



New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Regulation 2011

under the

Children (Education and Care Services) Supplementary Provisions Act 2011

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

ADRIAN PICCOLI, MP
Minister for Education

Explanatory note

The object of this Regulation is to facilitate the commencement of the *Children (Education and Care Services) Supplementary Provisions Act 2011* (**the Supplementary Provisions Act**). Currently, children's services are regulated by the *Children and Young Persons (Care and Protection) Act 1998*. As a result of the enactment of the *Children (Education and Care Services) National Law (NSW)* (**the National Law**), some children's services (now referred to as education and care services) will be regulated by the National Law, instead of the *Children and Young Persons (Care and Protection) Act 1998*. The remaining children's services (now referred to as State regulated education and care services) will be regulated by the Supplementary Provisions Act, instead of the *Children and Young Persons (Care and Protection) Act 1998*.

This Regulation amends the existing principal Regulation relating to children's services (which was initially made under the *Children and Young Persons (Care and Protection) Act 1998* but was transferred to the Supplementary Provisions Act):

- (a) to revise all terminology so that it is consistent with the terminology in the Supplementary Provisions Act and the National Law (for instance, children's services become education and care services, service provider licences become provider approvals, children's service approvals become service approvals and supervisor approvals become supervisor certificates), and
- (b) to remove provisions made redundant by the National Law (in particular, provisions relating to family day care services, as those services will be regulated by the National Law), and

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- (c) to align requirements relating to applications for approvals and certificates, as far as practicable, with the requirements with respect to similar applications under the National Law, and
- (d) to align time frames for certain requirements, as far as practicable, with time frames for similar requirements in the National Law, and
- (e) to specify the new fees applicable to State regulated education and care services, and
- (f) to make further modifications to the National Law, in its application to State regulated education and care services, and
- (g) to provide for savings and transitional matters consequent on the enactment of the Supplementary Provisions Act.

This Regulation is made under the *Children (Education and Care Services) Supplementary Provisions Act 2011*, including section 29, section 36 (the general regulation-making power), section 37 and clause 1 of Schedule 1.

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1 Name of Regulation

This Regulation is the *Children (Education and Care Services) Supplementary Provisions Amendment Regulation 2011*.

2 Commencement

This Regulation commences on 1 January 2012.

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[1] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “the licensee”, “The licensee”, “a licensee”, “A licensee” and “licensee’s” wherever occurring.

Insert instead “the approved provider”, “The approved provider”, “an approved provider”, “An approved provider” and “approved provider’s” respectively.

[2] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “centre based children’s service”, “Centre based children’s service”, “centre based or mobile children’s service”, “Centre based or mobile children’s services”, “Centre based or mobile children’s service” and “centre based and mobile children’s services” wherever occurring.

Insert instead “centre based education and care service”, “Centre based education and care service”, “centre based or mobile education and care service”, “Centre based or mobile education and care services”, “Centre based or mobile education and care service” and “centre based and mobile education and care services” respectively.

[3] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “a mobile children’s service” and “the mobile children’s service” wherever occurring.

Insert instead “a mobile education and care service” and “the mobile education and care service” respectively.

[4] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “home based children’s service” and “Home based children’s service” wherever occurring.

Insert instead “home based education and care service” or “Home based education and care service” respectively.

[5] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “A children’s service”, “a children’s service”, “All children’s services”, “the children’s service”, “other children’s service” and “class of children’s service” wherever occurring.

Insert instead “An education and care service”, “an education and care service”, “All education and care services”, “the education and care service”, “other education and care service” and “class of education and care service” respectively.

[6] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “the authorised supervisor”, “The authorised supervisor”, “and authorised supervisor”, “or authorised supervisor”, “An authorised supervisor” and “Authorised supervisors” wherever occurring.

Insert instead “the nominated supervisor”, “The nominated supervisor”, “and nominated supervisor”, “or nominated supervisor”, “A nominated supervisor” and “Nominated supervisors” respectively.

[7] The whole regulation (except Part 2 and any other provisions omitted or replaced by this Regulation and Schedule 2)

Omit “Director-General” wherever occurring.

Insert instead “Regulatory Authority”.

[8] Clause 3 Application

Omit the clause.

[9] Part 2

Omit the Part. Insert instead:

Part 2 General

Division 1 Provider approvals

7 Provider approvals

Part 2.1 of the National Law Regulations applies, with the prescribed modifications, to a provider approval under the Act in the same way as it applies to a provider approval under the National Law.

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8 Additional information to be provided by applicant for provider approval for home based education and care service

- (1) An application for a provider approval authorising the provision of a home based education and care service must be accompanied by:
 - (a) information to demonstrate that the applicant:
 - (i) has the required abilities to care for children, and
 - (ii) has experience in caring for children, and
 - (iii) has demonstrated a capacity to exercise overall supervision of the provision of an education and care service, and
 - (iv) has an understanding of nutrition, safe food handling, health, hygiene and safety in caring for children, and

Note. The required abilities to care for children are specified in clause 6.
 - (b) a copy of the applicant's current approved first aid qualification.
- (2) The information required to be provided under this clause is additional to the other information required to be provided under this Division.

