

Education and Care Services National Amendment Regulations 2013

under the

Education and Care Services National Law

The Standing Council on School Education and Early Childhood has made the following regulations under sections 301 and 324 of the *Education and Care Services National Law* as applied by the law of the States and Territories.

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Secretary
Standing Council on School Education
and Early Childhood

30 July 2013

Education and Care Services National Amendment Regulations 2013

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Education and Care Services National Law

**Education and Care Services National Amendment
Regulations 2013**

1 Title

These Regulations may be cited as the *Education and Care Services National Amendment Regulations 2013*.

2 Authorising provisions

These Regulations are made under sections 301 and 324 of the *Education and Care Services National Law*.

3 Commencement

These Regulations commence on 1 September 2013.

4 National Regulations

In these Regulations the Education and Care Services National Regulations are called the National Regulations.

5 Commencement

At the foot of regulation 3 of the National Regulations **insert**—

"Note

The commencement dates for the *Education and Care Services National Regulations 2012* of Western Australia were—

- (a) regulations 1 and 3, 25 July 2012;
- (b) the rest of the regulations, 1 August 2012."

6 Definitions

- (1) In regulation 4(1) of the National Regulations after the definition of *responsible person* insert—

"*safety screening clearance* means a safety screening clearance issued by the Department of Education of Tasmania;"

- (2) In regulation 4(1) of the National Regulations, at the foot of the definition of *scheme commencement day* insert—

Note

The scheme commencement day for Western Australia was 1 August 2012—see the definition of *scheme commencement day* in regulation 4 of the *Education and Care Services National Regulations 2012* of Western Australia."

- (3) In regulation 4(1) of the National Regulations after the definition of *working directly with children* insert—

"*working with children check number* has the same meaning as it has in the *Child Protection (Working with Children) Act 2012* of New South Wales;"

- (4) After regulation 4(1) of the National Regulations insert—

"(1A) A requirement under these Regulations applying in relation to a stated number of children applies each time there is the stated number of children or a part of the stated number.

Example

There are 30 children aged 36 months or over (not including children over preschool age) at a centre-based service. Regulation 123(1)(c) requires 1 educator for each 11 children. In this case 3 educators would be required."

7 Services that are not education and care services

At the foot of regulation 5(2)(b) of the National Regulations **insert**—

"Note

Paragraph (b) does not apply in Western Australia—see regulation 5(2)(b) of the *Education and Care Services National Regulations 2012* of Western Australia."

8 New regulation 9 substituted

For regulation 9 of the National Regulations **substitute**—

"9 Prescribed entities

For the purposes of paragraph (e) of the definition of *person* in section 5(1) of the Law, the following are prescribed entities—

- (a) the Catholic Education Commission of Western Australia;
- (b) a body politic."

9 Meaning of *serious incident*

(1) For regulation 12(b) of the National Regulations **substitute**—

"(b) any incident involving serious injury or trauma to, or illness of, a child while being educated and cared for by an education and care service—

- (i) which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or

Examples

Whooping cough, broken limb, anaphylaxis reaction.

(ii) for which the child attended, or ought reasonably to have attended, a hospital;".

(2) At the end of regulation 12 of the National Regulations **insert**—

"Note

Regulation 12(b)(i) does not apply in this form in Western Australia—see regulation 12(b)(i) of the *Education and Care Services National Regulations 2012* of Western Australia."

10 Application for provider approval

(1) In regulation 14 of the National Regulations—

(a) in paragraph (f)—

(i) before "if the participating jurisdiction" **insert** "except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,";

(ii) in subparagraph (ii) for "law; or" **substitute** "law;";

(iii) subparagraph (iii) is **revoked**;

(b) after paragraph (f) **insert**—

"(fa) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;

(fb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;

- (fc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's safety screening clearance;"
 - (c) in paragraph (h), before "a criminal history statement" **insert** "if a criminal history record check has been provided under paragraph (g)(ii)".
- (2) In regulation 20 of the National Regulations—
- (a) in paragraph (g)—
 - (i) before "if the participating jurisdiction" **insert** "except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,";
 - (ii) in subparagraph (ii) for "law; or" **substitute** "law;"
 - (iii) subparagraph (iii) is **revoked**;
 - (b) after paragraph (g) **insert**—
 - "(ga) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;
 - (gb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;
 - (gc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's safety screening clearance;"
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(c) in paragraph (i), before "a criminal history statement" **insert** "if a criminal history record check has been provided under paragraph (h)(ii),".

(3) In regulation 22 of the National Regulations—

(a) in paragraph (g)—

(i) before "if the participating jurisdiction" **insert** "except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,";

(ii) in subparagraph (ii) for "law; or" **substitute** "law;";

(iii) subparagraph (iii) is **revoked**;

(b) after paragraph (g) **insert**—

"(ga) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;

(gb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;

(gc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's safety screening clearance;"

(c) in paragraph (i), before "a criminal history statement" **insert** "if a criminal history record check has been provided under paragraph (h)(ii),".

