

CHILDCARE LEGAL HEALTH CHECKLIST

This legal health checklist will help you to identify areas in your childcare business that may need further protection or assistance to ensure that you are legally compliant.

BUSINESS STRUCTURE



- Business structure (e.g. company, partnership or sole trader) is appropriate for growth, liability and tax.
- Business has a dual company structure (holding company and operating company) appropriate to reduce risk and offer a flexible structure for growth.
- Shareholders agreement (if operating as a company or dual company and more than one shareholder).
- All business licences (including provider approval and service approval and food licences) are correct and up to date.

INTELLECTUAL PROPERTY



- Business holds a trade mark to protect the business' name and logo.
- All branding is cleared for use and registered as trade marks to avoid third-party infringement.
- Regularly check whether any other business is encroaching on your trade marks and if so, action has been taken to protect your trade mark and ownership.
- Regularly check that the IP portfolio (any trade marks, designs, patents) remains up to date to identify any gaps or changes in ownership, etc.

EMPLOYEES AND CONTRACTORS



- Workers are correctly classified as employees or contractors (and the business has considered any sham contracting risks).
- Employees and contractors have current contracts in place.
- Employee wages are compliant with the national minimum wage and/or modern award rates as applicable.
- Employees and contractors are qualified and have completed all required statutory checks (including Working With Children checks) to protect children's safety and rights.
- Business is complying with its record keeping obligations under the *Fair Work Act 2009* (Cth) and *Fair Work Regulations 2009* (Cth).
- The business maintains core policies on operations (e.g. medication, excursions, transport and departures), Record-keeping, Anti-Bullying, Discrimination and Harassment, WHS and IT.

COMMERCIAL CONTRACTS



- Service agreements are in place with individuals or businesses who supply goods or services to your business.
- Service agreements are in place for families enrolled in the business.
- Agreements and licences are in place for software being used by your business.

DATA AND PRIVACY



- Business is compliant with privacy legislation related to the collection, use, holding and disclosure of personal information (and has considered its obligations in Australia).
- Business understands its obligations related to using personal information for marketing purposes and has received all media consent forms.
- Privacy policy is current, complies with Australian law and prioritises child protection.
- Business has a collection notice in place and uses it to notify families when it is collecting their personal information.
- Business has processes in place to ensure data that sits on third-party systems or is disclosed to third parties, including overseas, is protected.
- Physical assets that hold personal information (such as servers) are in a secure location with appropriate security safeguards in place.
- Business has appropriate systems in place in relation to the retention, storage and disposal of personal information and company documents.

MANAGING CUSTOMERS AND YOUR PREMISES



Make your business has the following

- a signed lease (if required);
- planning approval to operate the business during set hours of operation;
- safe and secure premises for indoor and outdoor play;
- fire safety policy;
- health and safety policy; and
- COVID-safe policy.

Another important item is whether:

- business owns the licence for its website or mobile application.



If your business needs assistance with meeting its legal compliance obligations, contact **LegalVision** on **1300 544 755** or visit [legalvision.com.au](https://www.legalvision.com.au).