9 Conditions of provider approval

For the purposes of section 19 (1) of the National Law Alignment Provisions, the conditions of a provider approval are the provisions of Parts 3, 4, 5, 6 and 7 of this Regulation that are relevant to the type or types of education and care services that are provided by the approved provider.

Note. Section 12 of the Act makes it an offence to contravene a condition of a provider approval.

Division 2 Service approvals

10 Service approval

- (1) Part 2.2 of the National Law Regulations applies, with the prescribed modifications, to a service approval under the Act in the same way as it applies to a service approval under the National Law, subject to subclause (2).
- (2) Regulations 26, 29, 30, 31 and 37, and Divisions 5 and 6 of Part 2.2, of the National Law Regulations do not apply in respect of service approvals under the Act.

11 Additional information—mobile education and care service

- (1) An application for a service approval authorising the operation of a mobile education and care service must be accompanied by the following information and documents:
 - (a) the addresses of the premises where the service will be provided,
 - (b) if an occupation certificate is required under the *Environmental Planning and Assessment Act 1979* for the proposed use of the premises for a mobile education and care service, a copy of the certificate.
- (2) The information required to be provided under this clause is additional to the other information required to be provided under this Division.

12 Venue management plan—mobile education and care service

- (1) An application for a service approval authorising the operation of a mobile education and care service must be accompanied by:
 - (a) a statement as to whether any of the premises at which the service is proposed to be provided do not comply with the Part 3 facilities and equipment requirements applicable to a mobile education and care service, and
 - (b) if so, a plan describing how the applicant intends to ensure the safety and well-being of children at those premises.
- (2) The information required to be provided under subclause (1) is additional to the other information required to be provided under this Division.
- (3) The Regulatory Authority:
 - (a) may approve a plan submitted under subclause (1) (b), or
 - (b) may require the applicant to revise the plan as to any matter or in any respect specified by the Regulatory Authority.
- (4) A revised plan may be resubmitted to the Regulatory Authority for the approval of the Regulatory Authority.
- (5) The Regulatory Authority must refuse to grant a service approval authorising the operation of a mobile education and care service if:
 - (a) a plan is required to be submitted under this clause, and
 - (b) the plan has not been submitted or not been approved by the Regulatory Authority.

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- (6) A plan approved by the Regulatory Authority under this clause is a *venue management plan*.
- (7) An approved provider of a mobile education and care service who intends to change a venue management plan must apply to the Regulatory Authority:
 - (a) for approval of the revised venue management plan, and
 - (b) for an amendment to the service approval for the service, to reflect the revised venue management plan.
- (8) An application for an amendment to a service approval that is made as required by this clause must include, in addition to the information required in relation to an amendment under the National Law Regulations, a copy of the revised venue management plan.

13 Application fee

For the purposes of section 44 (1) (e) of the National Law Alignment Provisions, the fee for an application for a service approval is the fee specified in Schedule 1B in relation to the application concerned.

14 Copy of service approval

For the purposes of section 52 (i) of the National Law Alignment Provisions, the matters to be stated in a copy of a service approval are (in addition to the matters provided for by section 52):

- (a) the type of education and care service for which the service approval has been granted, and
- (b) the date on which the annual fee is due.

15 Annual fee for service approvals

- (1) For the purposes of section 53 of the National Law Alignment Provisions, the annual fee in respect of each service approval held by an approved provider is the fee specified in Schedule 1B in relation to the education and care service concerned.
- (2) An application for a service approval must be accompanied by the relevant annual fee (which is first payable when the application is made).
- (3) An annual fee is next payable on the first anniversary of the date the service approval is granted and on every anniversary of that date after that.

16 Refund or waiver of annual fee

- (1) The Regulatory Authority may refund an annual fee that is required to accompany an application for a service approval if:
 - (a) the Regulatory Authority refuses to grant the approval, or
 - (b) the applicant withdraws the application before the Regulatory Authority grants the approval.
- (2) The Regulatory Authority may waive or refund the whole, or any part, of the annual fee for an approval if the Regulatory Authority is satisfied that there are exceptional circumstances that justify waiving the whole or part of the annual fee.

17 Conditions of service approvals

- (1) For the purposes of section 51 (5) of the National Law Alignment Provisions, the conditions of a service approval are the provisions of Parts 3, 4, 5, 6 and 7 of this Regulation that are relevant to the type of education and care service authorised by the approval.
- (2) It is also a condition of a service approval that the approved provider of the approved education and care service must develop, maintain and implement procedures to ensure that the nominated supervisor and all other members of staff of the education and care service comply with the provisions of this Regulation that apply to them.
- (3) It is also a condition of a service approval that the approved provider of the approved education and care service must have the right to occupy the premises at which the service is provided under the approval.
- (4) It is also a condition of a service approval for a home based education and care service that the home based service provider provide that education and care service only at the home of the home based service provider.

