



Assessments of family day care residences

This fact sheet provides information on the Queensland Regulatory Authority's position regarding what constitutes a family day care residence under the Education and Care Services National Law (National Law).

This position supports the objectives of the National Law, specifically to ensure the safety, health and wellbeing of children attending an education and care service, and to improve their educational and developmental outcomes.

When considering premises for a proposed family day care service, an approved provider must establish whether the proposed premises for the delivery of education and care is a family day care residence or venue (section 5 National Law).

The paramount consideration in the case of either a residence or venue is the safety, health and wellbeing of children, including the suitability of the proposed premises.

What is a family day care residence?

The aim of family day care has been to offer a safe education and care option for children in small groups, traditionally in a stimulating home or family learning environment. The National Law and National Regulations do not require that the family day care educator, or a 'family,' needs to reside at the family day care residence.

The National Law defines a family day care residence as 'a residence at which a family day care educator educates and cares for children as part of a family day care service'. A 'residence' is defined as being 'the habitable areas of a dwelling' (Section 5).



Key preliminary considerations when establishing whether a proposed premises is a family day care residence are:

- the premises is a residence, and
- the parts of the premises to be used for education and care are the habitable areas of the premises (dwelling).

Premises are likely to be a residence when the premises is classified under the Building Code of Australia as one of the following:

- Class 1a – A single dwelling being a detached house, or one or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit
- Class 2 – A building containing two or more sole-occupancy units each being a separate dwelling.

A residence would normally include a free-standing house, townhouse, apartment, unit, villa, or granny flat (including a converted garage) that is attached to or detached from a house.

In addition, the approved provider must ensure that the educator is providing education and care in the habitable areas of the dwelling. These are the areas of the dwelling fit for human habitation. Habitable areas are likely to be indicated by those meeting the requirements in National Regulations 103, 104, 105, 106, 109, 110, and 116, including the following:

- structural stability, safe, clean and in good repair
- contains, or has access to, amenities in working order, including a kitchen, toilet and washing facilities
- natural lighting and ventilation
- electricity and water supply
- drainage and sanitary facilities.



For example, education and care proposed to be provided solely from an unconverted concrete garage within a house would not meet the above requirements.

Further, under the definition of an education and care service premises in Section 5 of the National Law, a family day care residence includes **each part** of a residence used to provide education and care, or used to provide access to the part of the residence used to provide that education or care. Therefore if a hallway from the front door of the house provides access to the areas used within the house to provide family day care, then this hallway would be considered part of the family day care residence.

Family day care venues

Note that if a proposed premises is not considered a family day care residence, it may be considered as a family day care venue in exceptional circumstances. Family day care venues **must be approved by the Regulatory Authority**, and can only be approved if the Regulatory Authority considers the venue to be suitable for family day care and that exceptional circumstances exist.

For more information, search the department's [website](#) for the fact sheet for approved providers, 'Approving family day care residences and approved family day care venues'.

Suitability of family day care premises

Regulation 116 of the Education and Care Services National Regulations requires approved providers to assess each proposed family day care residence or venue before education and care is provided to children at the premises, to ensure the safety, health, and wellbeing of children.

As part of their assessment, approved providers must consider the suitability of the residence or venue for the provision of family day care, according to the number, ages and abilities of children attending, or likely to attend, the education and care service.

Requirements include:

- That the premises, furniture and equipment is safe, clean and in good repair (Regulation 103), and that the furniture, materials and equipment is sufficient and developmentally appropriate (Regulation 105)
- That outdoor spaces used by children are appropriately fenced (Regulation 104)

- That the premises has access to adequate and appropriate laundry and hygiene facilities or arrangements (Regulation 106)
- That adequate, safe, convenient and developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children (Regulation 109)
- That indoor spaces used by children are well ventilated, have adequate natural light, and are maintained at a temperature that ensures the safety and wellbeing of children (Regulation 110).

Other considerations include the suitability of nappy change arrangements, the existence of water hazards (e.g. water features or swimming pools), and the risk posed by animals (Regulation 116).

The assessment must be conducted before education and care is provided and on an annual basis thereafter.

Dual care from the one dwelling

There may be occasions where a building has two self-contained residential areas under one roof. Each area being self-contained **is not** of itself sufficient to be considered as two separate family day care residences for the purposes of the National Law.

It is the Regulatory Authority's position that a family day care residence has clear separation from any other residences that may be located on the same lot. This may be evidenced, for example, by a separate rates notice, building certification as a residence, or being subject to a residential general tenancy agreement (form 18a) from the Residential Tenancies Authority. Note that although such evidence may be provided, the residence may still be deemed unsuitable as a family day care residence on other grounds (e.g. under the regulations referred to above).

For example, a dwelling comprising an ancillary dwelling and a main dwelling under the same rates notice is considered to be one residence from which one educator can operate. However, a duplex residential building containing two separate homes sharing a common central wall, but having separate titles and/or separate rates notices would constitute two separate family day care residences, despite being situated on the one lot. The Regulatory Authority would expect an approved provider to hold evidence that clearly establishes the separation of each residence, beyond being self-contained.

One educator per family day care residence

Under the National Law, a family day care residence means a residence at which a **family day care educator** educates and cares for children as part of a family day care service. The position of the Regulatory Authority is that this definition restricts the provision of a family day care service to one family day care educator operating at any one time per family day care residence.

It follows that application of National Regulation 124, relating to the number of children who can be educated and cared for by a family day care educator, is applied to a single residence. A family day care educator must not educate and care for more than 7 children at a family day care residence at any one time (Regulation 124(1)) and no more than 7 children can be educated and cared for as part of a family day care service at a family day care residence at any time (Regulation 124(3)).

Family day care and stand-alone care

Stand-alone care is regulated under the *Education and Care Services Act 2013* (Qld). It is the Regulatory Authority's position that stand-alone care cannot operate at the same time out of the same dwelling where a family day care service is being delivered. For more information, search the department's [website](#) for the fact sheet, 'Stand-alone care'.

More information

- Email the department at ecis@qed.qld.gov.au
- Contact your nearest regional office (www.earlychildhood.qld.gov.au/about-us/local-earlychildhood-offices)
- Phone the Regulation, Assessment and Service Quality team on (07) 3328 6780.

