

COMMUNITY CHILD CARE

THE LEGISLATIVE FRAMEWORK FOR AUSTRALIAN EDUCATION AND CARE SERVICES: A VICTORIAN CONTEXT

This resource sheet is intended as a guide to the legislative framework in which family day care (FDC), long day care (LDC) and outside school hours care (OSHC) services in the State of Victoria are required to operate. It does not constitute legal advice, nor does it replace advice or information that may be distributed by the Australian Government, the Victorian Government, independent statutory bodies or recognised authorities. The Community Child Care Association accepts no responsibility for the accuracy or completeness of any material contained herein and recommends the users exercise their own skill and care with respect to use.

Overview

When operating an education and care service for children, it is important to have a good understanding of the legal requirements that exist and what these requirements bring to an operating environment.

The legal responsibilities for operators of Australian children's services include:

- ▶ Compliance with Family Assistance Law
- ▶ Compliance with the National Law
- ▶ Accounting for Australian Government funds
- ▶ Ensuring the service remains financially viable
- ▶ Employing staff in line with industrial obligations
- ▶ Compliance with any other legislative instrument that may take effect in a workplace

The Regulatory Environment

In 2009, the Council of Australian Government (COAG) endorsed a new National Quality Framework for Early Childhood Education and Care for most Long Day Care, preschool/kindergarten, Family Day Care and Outside School Hours Care services in Australia.

In Victoria, to ensure they are in line with the National Quality Framework (NQF), Long Day Care, Family Day Care, Outside School Hours Care and preschool/kindergarten services are all currently expected to meet the requirements of:

- ▶ The Education and Care Services National Law Act 2010 (the National Law), and
- ▶ The Education and Care Services National Regulations 2011 (the Regulations) including the National Quality Standard (Schedule 1 of the Regulations)

Please note: A small number of Victorian services will continue to be regulated under the existing Children's Services Act 1996 and Children's Services Regulations 2009 including mobile, occasional care, sports and leisure services and early intervention services. These services generally hold a limited hours or short term licence.

The Australian Children's Education and Care Quality Authority (ACECQA) is an independent statutory body responsible for guiding the implementation of the National Quality Framework nationally.

ACECQA's responsibilities include:

- ▶ Awarding services that demonstrate excellence, and managing applications for further review of quality ratings
- ▶ Monitoring and promoting the nationally consistent application of the national law
- ▶ Guiding and supporting the work of the Victorian Government's Department of Education & Early Childhood Development (DEECD)

The Victorian Government's Department of Education and Early Childhood Development (DEECD) is the Victorian Regulatory Authority for the purposes of the National Law, where authorised officers are employed in nine regional offices across Victoria to monitor services' compliance with the National Law and the Regulations.

DEECD's responsibilities include:

- ▶ Approval, monitoring and quality assessment of Victorian education and care services for children
- ▶ Investigating complaints or concerns raised with the department about a children's service
- ▶ Providing best practice advice to services on the care and education of children

DEECD uses the term 'approved provider' in connection with the compliance of a service under the National Law and the Regulations. The approved provider is the legal body or group that receives approval to operate a children's service under the National Law.

The approved provider:

- ▶ Accepts the responsibilities and understands obligations associated with operating the service
- ▶ Is satisfied at any time that the service is in compliance with the national law
- ▶ Accepts responsibility to promptly remedy or repair any identified risky or non-compliant areas/activities

The Australian Government Funding and Accountability

The Australian Government Department of Education (DOE) coordinates the approvals to operate an education and care service for children under the family assistance law, and is the funding body for children's services Australia wide. Within this department, the Office of Early Childhood Education and Child Care (OECECC) was established to achieve a nationally consistent, accessible, affordable and high quality early childhood education and childcare system for all Australian children and families.

The Family Assistance legislation consists of the following Acts of Parliament:

- ▶ A New Tax System (Family Assistance) Act 1999
- ▶ A New Tax System (Family Assistance) (Administration) Act 1999
- ▶ Family Assistance Legislation Amendment (Child Care Management System and Related Measures) Act 2007
- ▶ Regulations under A New Tax System (Family Assistance) (Administration) Act 1999
- ▶ Schedules 5 and 6 to the A New Tax System (Family Assistance and Related Measures) Act 2000

Education and care services approved under the family assistance legislation are required by law to operate under the Child Care Management System (CCMS), a national online administration system in which funding data is lodged electronically.