Note. Section 14 of the Act makes it an offence to contravene a condition of a service approval.

Division 3 Supervisor certificates

18 Supervisor certificates

- (1) Part 2.3 of the National Law Regulations applies, with the prescribed modifications, to supervisor certificates under the Act in the same way as it applies to supervisor certificates under the National Law, subject to subclause (2).

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- (2) Regulations 47 and 54 of the National Law Regulation do not apply in respect of supervisor certificates under the Act.

19 Minimum requirements for qualifications and experience

- (1) For the purposes of sections 108 (1) (b) and 112 (c) of the National Law Alignment Provisions, the following are the minimum requirements for qualifications and experience:
- (a) the required abilities to care for children and the capacity to exercise overall supervision of the provision of an education and care service,
Note. The required abilities to care for children are specified in clause 6.
 - (b) successful completion of an approved course in child protection (being a course that covers all applicable requirements under the child protection legislation),
 - (c) one or more of the following qualifications:
 - (i) an approved 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,
 - (ii) a Diploma of Children's Services (Early Childhood Education and Care), a Child Care Certificate, a Certificate of Child Care Studies or an Associate Diploma of Social Science (Child Studies) from a registered training organisation,
 - (iii) another approved qualification,
 - (d) 12 months' full-time experience or its equivalent in part-time experience in providing a relevant education and care service (gained after obtaining the qualification referred to in paragraph (c)).
- (2) An application for a supervisor certificate must be accompanied by:
- (a) duly certified copies of the person's qualification referred to in subclause (1) (c) and of any other of the person's qualifications in the area of education and care services or any related area (such as a diploma, certificate of competency or statement of attainment from a registered training organisation), and
 - (b) work references from 2 independent referees (being individuals who are not relatives of the person) describing the person's performance during the training or work experience referred to in subclause (1) (d).

- (3) The information required to be provided under this clause is additional to the other information required to be provided under this Division.

20 Conditions of supervisor certificates

For the purposes of section 115 (1) of the National Law Alignment Provisions, the conditions of a supervisor certificate are the provisions of Parts 3, 4, 5, 6 and 7 of this Regulation that are relevant to the supervisor as a nominated supervisor.

Note. See clauses 47, 52, 54, 60, 63–72, 75, 77A–83, 92, 94–96 and 114.

Note. Section 16 of the Act makes it an offence to contravene a condition of a supervisor certificate.

Division 4 Application of other provisions of National Law Regulations

21 Application to cancel prohibition notice

Regulation 189 of the National Law Regulations applies, with the prescribed modifications, for the purposes of section 186 (3) (b) of the National Law Alignment Provisions.

Note. Regulation 189 of the National Law Regulations sets out the information to be included in an application to the Regulatory Authority to cancel a prohibition notice.

22 Identity cards for authorised officers

An identity card issued to an authorised officer under the National Law is taken to be in the prescribed form, for the purposes of section 196 of the National Law Alignment Provisions, if:

- (a) it complies with Regulation 187 of the National Law Regulations, and
- (b) it also states that the officer is authorised to exercise functions as an authorised officer under the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

23 Register of approved education and care services

- (1) Regulation 230 of the National Law Regulations applies, with the prescribed modifications, for the purposes of section 267 (2) (f) of the National Law Alignment Provisions.
- (2) The reference in Regulation 230 of the National Law Regulations to centre based services is to be read as a reference to a centre

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based education and care service or mobile education and care service.

Note. Regulation 230 of the National Law Regulations sets out additional information required to be included in the register of approved education and care services.

24 Publication of information

Regulations 226 and 227 of the National Law Regulations apply, with the prescribed modifications, for the purposes of section 270 of the National Law Alignment Provisions.

Note. Regulations 226 and 227 of the National Law Regulations deal with the publication of information by the Regulatory Authority about approved providers, approved education and care services and certified supervisors.

Division 5 Modifications to National Law Regulations

25 Prescribed modifications—meaning

The provisions of this Division are the prescribed modifications to the National Law Regulations.

26 Interpretation of references

- (1) For the purposes of this Regulation, a reference in the National Law Regulations to a provision of the National Law is to be read as a reference to the corresponding provision of the National Law Alignment Provisions.
- (2) For the purposes of this Regulation:
 - (a) a reference in the National Law Regulations to a provider approval, service approval or supervisor certificate is to be read as a reference to a provider approval, service approval or supervisor certificate (as the case requires) under the Act (instead of the National Law), and
 - (b) a reference in the National Law Regulations to an approved provider or a certified supervisor is to be read as a reference to an approved provider or a certified supervisor (as the case requires) under the Act (instead of the National Law).
- (3) For the purposes of this Regulation, sections 22, 24 and 26 of the Act apply in relation to the National Law Regulation in the same way they apply in relation to the National Law.

