



NSW Department of
Community Services

LICENSING OF SCHOOL-BASED PRESCHOOLS/CHILDREN'S SERVICES

FAQs

Q: I have been operating a school-based preschool for some time now. My school is registered by the Board of Studies. Why do I have to be licensed?

A: In NSW, there is a longstanding legislative requirement that all children's services must be licensed. The *Children and Young Persons (Care and Protection) Act 1998* ('the Act') establishes the requirement for children's services providers in NSW (eg. preschools, long day care services, family day care services) to be licensed. The *Children's Services Regulation 2004* ('the Regulation') sets out the process for applying for a licence and the conditions that must be met for a licence to be granted.

Parents, industry and Government also expect that regulatory standards should apply consistently across service types. Regulating children's services is one way of ensuring consistent quality of services and enhancing their quality over time.

Although non-government schools are required to be registered by the Board of Studies, that registration covers the school's activity from Kindergarten onwards. So even though a school must be registered with the Board of Studies, its school-based preschool is not covered by that registration.

Q: Where can I get a copy of the Act and the Regulation?

A: The Act and the Regulation can both be downloaded from the DoCS website by following the links on the 'Guide to Children's Services Licensing' page.

Q: Does all of the Regulation apply to me? Are there any exemptions for existing services?

A: All existing school-based preschools/children's services **operating before 1 July 2008 will be exempt from all of Part 3 of the Regulation except for the following clauses:**

- cl 34: Toilets and washing facilities
- cl 40: Development and play equipment
- cl 45: Fencing

New school-based preschools/children's services commencing operation after 1 July 2008 will be required to comply in full with the Regulation.

The Department of Community Services (DoCS) recognises that schools are already operating in a regulated environment, whether they are registered with the Board of Studies (BOS) or run by the Department of Education and Training (DET). In a number of instances, DoCS will waive or streamline requirements of the Regulation where they are already adequately managed by existing BOS or DET requirements. For example, DoCS will not duplicate Working With Children Checks.

Q: I am not sure if my school-based service is captured by the Regulation?

A: There is considerable diversity in the services provided to children and families on school sites and by schools. Some of the types of services that are provided by schools include supported playgroups, short term school orientation visits, longer term school transition classes, traditional preschool classes and 'Prep'.

The Department does not intend to license playgroups (where parents are on the school premises) or short term school orientation visits.

The Act also provides an exemption for 'formal education' ([see separate FAQ](#)).

In some instances, it will only be possible to determine whether or not a service should be licensed by having a DoCS Children's Services Advisor visit the service.

Q: My school provides a Prep class for preschool aged children. Is this covered by the exemption for 'formal education'?

A: Section 200(2)(f) of the *Children and Young Persons (Care and Protection) Act 1998* ('the Act') provides an exception from the definition of a 'children's service'. The exception applies if a service is:

1. providing formal education in accordance with the school curriculum set out in Part 3 of the *Education Act 1990*; **AND**
2. being provided by a government school or a registered non-government school within the meaning of the *Education Act*.

If these tests are met, then a children's service is not captured by the definition of a 'prescribed children's service' (that is, a service that is required to be licensed under the Act).

Intention of this exception

In relation to school based children's services, the intent of s. 200 of the Act is to recognise children under the age of six years who are enrolled at a school, and who are provided with a school education curriculum in an environment that is conducted in accordance with the laws and rules applying to schools. The Act does not intend that these children are also included in the scope of the *Children's Services Regulation*.

Application of the exception

Services that fit the terms of the exception are not required to be licensed and so do not need to apply for a licence from the Department of Community Services (DoCS).

Services may however wish to apply to DoCS for verification that they do not require a licence and or seek a determination from DoCS as to whether or not they are required to be licensed.

If a registered school or Board of Studies-recognised system of schools considers that a service it provides for children under the age of 6 years is not within the scope of the Regulation, and wishes to seek Departmental confirmation of this, then the school/system can provide DoCS with a declaration stating that the specified service is not a prescribed children's service on the basis of s. 200(2)(f) of the Act.

