



Nominated Supervisor

Law Section 165 Offence to inadequately supervise children

The approved provider and nominated supervisor ... must ensure that all children ... are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

Law Section 166 Offence to use inappropriate discipline

The approved provider and nominated supervisor... must ensure that no child ... is subjected to— (a) any form of corporal punishment; or (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

A staff member or a volunteer ... must not subject any child being educated and cared for by the service to— (a) any form of corporal punishment; or (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000.

Law Section 167 Offence relating to protection of children from harm and hazards

The approved provider and nominated supervisor... must ensure that every reasonable precaution is taken to protect children ... from harm and from any hazard likely to cause injury. Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

Law Section 170 Offence relating to unauthorised persons on education and care service premises

(2) & (3) The approved provider and nominated supervisor ... must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless—

(a) the person is an authorised person; or (b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1000, in the case of an individual. \$5000, in any other case.

(5) In this section— authorised nominee, in relation to a child, means a person who has been given permission by a parent or family member of the child to collect the

child ...; authorised person means a person who is— (a) a person who holds a current working with children check or working with children card; or (b) a parent or family member of a child ...; or (c) an authorised nominee of a parent or family member of a child ...; or (d) in the case of an emergency, medical personnel or emergency service personnel; or (e) a person who is permitted under the working with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

(6) A reference in subsection (5) to a parent or family member... does not include a person— (a) whose access to the child is prohibited or restricted by an order of a court or tribunal of which the approved provider or nominated supervisor ... is aware; or (b) who is an inappropriate person within the meaning of section 171.

Law Section 171 Offence relating to direction to exclude inappropriate persons from education and care premises

The Regulatory Authority may direct an approved provider or nominated supervisor ... to exclude a person whom the Authority is satisfied is an inappropriate person from the education and care service premises while children are being educated and cared for at the premises for such time as the Authority considers appropriate.

(2) A person to whom a direction is given under subsection (1) must comply with the direction. Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

(3) In this section— inappropriate person means a person— (a) who may pose a risk to the safety, health or wellbeing of any child or children ...; or (b) whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for him or her to be on the education and care service premises while children are being educated and cared for Example A person who is under the influence of drugs or alcohol.

Regulation 82 Tobacco, drug and alcohol free environment

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The approved provider ... must ensure that children ... are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol.

Penalty: \$2000.

Regulation 83 Staff members not to be affected by alcohol or drugs

The approved provider ... must ensure that a nominated supervisor or a staff member or volunteer ... is not affected by alcohol or drugs (including prescription medication) so as to impair the person's capacity to supervise or provide education and care to children

Penalty (approved provider and nominated supervisor): \$2000.

Regulation 99 Children leaving the education and care service premises

The approved provider and nominated supervisor ... must ensure that a child ... does not leave the education and care service premises except in accordance with subregulation (4). Penalty: \$2000.

(4) The child may only leave the relevant premises if the child—

(a) is given into the care of—

(i) a parent of the child; or

(ii) an authorised nominee named in the child's enrolment record; or

(iii) a person authorised by a parent or authorised nominee named in the child's enrolment record to collect the child from the premises; or

(b) leaves the premises in accordance with the written authorisation of the child's parent or authorised nominee named in the child's enrolment record; or

(c) is taken on an excursion in accordance with this Division; or

(d) is given into the care of a person or taken outside the premises—

(i) because the child requires medical, hospital or ambulance care or treatment; or

(ii) because of another emergency.

(5) In this regulation parent does not include a parent who is prohibited by a court order from having contact with the child.

Note. Regulation 99 does not apply in Western Australia. Western Australia has enacted an equivalent provision in section 165A of the Schedule to the Education and Care Services National Law (WA) Act 2012.

Regulation 100 Risk assessment must be conducted before excursion

The approved provider and nominated supervisor ... must ensure a risk assessment is carried out in

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accordance with regulation 101 before an authorisation is sought under regulation 102 for an excursion.