27 Fees

- (1) For the purposes of this Regulation, fees prescribed by the National Law Regulations are to be disregarded.
- (2) The fees applicable in relation to State regulated education and care services are the fees (if any) provided for by this Regulation.

Division 6 Miscellaneous

28 Waiver and postponement of certain application requirements

The Regulatory Authority may waive or postpone a requirement to provide specified information or documents under this Part, or may approve the provision of specified information or documents in place of information or documents the subject of such a requirement.

29 Associated children's services

The Regulatory Authority may dispense with the requirement to obtain a service approval in respect of an associated children's service (within the meaning of the National Law) that is authorised by a service approval under the National Law.

[10] Clause 35 Nappy change facilities

Omit clause 35 (1) (d). Insert instead:

- (d) if the children's soiled clothing is laundered by the staff of the education and care service, adequate facilities for laundering the clothing or otherwise dealing hygienically with waste,

[11] Clause 36 Sleeping facilities

Omit “, or the family day care carer or home based licensee” from clause 36 (5).

Insert instead “or the home based service provider”.

[12] Clause 38 Swimming pools

Omit clause 38 (3). Insert instead:

(3) Home based education and care services

Any swimming pool at the premises of a home based service provider must be fenced to the standard to which a new swimming pool would be required to be fenced under the *Swimming Pools Act 1992*.

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[13] Clause 40 Development and play equipment

Omit clause 40 (8). Insert instead:

(8) Home based education and care service

The home of a home based service provider must be equipped with equipment that:

- (a) is adequate and sufficient to meet the individual interests and capabilities of each child provided with the service, and
- (b) is readily available for use by children and the home based service provider.

[14] Clauses 41 (2), (3), 44 (2), (3), 67 (3), 68 (3) and 74 (1)

Omit “family day care carer or home based licensee” wherever occurring.

Insert instead “home based service provider”.

[15] Clause 42 Fire safety equipment

Omit “family day carer or home based licensee” from clause 42 (2).

Insert instead “home based service provider”.

[16] Clause 44 (2)

Omit the heading to the subclause. Insert instead:

Home based education and care service

[17] Clause 45 Fencing

Omit clause 45 (5). Insert instead:

- (5) Child-proof barriers that are appropriate to the ages of children provided with the service must be provided at the top and bottom of stairs at the premises of an education and care service if the Regulatory Authority so requires by notice in writing served on the approved provider.

[18] Clause 49 Repair of premises

Omit clause 49 (2).

[19] Clause 50 Facilities and equipment requirements—responsibility of family day care carer

Omit the clause.

[20] Clause 51A

Omit the clause. Insert instead:

51A Nomination of supervisor

- (1) The approved provider of a centre based or mobile education and care service must not nominate more than 2 certified supervisors as nominated supervisors of the service at any one time, unless the Regulatory Authority approves otherwise.
- (2) A certified supervisor must not be nominated as a nominated supervisor of more than 2 approved education and care services at any one time, unless the Regulatory Authority approves otherwise.
- (3) In this clause, an *approved education and care service* includes an approved education and care service under the National Law.

[21] Clauses 56 (2) (a), 77 (5) and 78 (9)

Omit “school based children’s service” wherever occurring.

Insert instead “school based education and care service”.

[22] Clause 57 Use of volunteers

Omit “a licence” from the note. Insert instead “an approval”.

[23] Clauses 59 (1), (2), 62, 69 (1) and 90 (1)

Omit “licence” wherever occurring. Insert instead “service approval”.

[24] Clause 58 Number of children

Omit clause 58 (1). Insert instead:

(1) Centre based or mobile education and care service

The number of children who may attend a centre based or mobile education and care service at any one time while a service is being provided must not exceed the maximum number of children specified in the service approval for the service.

[25] Clause 58 (3)

Omit the subclause.

[26] Clause 59 Regulatory Authority may approve emergency child care arrangements

Omit clause 59 (3).

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- [27] **Clause 60 Requirements for approval of emergency child care arrangements**
Omit clause 60 (5).
- [28] **Clause 64 Programs for children**
Omit clause 64 (3).
- [29] **Clause 65 Interaction with children**
Omit clause 65 (4).
- [30] **Clause 66 Supervision of children**
Omit “, a family day care carer or the home based licensee” from clause 66 (1).
Insert instead “or the home based service provider”.
- [31] **Clause 66 (3)**
Omit the subclause.
- [32] **Clause 67 Child health**
Omit the heading to clause 67 (3). Insert instead:
Home based education and care service
- [33] **Clause 67 (4)**
Omit the subclause.
- [34] **Clause 68 Food and nutrition**
Omit the heading to clause 68 (3). Insert instead:
Home based education and care service
- [35] **Clause 68 (4)**
Omit the subclause.
- [36] **Clause 69 Pool safety**
Omit “, primary contact staff or family day care carers” from clause 69 (4).
Insert instead “and primary contact staff”.
- [37] **Clause 69 (5)**
Omit the subclause.