The declaration would ask the school to include evidence as appropriate to support their declaration (for example, proof that the service is provided by a school as defined, information that demonstrates that it is using Board of Studies syllabuses as the curriculum, information that demonstrates the school environment being provided, and information about the ages of the children). DoCS would then make a judgement as to whether the service should be excepted from the requirement to be licensed under the Regulation.

In forming its view, DoCS may seek input from the Board of Studies on a case by case basis. For example, the Board of Studies may be able to provide advice on the nature of the service or the evidence provided by the school.

Q: What should I consider in deciding whether my school-based service is covered by the definition of a children's service in the *Children and Young Persons (Care and Protection) Act 1998*?

A: The *Children and Young Persons (Care and Protection) Act 1998* (Section 200(2)(f)) includes a definition of a children's service that does not require a DoCS' licence if the service is:

- a. providing formal education in accordance with the school curriculum set out in Part 3 of the *Education Act 1990*; and
- b. being provided by a government school or a registered non-government school within the meaning of the *Education Act*.

While a school's status as a government or registered non-government school is easily determined, a school also needs to consider whether its school-based preschool/children's service is providing 'formal education' in accordance with Part 3 of the *Education Act*.

Part 3 of the *Education Act* sets out 6 key learning areas for primary education: English; Mathematics; Science and Technology; Human Society and its Environment; Creative and Practical Arts; and Personal Development, Health and Physical Education.

Part 3 of the Act also states that the curriculum for primary school children must include courses of study:

- in each of the 6 key learning areas during each year;
- that relate to Australia as part of Human Society and its Environment;
- in Art and Music as part of Creative Arts;
- that are appropriate for the level of achievement and needs of the children being taught;

- that are provided in accordance with any relevant guidelines developed by the Board of Studies (and approved by the Minister for Education); and
- that are based on, and taught in accordance with, a syllabus developed or endorsed by the Board of Studies (and approved by the Minister for Education).

A school needs to consider whether its school-based preschool/children's service meets these criteria in order to be covered by the s.200(2)(f) exception.

In addition to the above, it may also be helpful for a school to reflect on the following questions:

- What was the school's rationale for establishing its service? What are the main child and family needs the program seeks to meet?
- What is the program of activities or syllabus being followed? For example, is it curriculum and syllabus-based or based on another approach?
- How many weeks a year does the service operate, and are there any set requirements for children's pattern of attendance? For example, does the service operate for more than 40 weeks a year?
- Does the service follow a timetable organised by Key Learning Areas or does its timetable provide for a more flexible approach based around children's needs and interests?
- How old are the children attending the service? Are they mostly four year olds and older, or are they younger?

Having considered all of the above, a school may then decide to seek DoCS' confirmation of the status of its school-based preschool/children's service. To do this, a school should provide DoCS with a written declaration that would include evidence in relation to the two parts of s.200(2)(f) of the *Children and Young Persons (Care and Protection) Act*.

Information relating to the other questions set out above would also be useful to DoCS in understanding the nature of the service.

DoCS will assess the information provided by each school on a case-by-case basis and provide written confirmation of whether, in its view, the service should be licensed.

Q: How will DoCS assess the qualifications of existing teaching staff in school-based children's services and preschools?

A: The Regulatory requirement for a Teaching Staff Member only comes into effect once there are 30 or more children attending a children's service (cl 52(1)). Many school-based children's services and preschools have fewer than 30 children at any one time, and will therefore not need to meet the Teaching Staff Member requirements.

Many preschool teachers in the school-based sector already have early childhood qualifications. However, there are some who have primary (or other) qualifications and relevant experience teaching young children.

Almost all Department of Education and Training's preschool teachers are early childhood trained. The qualifications of preschool teachers in the Independent school sector are known to be more diverse, but it is not known how many existing teachers do not hold an early childhood qualification, or indeed a teaching/education qualification.