The following legislative instruments are relevant to CCMS:

- ▶ *Child Care Benefit (Session of Care) Determination 2000* (Section 9, Family Assistance Act)
- ▶ *Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000* (Section 11, Family Assistance Act)
- ▶ *A New Tax System (Family Assistance) (Child Care Benefit – Eligible Hours of Care) Determination 2006* (Section 57A, Family Assistance Act)
- ▶ *Child Care Benefit (Hours of Eligibility Rules) Determination 2006* (Section 57B, Family Assistance Act)
- ▶ *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000* (Section 205, Family Assistance (Administration) Act)

- ▶ *Child Care Benefit (Receipts) Rules 2000* (Section 219E, Family Assistance (Administration) Act)
- ▶ *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping Rules) 2006*
- ▶ *Child Care Benefit (Rates and Hardship) Determination 2000* (Subsection 82 [3] Family Assistance Act)
- ▶ *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – amount of enrolment advance) Determination 2007* (Subsection 219RB Family Assistance (Administration) Act)

DOE currently uses the term 'operator' in connection with the service approval under the family assistance legislation, where the operator signs the funding agreement for the purposes of Child Care Benefit.

The operator agrees to:

- ▶ Take legal responsibility for all obligations under the family assistance law
- ▶ Accept the responsibilities to meet conditions of funding
- ▶ Liaise with and be represented on management committees
- ▶ Ensure that the needs of the service in terms of staff, venue, facilities, privacy, safety and hygiene are met in accordance with the funding guidelines and the national law
- ▶ Work in the best interests of the children and families using the service, and the local community
- ▶ Be accountable for the use of funds received from the Australian government and how these funds will be spent

The application for approval under family assistance legislation for the purposes of Child Care Benefit is conditional on services complying with the following set eligibility criteria. A service must also be approved to operate under the National Law (in the form of a 'service approval' administered through DEECD). The service must sign an undertaking that seeks commitment of compliance with eligibility criteria, as per the following table:

A centre-based long day care service undertakes that:	An outside school hours care service undertakes that:	A family day care service undertakes that:
<ul style="list-style-type: none"> ▶ Most of the children to be provided with care will not have commenced school and attend the service at least one day a week ▶ The service will operate on all normal working days in at least 48 weeks of the year 	<ul style="list-style-type: none"> ▶ Most of the children to be provided with childcare will be attending school ▶ If the service provides before or after school care the service will operate on each school day 	<ul style="list-style-type: none"> ▶ Most of the children to be provided with childcare will attend the service at least one day a week ▶ The service will operate on all normal working days in at least 48 weeks of the year

A centre-based long day care service undertakes that:	An outside school hours care service undertakes that:	A family day care service undertakes that:
<ul style="list-style-type: none"> ▶ The service will be available to provide care for any particular child for at least eight continuous hours on each normal working day it operates ▶ Where a child attends a session of care, the service will not prevent the child from attending any part of that session ▶ The service will provide childcare places for children in accordance with priority of access requirements set out in the child care benefit (eligibility of child care services for approval and continued approval) determination 2000 ▶ The service will comply with obligations under the state or territory law in which the service operates ▶ The service will notify the department of any changes to the application details (including a change to bank account details, email address, authorised persons and service contacts) within 14 days and changes to the suitability of staff within seven days ▶ The service operator will notify the department at least 30 days before a change of address and at least 42 days before cessation of operations, including where the service is sold to another operator ▶ The service will not charge higher than the usual fee for families receiving special child care benefit, grandparent child care benefit or jobs, education and training child care fee assistance 	<ul style="list-style-type: none"> ▶ If the service provides vacation care, the service will be available to provide care for any particular child for at least eight continuous hours on each normal working day for at least seven weeks of the school holidays in a year ▶ The service will not restrict the attendance of school children in order to provide care for non-school-age children before or after school or during school holidays ▶ The service will provide childcare places for children in accordance with priority of access requirements set out in the child care benefit (eligibility of child care services for approval and continued approval) determination 2000 ▶ The service will comply with obligations under the state or territory law in which the service operates ▶ The service will notify the department of any changes to the application details (including a change to bank account details, email address, authorised persons and service contacts) within 14 days and changes to the suitability of staff within seven days ▶ The service operator will notify the department at least 30 days before a change of address and at least 42 days before cessation of operations, including where the service is sold to another operator ▶ The service will not charge higher than the usual fee for families receiving special child care benefit, grandparent child care benefit or jobs, education and training child care fee assistance 	<ul style="list-style-type: none"> ▶ The service will be available to provide care for any particular child for at least eight continuous hours on each normal working day it operates ▶ Where a child attends a session of care, the service will not prevent the child from attending any part of that session ▶ The service will provide childcare places for children in accordance with priority of access requirements set out in the child care benefit (eligibility of child care services for approval and continued approval) determination 2000 ▶ The service will comply with obligations under the state or territory law in which the service operates ▶ The service will notify the department of any changes to the application details (including a change to bank account details, email address, authorised persons and service contacts) within 14 days and changes to the suitability of staff within seven days ▶ The service operator will notify the department at least 30 days before a change of address and at least 42 days before cessation of operations, including where the service is sold to another operator ▶ The service will not charge higher than the usual fee for families receiving special child care benefit, grandparent child care benefit or jobs, education and training child care fee assistance