- [38] Clause 70 Storage of dangerous substances and equipment**
Omit clause 70 (4).
- [39] Clause 70 (5)**
Omit “and family day care carers comply”.
Insert instead “complies”.
- [40] Clause 71 Animals**
Omit clause 71 (7).
- [41] Clause 72 Plants**
Omit clause 72 (3).
- [42] Clause 73 Obtaining information about child**
Omit “, primary contact staff or family day care carers”.
Insert instead “or primary contact staff”.
- [43] Clause 74 Arrival and departure of child**
Omit “, the family day carer or the home based licensee” from clause 74 (1) (a).
Insert instead “or the home based service provider”.
- [44] Clause 74 (5)**
Omit the subclause.
- [45] Clause 75 Access to children**
Omit “, with family day care carers or with the home based licensee” from clause 75 (1) (b).
Insert instead “or with the home based service provider”.
- [46] Clause 75 (2)**
Omit “or family day care carers”.
- [47] Clause 77A Risk assessment of excursions**
Omit clause 77A (2).
- [48] Clauses 78 (4) and 79 (3)**
Omit “, primary contact staff or family day care carers” wherever occurring.
Insert instead “and primary contact staff”.

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[49] Clause 78 (8)

Omit the subclause. Insert instead:

(8) Home based education and care service

A home based service provider must conduct all excursions in a safe manner.

[50] Clause 79 Conduct of excursions: water hazards

Omit clause 79 (5). Insert instead:

(5) Home based education and care service

A home based service provider must ensure that the person in charge of any excursion to a beach, river, lake or other place where there is a water hazard has a current approved first aid qualification and the knowledge and ability to implement water safety procedures.

[51] Clause 80 Illness, accident and emergency treatment

Omit “home based licensee” wherever occurring in clause 80 (4) and (6).

Insert instead “home based service provider”.

[52] Clause 80 (8)

Omit the subclause.

[53] Clause 81 Medication

Omit clause 81 (3).

[54] Clause 82 Infectious diseases

Omit clause 82 (4)–(7). Insert instead:

(4) Home based education and care service

The approved provider of a home based education and care service must ensure that the infectious diseases policy covers all persons normally resident in the home of the home based service provider.

(5) The approved provider of a home based education and care service must practise the policy on infectious diseases.

(6) The approved provider of a home based education and care service must ensure that information about the occurrence within the education and care service of significant infectious disease:

(a) in any child provided with the service, or

- (b) in the home based service provider, or
 - (c) in any person resident at the home of the home based service provider,
- is made available to the parents of children provided with the service in a manner that is not prejudicial to the rights of individual children or other persons.

[55] Clause 83 Emergency and evacuation procedures

Omit clause 83 (2) (c).

[56] Clause 83 (3)

Omit “, family day care carers or the home based licensee”.

Insert instead “or the home based service provider”.

[57] Clause 83 (4)

Omit “the home based licensee”.

Insert instead “the home based service provider”.

[58] Clause 84

Omit the clause. Insert instead:

84 Home based service provider to hold first aid qualification

A home based service provider must hold a current approved first aid qualification.

[59] Clause 86 Information or documents required by Regulatory Authority

Omit “, or a family day care carer of a family day care children’s service,”.

[60] Clause 87 Entry and inspection

Omit “any staff of the service, or any family day care carer of the service, does” from clause 87 (b).

Insert instead “and any staff of the service, do”.

[61] Clause 87, note

Omit the note.

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[62] Clause 88 Notice of complaint

Omit clause 88 (2) (b). Insert instead:

- (b) an allegation of a contravention of a condition of a provider approval or service approval by the approved provider of the service or a member of staff of the service, or

[63] Clauses 89 (1) and 90 (1)

Omit “(other than a family day care children’s service)” wherever occurring.

[64] Clause 89 Public liability insurance

Omit “children’s services” from clause 89 (1) (a).

Insert instead “education and care services”.

[65] Clause 89 (2)

Omit the subclause.

[66] Clause 90 Display of service approval

Omit clause 90 (2).

[67] Clause 92

Omit the clause. Insert instead:

92 Records in relation to children

The approved provider and nominated supervisor of an education and care service must ensure that the records referred to in Schedule 1 are made in relation to each child provided with the service and (as appropriate) kept up to date.

[68] Clause 94 Records in relation to attendance at education and care service

Omit clause 94 (3).

[69] Clause 96 Retention of records

Omit “(or in the case of a family day care service, at the premises where the service is organised and arranged)” from clause 96 (1) (a).

[70] Clause 96 (2A)

Insert after clause 96 (2):

- (2A) The approved provider of an education and care service must ensure that the records referred to in clause 93 in relation to a visitor to the premises of the service are kept:
- (a) in a safe and secure area at the premises of the service for a period of not less than 2 years after the making of the record, and
 - (b) after that, at a place approved by the Regulatory Authority for a period of not less than 7 years after the visit to the premises.