Licensing of school-based children's services under the *Children's Services Regulation 2004* is occurring via a three year, geographically staged process as follows:

1 July 2008: Metro West and Metro South West DoCS Regions

1 July 2009: Metro Central, Hunter and Central Coast, Southern DoCS Regions

1 July 2010: Northern and Western DoCS Regions

Clause 52(4) of the *Children's Services Regulation* states that a Teaching Staff Member of a children's service means a member of staff who:

- a) has a degree or diploma in early childhood education from a university following a course with a duration (on a full-time basis) of not less than 3 years; or
- b) has some other approved qualification; or
- c) has other approved training and other approved experience.

Qualifications assessment where school based children's services require a Teaching Staff Member

To minimise disruption to existing services, the Department of Community Services (DoCS) will take a flexible approach to recognising the qualifications of **existing** teaching staff. This approach recognises that teachers in school-based services operate in a strong pedagogical environment where all or most staff have teaching qualifications. The schools sector also has systems that support ongoing professional training and development.

Where the Regulation requires a Teaching Staff Member, and his/her qualifications are not of a type already approved, then his/her qualifications, training and experience will be assessed centrally by DoCS on a case by case basis. This is the current practice for qualifications assessment in early childhood services that are regulated by DoCS.

During the staged introduction of licensing to school-based children's services, services that are required to comply with cl 52(4) of the Regulation may have the Teaching Staff Member's qualifications assessed against the following criteria:

1. The proposed Teaching Staff Member was employed as a teacher at a school in the period prior to 1 July 2008; AND
2. The proposed Teaching Staff Member holds tertiary qualifications in education OR,
3. Has other relevant qualifications together with at least three years recent experience teaching children under seven years of age.

The assessment will be subject to approval by the Executive Director of the Children's Services Directorate.

The employment of qualified early childhood teachers in children's services plays a significant part in the provision of a high quality service and good outcomes for children. After 2010, the Department of Community Services' qualifications assessment process will generally require school-based children's services or preschools that require a Teaching Staff Member to have early childhood teaching qualifications while still allowing for case by case assessment of other qualifications, training and experience under cl 52(4) of the Regulation.

Q: When does my school-based service have to be licensed?

A: All existing school-based preschools in the DoCS **Metro West** and **Metro South West** Regions of NSW need to be licensed by 1 July 2008.

Licensing will then be rolled out across other regions as follows:

1 July 2009: Metro Central, Hunter and Central Coast, Southern Regions

1 July 2010: Northern and Western Regions

Q: How do I know which region my school is in?

A: **Metro West** region incorporates the areas of Auburn, Blacktown, Hawkesbury, Katoomba, Mt Druitt, Parramatta, Penrith and St Marys.

Metro South West incorporates Bankstown, Bowral, Campbelltown, Fairfield, Ingleburn, Liverpool.

If you are unsure which region your service falls within, please call the Central Licensing section of Department of Community Services on 02 9716 2100.

Q: If I operate more than one service in different locations, do I need to licence each one?

A: Yes. A separate licence application should be lodged for each separate service.

Q: When do I need to lodge my application for a licence? What will happen if I do not submit my licence application by the due date?

A: If your school-based preschool/children's service is located in the Metro West or Metro South West regions, please submit your licence application **by 31 March 2008**.

Schools may apply for a licence after that date but it should be noted that if this occurs, DoCS cannot guarantee that the school-based preschool/children's service would be licensed by the 1 July 2008 commencement date. In such cases, DoCS and the respective schools would need to work together closely to finalise licences as quickly as possible.

Q: What if my school-based preschool/children's service does not meet the licensing standards by 1 July 2008?

A: Existing school-based preschools/children's services will be exempt from all of the facilities and equipment requirements of Part 3 of the Regulation except clauses 34, 40 and 45.