Penalty: \$2000.

A risk assessment is not required under this regulation for an excursion if—

(a) the excursion is a **regular outing**; and

(b) a risk assessment has been conducted for the excursion; and

(c) that risk assessment has been conducted not more than 12 months before the excursion is to occur.

Note regular outing is defined in Regulation 4 as a walk, drive or trip to and from a destination—

(a) that the service visits regularly as part of its educational program; and

(b) where the circumstances relevant to the risk assessment are substantially the same on each outing

Regulation 101 Conduct of risk assessment for excursion

(1) A risk assessment for an excursion must—

(a) identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion; and

(b) specify how the identified risks will be managed and minimised.

(2) Without limiting subregulation (1), a risk assessment must consider—

(a) the proposed route and destination for the excursion; and

(b) any water hazards; and

(c) any risks associated with water-based activities; and

(d) if the excursion involves transporting children

(i) the means of transport; and

(ii) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and

(iii) the process for entering and exiting—

(A) the education and care service premises; and

(B) the pick-up location or destination (as required);

and

(iv) procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking; and

(v) the number of adults and children involved in the excursion; and

(vi) given the risks posed by the excursion, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and

Example. Specialised skills could include life-saving skills.

(g) the proposed activities; and

(h) the proposed duration of the excursion; and

(i) the items that should be taken on the excursion.

Example. A mobile phone and a list of emergency contact numbers for children on the excursion.

Regulation 102 Authorisation for excursions

- (1) &(2) The approved provider and nominated supervisor ... must ensure that a child ... is not taken outside the education and care service premises on an excursion unless written authorisation has been provided under subregulation. Penalty: \$1000.
- (4) The authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise the taking of the child outside the education and care service premises by an educator and must state—
- (a) the child's name; and
 - (b) the reason the child is to be taken outside the premises; and
 - (c) if the authorisation is for a regular outing, A description of when the child is to be taken on the regular outing; and
 - (ca) if the authorisation is for an excursion that is not a regular outing, the date the child is to be taken on the excursion; and
 - (d) a description of the proposed destination for the excursion; and
 - (e) if the excursion involves transporting children –
 - (i) the means of transport; and
 - (ii) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - (f) the proposed activities to be undertaken by the child during the excursion; and
 - (g) the period the child will be away from the premises; and
 - (h) the anticipated number of children likely to be attending the excursion; and
 - (i) the anticipated ratio of educators attending the excursion to the anticipated number of children attending the excursion; and
 - (j) the anticipated number of staff members and any other adults who will accompany and supervise the children on the excursion; and
 - (k) that a risk assessment has been prepared and is available at the service.
- (5) If the excursion is a regular outing, the authorisation is only required to be obtained once in a 12 month period.

Regulation 102B Transport risk assessment must be conducted before service transports a child

- (1)&(2) The approved provider and nominated supervisor ... must ensure 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.
- Penalty: \$2000.

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(4) A risk assessment is not required under this regulation for transporting a child if—

- (a) the transportation is regular transportation; and
- (b) a risk assessment has been conducted for the regular transportation of the child within the previous 12 months.

Regulation 102C Conduct of risk assessment for transporting of children by the education and care service

- (1) A risk assessment for the transportation of a child ... must—
- (a) identify and assess risks that transporting the child may pose to the safety, health or wellbeing of the child; and
 - (b) specify how the identified risks will be managed and minimised.
- (2) Without limiting subregulation (1), a risk assessment must consider—
- (a) the proposed route and duration of the transportation; and
 - (b) the proposed pick-up location and destination; and
 - (c) the means of transport; and
 - (d) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - (e) any water hazards; and
 - (f) the number of adults and children involved in the transportation; and
 - (g) given the risks posed by transportation, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and
 - (h) whether any items should be readily available during transportation; and
- Example A mobile phone and a list of emergency contact numbers for the children being transported.
- (i) the process for entering and exiting—
 - (i) the education and care service premises; and
 - (ii) the pick-up location or destination (as required); and
 - (j) procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking.