[71] Clause 98

Omit the clause. Insert instead:

98 Confidentiality guidelines

The approved provider of an education and care service is to prepare or cause to be prepared written guidelines setting out the policies and practices to be observed by the approved provider, staff and agents and contractors of the service to ensure confidentiality about records of the service, or information obtained by the approved provider, staff, agents or contractors concerning:

- (a) children provided with the service, and
- (b) staff and their families, and
- (c) the families of children provided with the service, and
- (d) contractors of the service and their families.

[72] Clauses 100 and 101

Omit the clauses.

[73] Clause 104

Omit the clause. Insert instead:

104 Application of conditions if no nominated supervisor

While an education and care service has no nominated supervisor, the supervisor certificate conditions that apply to a nominated supervisor for the service extend to the approved provider of the service.

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- [74] **Clause 106 Notice of proposed change to constitution of licensee**
Omit the clause.
- [75] **Clause 107 Notice of change in management of approved provider: public authorities**
Omit “within one week” wherever occurring in clause 107 (2) and (3).
Insert instead “within 14 days”.
- [76] **Clauses 107 (3) and 108 (3)**
Omit “licence” wherever occurring. Insert instead “provider approval”.
- [77] **Clause 108 Notice of change in management of approved provider: bodies other than public authorities**
Omit “within one week” wherever occurring in clause 108 (2) and (3).
Insert instead “within 14 days”.
- [78] **Clause 109 Notice of significant change in circumstances of approved provider**
Omit “within one week” from clause 109 (1).
Insert instead “within 7 days”.
- [79] **Clause 110 Notice of change in contact information to be notified**
Omit “one week”. Insert instead “7 days”.
- [80] **Clause 111 Notice of cessation of children’s service**
Omit the clause.
- [81] **Clause 111A Notice of transfer of operation of children’s service**
Omit the clause.
- [82] **Clause 113 Notice of change to family day care carer’s home**
Omit the clause.
- [83] **Clause 113A Notice of appointment of authorised supervisor**
Omit the clause.
- [84] **Clause 114 Notice of criminal charges or convictions**
Omit “immediately” wherever occurring in clause 114 (1) and (2).

[85] Clause 114 (1) (c)

Omit “or a family day care carer of the service”.

[86] Clause 114 (1) (d)

Omit “, or at the home of a family day care carer of the service,”.

[87] Clause 114 (3)

Insert at the end of the section:

- (3) Notice must be given to the Director-General as soon as practicable and, in any case, no later than 7 days after the charge or conviction is made or, in a case referred to in subclause (1) (c) or (d), the approved provider becomes aware of the charge of conviction.

[88] Clauses 115, 116, 118 and 122

Omit the clauses.

[89] Clause 122D Application for approval

Omit clause 122D (1). Insert instead:

- (1) A person or body may make an application for an approval to provide a specified education and care service to which this Part applies without the need to hold a provider approval or service approval, subject to this clause.

[90] Clause 122H

Omit the clause. Insert instead:

122H Effect of approval

A person is not required to hold a provider approval or service approval in relation to an education and care service to which this Part applies if it is an approved child-minding service.

[91] Clause 123

Omit the clause. Insert instead:

123 Reviewable decisions

For the purposes of section 28 of the Act, a reviewable decision for external review includes a decision of the Regulatory Authority to require an approved provider to employ additional staff.

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[92] Clause 123A

Omit the clause. Insert instead:

123A Further modifications to National Law

- (1) For the purposes of the National Law Alignment Provisions, the following provisions of the National Law are to be disregarded:
 - (a) section 81 (4) (about associated children’s services),
 - (b) section 190 (f) (about reviews of decisions to revoke service waivers),
 - (c) section 267 (4) and (5) (about the register of education and care services),
 - (d) section 272 (2) (about disclosures of information about education and care services).

- (2) A reference in section 201 of the National Law to section 103 of the National Law is to be read, for the purpose of the National Law Alignment Provisions, as a reference to section 8 of the Act.

Note. Accordingly the power to enter premises under section 201 of the National Law where a contravention of section 103 of the National Law is suspected is, for the purposes of the National Law Alignment Provisions, a power to enter premises where a contravention of section 8 of the Act is suspected.

Note. Power to modify the application of the National Law to State regulated education and care services is conferred by section 29 of the Act.

[93] Clause 123B Information to be included in children’s services register

Omit the clause.

[94] Clause 124A Penalty notice offences and penalties

Omit the clause.

[95] Schedule 1, heading

Omit the heading. Insert instead:

Schedule 1 Approval conditions—records to be kept for each child

[96] Schedule 1, clause 1 (e)

Omit “licensee”. Insert instead “approved provider”.