A centre-based long day care service undertakes that:	An outside school hours care service undertakes that:	A family day care service undertakes that:
<ul style="list-style-type: none"> ▶ The service will be equipped with and have the operational capacity to use registered child care management system software ▶ The service will operate as per the family assistance law relevant to child care benefit, as amended from time to time <p><i>www.education.gov.au > early childhood > child care information for service providers > Information on becoming an approved child care service > application for approval under the family assistance law for the purposes of child care benefit – centre based long day care service)</i></p>	<ul style="list-style-type: none"> ▶ The service will be equipped with and have the operational capacity to use registered child care management system software ▶ The service will operate as per the family assistance law relevant to child care benefit, as amended from time to time <p><i>www.education.gov.au > early childhood > child care information for service providers > Information on becoming an approved child care service > application for approval under the family assistance law for the purposes of child care benefit – outside school hours care service)</i></p>	<ul style="list-style-type: none"> ▶ The service will be equipped with and have the operational capacity to use registered child care management system software ▶ The service will operate as per the family assistance law relevant to child care benefit, as amended from time to time <p><i>(www.education.gov.au > early childhood > child care information for service providers > Information on becoming an approved child care service > application for approval under the family assistance law for the purposes of child care benefit – family day care service)</i></p>

Sponsors/operators, approved providers and staff in Victorian education and care services also need to be aware of responsibilities and guidelines pertaining to various Acts of Parliament and statutory measures that apply within a workplace. Policies may not need to be developed where there is existing legislation; however procedures about how the service will operate within the legislation do need to be developed with reference to the pertaining legislation.

Other Acts of Parliament that impact on Victorian education and care services include (but are not limited to) those listed in the following table.

Victorian Acts Of Parliament	Commonwealth Acts Of Parliament
<ul style="list-style-type: none"> ▶ Equal Opportunity Act 2010 ▶ Family Violence Protection Act 2008 ▶ Public Health and Wellbeing Act 2008 ▶ Surveillance Devices (Workplace Privacy) Act 2006 ▶ Child Wellbeing and Safety Act 2005 ▶ Children Youth and Family Act 2005 ▶ Working With Children Act 2005 ▶ Occupational Health and Safety Act 2004 ▶ Wrongs and Limitation of Actions (Insurance Reform) Act 2003 ▶ Child Employment Act 2003 ▶ Health Records Act 2001 ▶ Racial and Religious Tolerance Act 2001 ▶ Information Privacy Act 2000 ▶ Civil and Administrative Tribunal Act 1998 ▶ Victorian Long Service Leave Act 1992 ▶ Accident Compensation Act 1985 	<ul style="list-style-type: none"> ▶ Fair Work Act 2009 ▶ Age Discrimination Act 2004 ▶ Disability Discrimination Act 1992 ▶ Superannuation Guarantee (Administration) Act 1992 ▶ Food Standards Australia New Zealand Amendment Act 2010 ▶ Therapeutic Goods Act 1989 ▶ Privacy Act 1988 ▶ Freedom of Information Act 1982 ▶ Human Rights and Equal Opportunity Commission Act 1986 ▶ Sex Discrimination Act 1984 ▶ Family Law Act 1975 ▶ Racial Discrimination Act 1975 ▶ Commonwealth Bankruptcy Act 1966



Further Information:

Australian Children's Education and Care Quality Authority www.acecqa.gov.au

Australian Government Department of Education www.education.gov.au

Fair Work Australia www.fwa.gov.au

Department of Education & Early Childhood Development www.education.vic.gov.au

Australian Government Commonwealth Law www.comlaw.gov.au



CCC provides leadership, advocacy and support to build the capacity of the children's services sector and promote public support for community owned, not for profit services.

COMMUNITY CHILD CARE ASSOCIATION INC.

ABN 90 494 504 678 Reg No A0030026F

Suite West 08 & 09, 215 Bell Street, Preston Victoria 3072

Tel 03 9486 3455 Freecall 1800 177 017 Fax 03 9486 3271

Email reception@cccinc.org.au Web www.cccinc.org.au