Even with this exemption, DoCS acknowledges that some non-government schools may still require some time to fully comply with the requirements if they create capital costs. If such circumstances arise, DoCS' approach will be as follows:

1. After receiving a licence application, DOCS will assess whether there is any non-compliance with the relevant parts of the Regulation;

2. DoCS and the applicant would discuss how compliance can be achieved, including the period in which the applicant considers that it can become fully compliant;
3. DoCS and the applicant would then agree as appropriate on interim methods for achieving compliance and safeguarding the safety, well-being and development of children attending the service;
4. Upon agreement to a satisfactory plan to achieve full, permanent compliance as soon as practicable, the applicant school-based service could then be licensed.

All school-based services will be required to achieve full compliance by 1 July 2010. This means that all schools should begin planning towards achieving compliance now.

Q: Do I have to fill in a Statement of Premises Compliance or a Statement of Premises Non-Compliance before submitting my licence application?

A: It is a requirement of licensing that your school must submit either a *Statement of Premises Compliance (CSDF 02)* or a *Statement of Premises Non-Compliance (CSDF 03)*, certified by a registered architect or accredited person. DoCS must receive the relevant form before it can issue a licence.

These forms are available on the DoCS website (under 'Licensing - Application Forms').

Existing school based children's services and preschools in operation **before 1 July 2008** are only required to comply with clauses 34, 40 and 45 of Part 3 of the *Children's Services Regulation*, relating to toilets, development and play equipment and fencing.

If you are able to complete the relevant Statement and send it to DoCS with your licence application, please do so.

If you are uncertain about how to proceed with completing the Statement, please submit all other parts of your application to DoCS and indicate that you have not included the *Statement of Premises Compliance* or *Statement of Premises Non-Compliance*.

When a DoCS Children's Services Adviser (CSA) visits your children's service / preschool as part of the licensing process, the CSA will be able to assist you in assessing whether there is any non-compliance with the relevant parts of the Regulation.

If any non-compliance is identified, your school and the DoCS Children's Services Adviser can then discuss how compliance can be achieved.

Once agreement has been reached, your school will be able to take the necessary action to complete the relevant Statement prior to DoCS issuing a licence.

Q: How do I apply for a licence?

A: You will need to complete and lodge the following forms.

1. [School-Based Preschool/Children's Services \(CS\) Licence Application \(CSSBA 01\)](#)

2. [Authorised Supervisor \(AS\) Nomination by Licensee of a School-Based Preschool/Children's Service \(CSSBA 02\)](#)

3. [Personal Information for Licensee \(School-Based preschool/Children's Service\) \(CSSBF 01\)](#)

Q: What will happen after I lodge my application with DOCS?

A: Your application will be confirmed as being received by Central Licensing and Regulation in the Children's Services Directorate of DoCS.

After Central Licensing has processed the paperwork for your application, you will be contacted by a DoCS Children's Services Advisor (CSA) from your region. The CSA will make an appointment to visit your school-based service to assess its compliance with relevant parts of the Regulation.

If your school-based service is fully compliant, your Licence will be issued by mail shortly thereafter. If your school-based service is not fully compliant, you will need to reach agreement with DoCS about interim compliance measures prior to a licence being granted.

Q: Does licensing affect whether my service can be approved for Child Care Benefit (CCB)?

A: Eligibility for the Child Care Benefit (CCB) is determined by the Commonwealth Government. As part of its CCB eligibility criteria, the Commonwealth generally expects children's services will comply with the regulatory requirements in each State and Territory for their type of service.

Further information about CCB can be obtained from the Federal Department of Families, Housing, Community Services and Indigenous Affairs at www.fahcsia.gov.au or the Child Care Access Hotline on 1800 670 305.

Q: Do I have to pay for a licence?

A: There is no charge for the granting of a licence.

Q: How and where do I lodge my licence application?

A: Applications should be lodged by mail to:
Central Licensing
Children's Services Directorate
NSW Department of Community Services
Locked Bag 4028
ASHFIELD NSW 1800