[97] Schedule 1A Standards applying to approved child-minding services in retail shopping centres

Omit “children’s services” wherever occurring in clauses 2 (3) (b), 3 (1) (b) and 26 (b).

Insert instead “education and care services”.

[98] Schedule 1A, clause 26 (a)

Omit “(other than a family day care children’s service)”.

[99] Schedule 1B

Omit the Schedule. Insert instead:

Schedule 1B Fees

(Clauses 13 and 15)

Matter	Fee (\$)
Application fee in respect of a service approval authorising the operation of:	
(a) a home based education and care service	400
(b) a mobile education and care service	600
(c) a centre based education and care service:	
(i) provided to not more than 29 children	400
(ii) provided to more than 29 children, but not more than 60 children	600
(iii) provided to more than 60 children	800
Annual fee in respect of a service approval authorising the operation of:	
(a) a home based education and care service	185
(b) a mobile education and care service	275
(c) a centre based education and care service:	
(i) provided to not more than 29 children	185
(ii) provided to more than 29 children, but not more than 60 children	275
(iii) provided to more than 60 children	365

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[100] Schedule 1C Penalty notices

Omit the Schedule.

[101] Schedule 2 Savings and transitional provisions

Insert before clause 1:

Part 1 Provisions taking effect before 1 January 2012

Note. Before 1 January 2012 this Regulation was known as the *Children's Services Regulation 2004*. It was initially made under the *Children and Young Persons (Care and Protection) Act 1998*. On 1 January 2012, the Regulation was transferred to the *Children (Education and Care Services) Supplementary Provisions Act 2011* and renamed the *Children (Education and Care Services) Supplementary Provisions Regulation 2004*.

[102] Schedule 2, Part 2

Insert after clause 20:

Part 2 Provisions relating to commencement of Children (Education and Care Services) Supplementary Provisions Act 2011 (1 January 2012)

21 Definitions

In this Part:

children's service means a children's service referred to in section 200 of the *Children and Young Persons (Care and Protection) Act 1998*, as in force before its repeal by the new Act.

children's service approval means a children's service approval under the repealed provisions authorising the operation of a children's service that, on the commencement of the new Act, is a State regulated education and care service.

Director-General means the Director-General of the Department of Education and Communities or any person exercising the functions of Director-General under the repealed provisions.

in force children's service approval means a children's service approval in force immediately before the commencement of the new Act.

in force service provider licence means a service provider licence in force immediately before the commencement of the new Act.

in force supervisor approval means a supervisor approval in force immediately before the commencement of the new Act.

new Act means the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

repealed provisions means Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*.

service provider licence means a service provider licence under the repealed provisions.

supervisor approval means a supervisor approval under the repealed provisions.

22 Pending applications

- (1) An application for a service provider licence made under the repealed provisions before their repeal by the new Act, which has not been granted or refused by the date of that repeal, in respect of a children's service that is a State regulated education and care service, is taken to be an application for a provider approval in respect of the type of State regulated education and care service to which the application relates.
- (2) An application for a children's service approval that was made under the repealed provisions before their repeal by the new Act, which has not been granted or refused by the date of that repeal, is taken to be an application for a service approval in respect of the State regulated education and care service to which the application relates.
- (3) An application for a supervisor approval that was made under the repealed provisions before their repeal by the new Act, which has not been granted or refused by the date of that repeal, in respect of a children's service that is a State regulated education and care service, is taken to be an application for a supervisor certificate.
- (4) Any other application made or notification given under the repealed provisions may be dealt with by the Regulatory Authority as an application made or notification given under the corresponding provisions of the new Act.

23 Conversion of in force licences, approvals and appointments

- (1) An in force service provider licence is taken, on the commencement of the new Act, to be a provider approval granted under the National Law Alignment Provisions that authorises the licensee under the in force service provider licence to provide State regulated education and care services (a ***corresponding provider approval***).

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- (2) An in force children's service approval is taken, on the commencement of the new Act, to be a service approval under the National Law Alignment Provisions that authorises the operation of the State regulated education and care service to which the in force service approval relates (a *corresponding service approval*).
- (3) An in force supervisor approval is taken, on the commencement of the new Act, to be a supervisor certificate under the National Law Alignment Provisions that authorises the authorised supervisor under the supervisor approval to be nominated as the nominated supervisor of a State regulated education and care service (a *corresponding supervisor certificate*).
- (4) A person appointed, before the commencement of the new Act, as the authorised supervisor for a children's service that, on that commencement, is a State regulated education and care service, and whose appointment is in force immediately before that commencement, is taken on that commencement to have been nominated as the nominated supervisor of the education and care service.
- (5) A corresponding provider approval, service approval or supervisor certificate remains in force until cancelled or suspended by the Regulatory Authority under the new Act, unless subclause (6) applies.
- (6) If an in force service provider licence, in force children's service approval or in force supervisor approval was granted for a specified period of less than 5 years, the corresponding provider approval, service approval or supervisor certificate remains in force for the balance of that period, unless sooner cancelled or suspended by the Regulatory Authority under the new Act.
- (7) The Regulatory Authority may issue a new provider approval, service approval or supervisor certificate for the purpose of replacing a corresponding provider approval, service approval or supervisor certificate.