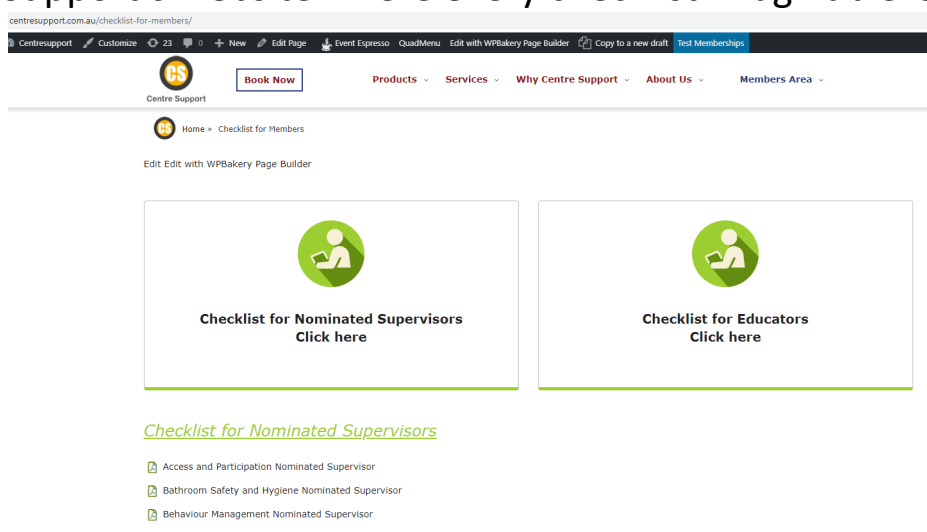
Regulation 102D Authorisation for service to transport children

- (1)&(2) The approved provider and nominated supervisor ... must ensure that a child ... is not transported ... unless written authorisation has been given under subregulation (4). Penalty: \$1000.
- (4) The authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise the child being transported by the service or on transportation arranged by the service and must state—

- (a) the child's name; and
- (b) the reason the child is to be transported; and
- (c) if the authorisation is for regular transportation, a description of when the child is to be transported; and
- (d) if the authorisation is not for regular transportation, the date the child is to be transported; and
- (e) a description of the proposed pick-up location and destination; and
- (f) the means of transport; and
- (g) the period of time during which the child is to be transported; and
- (h) the anticipated number of children likely to be transported; and

- (i) the anticipated number of staff members and any other adults who will accompany and supervise the children during the transportation; and
 - (j) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - (k) that a risk assessment has been prepared and is available at the education and care service; and
 - (l) that written policies and procedures for transporting children are available at the education and care service.
- (5) If the transportation is regular transportation, the authorisation is only required to be obtained once in a 12 month period.

Remember: If you need to use a checklist go to the members area of Centre Support's website where every checklist imaginable is available.



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Answers from last week - Compliance test for educators

Instructions: Nominated Supervisor is to conduct the test. Ask one educator at a time in a location that other educators cannot hear or provide support to the educators being asked the question. Record the responses then analyse to see if the educators' responses would place you at risk of a fine. Finally, train the educators that fail to meet the regulations.

Name of educator:

Questions	Response	Pass or Fail
Miss Marley asks whether educators have to comply with families' requests about the length of time their child sleeps or rests at the Service? Do they?	No. Educators have obligations under Reg 81 to meet the sleep and rest needs of children, after considering children's ages, development and individual needs. They should of course explain this to families and follow their requests where these still allow educators to comply with Reg 81.	
Mr Cody asks if services must have a policy and procedures relating to children's sleep and rest. What's your response?	Yes – this requirement is part of Reg 168.	
Miss Bec asks what type of things need to be in the Policy. Please let her know.	ACECQA's Safe Sleep and Rest Practices Fact Sheet contains the information that should be covered in the Policy including: <ul style="list-style-type: none"> • Red Nose guidance on safe sleep practices for babies and toddlers • Sleep and rest environment • Supervision requirements 	

