates of pay who make little or no progress toward the qualification but are merely deemed to be doing so.¹²

3 JURISDICTIONAL VARIATIONS

The national regulations described above can be thought of as a minimum level of standards for childcare operators across Australia. However, individual states and territories may make, and have made, those regulations tighter. Typically, the adjustments are trivial and it is difficult to understand their rationale. For example, NSW and Tasmania both have staff ratio requirements for children aged 36 months to school-age in child care centres that are slightly stricter than the federal standard (1:10 instead of 1:11), while Victoria has a slightly stricter ratio for children in the 24-36 month age bracket (1:4 instead of 1:5).¹³ NSW centres must also have a greater fraction of staff holding degrees (ECTs) than is stipulated in the federal standard.¹⁴ Regulation 272 pushes the limits of credulity by stipulating different levels of access to an ECT for centres caring for 25-29 children, 30-39, 40-59, 60-79, and 80+. In a December 2022 report, the NSW Productivity Commission pointed out that outcomes for children were no better in NSW than elsewhere in the country, and that the costs of the incremental regulation may be greater than the benefits. Moreover, the additional regulatory costs were found to have raised child care fees and put child care beyond the reach of some parents, causing them to stay at home to care for their children.¹⁵ Victoria’s regulatory regime is fairly closely aligned with the national regulations.¹⁶ Other regional variations exist, such as that in WA, there are tighter regulations around the safety of swimming pools at family day care facilities.

¹ <https://www.acecqa.gov.au/nqf/educator-to-child-ratios>

² NSW Government. <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#statusinformation>

³ <https://www.acecqa.gov.au/qualifications/requirements/children-preschool-age-or-under>

⁴ <https://www.tafensw.edu.au/course-areas/education-and-training/courses/certificate-iii-in-early-childhood-education-and-care--CHC30121-01>

⁵ E.g., <https://www.nsw.gov.au/community-services/foster-relative-and-kinship-care/become-a-foster-carer>

⁶ <https://www.acecqa.gov.au/resources/opening-a-new-service>

⁷ [https://earlychildhood.qld.gov.au/careers/where-i-can-work/working-in-family-day-care#:~:text=A%20family%20day%20care%20coordinator,Care%20Coordinators%20\(in%20Queensland\)%20.](https://earlychildhood.qld.gov.au/careers/where-i-can-work/working-in-family-day-care#:~:text=A%20family%20day%20care%20coordinator,Care%20Coordinators%20(in%20Queensland)%20.)

⁸ ACECQA. <https://www.acecqa.gov.au/nqf/national-quality-standard>

⁹ <https://www.acecqa.gov.au/resources/national-registers>

¹⁰ <https://www.acecqa.gov.au/sites/default/files/2018-01/Guide-to-the-NQF-3-Assessment-and-rating.pdf>, pp. 314-318

¹¹ <https://www.abc.net.au/news/2025-03-17/betrayal-of-trust/105063150> (Monday 17 March 2025 episode)

¹² Considine, Mark. (n ii), p.103.

¹³ <https://www.acecqa.gov.au/nqf/educator-to-child-ratios>

¹⁴ <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#ch.7-pt.7.3-div.2>, <https://nsw.childcarealliance.org.au/is-regulation-272-right-for-early-childhood-teachers>

¹⁵ <https://www.productivity.nsw.gov.au/sites/default/files/2022-12/20221207-evaluation-of-nsw-specific-early-childcare-regulations-nsw-productivity-commission.pdf>

¹⁶ <https://www.vic.gov.au/childrens-services-regulated-under-state-law>