24 Continuation of conditions

- (1) Any conditions imposed by the Director-General on an in force service provider licence, in force children's service approval or in force supervisor approval which had effect immediately before the commencement of the new Act, are taken, on that commencement, to be conditions determined or imposed by the Regulatory Authority.

- (2) The conditions are taken to have been imposed on the date that they were imposed by the Director-General under the repealed provisions.
- (3) This clause does not prevent the imposition of new conditions or the variation of conditions.

25 Suspended licences and approvals

- (1) A service provider licence, children's service approval or supervisor approval that was the subject of a suspension immediately before the commencement of the new Act is taken to be an in force service provider licence, in force children's service approval or in force supervisor approval (as the case requires) for the purposes of this Part.
- (2) However, the suspension continues to apply in respect of a corresponding provider approval, service approval or supervisor certificate (as the case requires).

26 Compliance notices

- (1) Division 1 of Part 5 of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* continues to apply in respect of a compliance notice issued by the Director-General before the repeal of that Division.
- (2) The functions of the Director-General under that Division with respect to a compliance notice are to be exercised by the Regulatory Authority.

27 Enforceable undertakings

A written undertaking accepted by the Director-General under Division 2 of Part 5 of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is taken, on the commencement of the new Act, to be a written undertaking accepted by the Regulatory Authority under section 180 of the National Law Alignment Provisions.

28 General saving

Any other thing done or omitted by the Director-General under the repealed provisions which continued to have effect immediately before the repeal of the repealed provisions is taken, on the commencement of the new Act, to have been done or omitted by the Regulatory Authority.

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29 Changes to fees

The amendment made by the *Children (Education and Care Services) Supplementary Provisions Amendment Regulation 2011* to Schedule 1B (specifying new fees for applications and approvals) applies:

- (a) to any application for a service approval that is made on or after the commencement of that Regulation, and
- (b) to an annual fee that becomes due and payable on or after the commencement of that Regulation (including in relation to service approvals granted before the commencement of that Regulation).

30 Reviews by Administrative Decisions Tribunal

The amendment made by the new Act to section 29 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* does not apply in respect of an application to the Administrative Decisions Tribunal made before the commencement of that amendment.

31 No effect on transitional arrangements under National Law

Nothing in this Part affects the application of the National Law or the National Law Regulations to service provider licences, children's service approvals and supervisor approvals.

Note. For example, in force service provider licences are also recognised under the transitional arrangements for the National Law.

[103] Dictionary

Omit the definitions of *approval*, *approved children's service*, *authorised supervisor*, *centre based children's service*, *children's service*, *children's service approval*, *children's services register*, *compliance notice*, *entity*, *excursion*, *family day care carer*, *family day care children's service*, *family day care register*, *full time place*, *home based children's service*, *home based licensee*, *home of a family day care carer*, *home of a home based licensee*, *licence* or *service provider licence*, *licensed service provider*, *licensee*, *majority shareholder*, *mobile children's service*, *parent*, *premises of a centre based children's service*, *premises of a children's service*, *premises of a mobile children's service*, *school based children's service*, *supervisor approval* and *the Act*.

[104] Dictionary

Insert in alphabetical order:

education and care service means a State regulated education and care service.

excursion means an activity carried out for a recreational or educational purpose:

- (a) in the case of a centre based or mobile education and care service, under the supervision of one or more members of staff of the service at a place other than the premises of the service, and
- (b) in the case of a home based education and care service, under the supervision of the home based service provider at a place other than the home of the home based service provider.

home based service provider means the approved provider of a home based education and care service.

home of a home based service provider means the premises at which the approved provider of a home based education and care service resides for most of the time.

National Law Regulations means the national regulations made under the National Law, as in force from time to time.

nominated supervisor of an education and care service means a certified supervisor nominated as the nominated supervisor of the service.

parent of a child has the same meaning as in the National Law Alignment Provisions.

premises of a centre based education and care service means the premises at which a centre based education and service is provided as specified in the service approval for the service, and includes any part of those premises.

premises of a mobile education and care service means any premises at which a mobile education and care service is provided from time to time as specified in the service approval for the service, and includes any part of those premises.

premises of an education and care service means:

- (a) in relation to a centre based education and care service, the premises of the service, and
- (b) in relation to a mobile education and care service, the premises of the service, and
- (c) in relation to a home based education and care service, the home of the home based service provider.

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prescribed modifications—see Division 5 of Part 2.

school based education and care service means a State regulated education and care service that is conducted by a school within the meaning of the *Education Act 1990*.

the Act means the *Children (Education and Care Services) Supplementary Provisions Act 2011*.