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Name of educator:

Questions	Response	Pass or Fail
Miss Soraya asks what 'adequate supervision' means. What's the answer?		
Miss Sian asks what the term 'authorised nominee' means. What's your response?		
Mr Jordan asks if risk assessments for excursions and authorisations parents give for excursions need to say specific things. Do they?		
Miss Halimah asks which Reg relates to children's safety when visitors are present. Please respond.		
Miss Sofia asks why Element 2.2.1 covers supervision AND risk management. Why do you think this is?		

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The Federal Government's [Fair Work](#) and [Business support](#) websites have a lot of simple, easy to understand information about employee entitlements as well as some useful templates. Each week we'll share information from the websites.

This week we're looking at some of Fair Work's [updated advice on COVID-19 vaccinations](#). Please visit the website for complete and more detailed advice.

Does an employer need to consult when implementing a workplace policy about coronavirus vaccinations?

Yes. Before implementing a new policy or changing an existing policy about vaccinations, employers should:

- consider their workplace and employees' circumstances and whether they need legal advice about their obligations
- consult with employees as required under [Clause 8 of the Children's Services Award](#) and [Clause 29 of the Education Services \(Teachers\) Award](#)
- consult with employees and their health and safety representatives (HSRs) as required under work health and safety (WHS) laws because COVID-19 vaccination is about controlling the WHS risk of COVID infection in the workplace.

Employees and their HSRs must be given a reasonable opportunity to express their views. Employers need to take these views into account when making a decision and advise employees and HSRs of their decision.

Can an employer require an employee to be vaccinated?

Employers can only require their employees to be vaccinated where:

- there's a specific law (eg state/territory public health order) requiring an employee to be vaccinated (see [Legislation and public health orders requiring vaccination against coronavirus](#))
- the requirement is permitted by an enterprise agreement, other registered agreement or employment contract (see [Agreements or contracts relating to vaccinations](#)), or
- it would be lawful **and reasonable** for an employer to give their employees a direction to be vaccinated, which is **assessed on a case-by-case basis** (see [Lawful and reasonable directions to get vaccinated](#)).

There are a range of factors that may be relevant when determining whether a direction to an employee is reasonable. Things to consider include:

- the nature of the workplace (eg the extent to which employees need to work in public facing roles, whether social distancing is possible and whether the business is providing an essential service)
- the extent of community transmission of COVID-19 in the location, including the risk of transmission of the Delta variant among employees, customers or other members of the community
- the effectiveness of vaccines in reducing the risk of transmission or serious illness, including the Delta variant (find out more at the Department of Health: [statement from ATAGI](#))
- work health and safety obligations (find out more at [Safe Work Australia](#))
- each employee's circumstances, including their duties and the risks associated with their work
- whether employees have a legitimate reason for not being vaccinated (eg a medical reason)
- vaccine availability.

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When undertaking this case-by-case assessment, it may also be helpful as a general guide to divide work into 4 broad tiers:

- **Tier 1 work** where employees are required as part of their duties to interact with people with an increased risk of being infected with coronavirus (eg employees working in hotel quarantine or border control).
- **Tier 2 work** where employees are required to have close contact with people who are particularly vulnerable to the health impacts of coronavirus (eg employees working in health care or aged care).
- **Tier 3 work** where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment (eg stores providing essential goods and services).
- **Tier 4 work** where employees have minimal face-to-face interaction as part of their normal employment duties (eg they are working from home).

For employees performing **Tier 3** work:

- where no community transmission of coronavirus has occurred for some time in the area where the employer is located, a direction to employees to be vaccinated is in most cases less likely to be reasonable
- where community transmission of coronavirus is occurring in an area, and an employer is operating a workplace in that area that needs to remain open despite a lockdown, a direction to employees to receive a vaccination is more likely to be reasonable.

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