11 Additional information about proposed education and care service premises

- (1) In regulation 25 of the National Regulations for "In addition" **substitute** "(1) Subject to subregulation (2), in addition".
- (2) At the end of regulation 25 of the National Regulations **insert**—
 - "(2) A regulatory authority may determine that the information set out in subregulation (1)(b) or (g) is not required to be provided if the approved provider is seeking—
 - (a) to relocate the education and care service to alternative premises for not more than 12 months; or
 - (b) to locate the education and care service on a school site."

12 Annual fees

At the foot of regulation 33 of the National Regulations **insert**—

"Note

In Western Australia the due date for the payment of a relevant annual fee for 2012 is on or before 31 December 2012—see regulation 33 of *Education and Care Services National Regulations 2012* of Western Australia."

13 Applications for supervisor certificates

- (1) In regulation 46(1) of the National Regulations—
 - (a) in paragraph (f)—
 - (i) before "the following" **insert** "except in the case of an application to the New South Wales Regulatory Authority, the Queensland Regulatory Authority or the Tasmanian Regulatory Authority,";
 - (ii) subparagraph (iii) is **revoked**;

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- (b) in paragraph (f)(iv)(D) for "applicant." **substitute** "applicant;"
 - (c) after paragraph (f) **insert**—
 - "(g) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;
 - (h) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;
 - (i) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's safety screening clearance."
 - (2) In regulation 46(2) of the National Regulations for "management and control" **substitute** "management or control".

14 Assessing approved education and care services

At the foot of regulation 63(1)(a)(iii)(B) of the National Regulations **insert**—

"Note

The date specified in sub-subparagraph (B) does not apply in Western Australia. The applicable date in Western Australia is 1 August 2012—see regulation 63(1)(a)(iii)(B) of the *Education and Care Services National Regulations 2012* of Western Australia."

15 Emergency and evacuation procedures

For regulation 97(3)(a) of the National Regulations **substitute**—

- "(a) in the case of a centre-based service, the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present at the service on the day of the rehearsal and the responsible person in relation to the service who is present at the time of the rehearsal; and
- (ab) in the case of a family day care service, the emergency and evacuation procedures are rehearsed every 3 months by each family day care educator and the children being educated and cared for by the family day care educator on that day; and".

16 Children leaving the education and care service premises

At the foot of regulation 99 of the National Regulations **insert**—

"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*."

17 Space requirements

- (1) After regulation 107(5) of the National Regulations **insert**—

- "(6) In this regulation a reference to a child does not include—
 - (a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or

-
- (b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6)."
 - (2) After regulation 108(5) of the National Regulations **insert**—
 - "(6) In this regulation a reference to a child does not include—
 - (a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or
 - (b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6)."

18 Educator to child ratios—centre-based services

After regulation 123(4) of the National Regulations **insert**—

- "(5) In subregulations (1) and (2) a reference to children does not include a child who is, or 2 or more children from the same family who are, educated and cared for at a centre-based service in an emergency for a period of not more than 2 consecutive days on which the service operates.

Examples

- 1 A child is determined to be in need of protection under a child protection order.
 - 2 The parent of a child needs urgent health care that prevents them caring for the child.
- (6) An approved provider of a centre-based service must not permit an additional child or additional children to be educated and cared for at the service in an emergency in the circumstances set out in subsection (5) unless the approved provider is satisfied on reasonable grounds that this will not affect
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the health, safety and wellbeing of all the children attending the service."

19 Requirements for educators who are early childhood teachers

(1) After regulation 129(2) of the National Regulations, **insert**—

"(3) In this Division a reference to a number of children being educated or cared for by a centre-based service does not include a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5)."

(2) In regulation 131(1) of the National Regulations before "caring" **insert** "educating or".

20 Additional information for application for determination of equivalent qualification

(1) In regulation 139(1)(a) of the National Regulations for "regulations 140 to 143" **substitute** "regulations 140, 141(1), 142 and 143".

(2) In regulation 140(j)(i)(A) and (ii) of the National Regulations **omit** "primary and".

(3) In regulation 141 of the National Regulations before "The following documents" **insert** "(1)".

(4) Regulation 141(c) of the National Regulations is **revoked**.

(5) At the end of regulation 141 of the National Regulations **insert**—

"(2) If the qualification was awarded, or the educational institution was attended, in a country other than Australia, the applicant must, at the request of the National Authority, give the National Authority a certification of the Australian Qualification Framework level of the qualification from—

- (a) the Australian Education International-National Office of Overseas Skills Recognition, located in the Department of Education, Employment and Workplace Relations of the Commonwealth; or
 - (b) Trades Recognition Australia, located in the Department of Education, Employment and Workplace Relations of the Commonwealth; or
 - (c) an overseas qualification unit, or other unit responsible for recognising overseas qualifications, of the State or Territory where the applicant resides.".
- (6) In regulation 143 of the National Regulations after "the application" **insert** "or otherwise to the National Authority".

21 Records

- (1) For regulation 146(d) of the National Regulations **substitute**—
- "(d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
 - (e) if the nominated supervisor has provided proof as permitted by regulation 46 of the supervisor's current teacher registration under an education law of a participating jurisdiction, a record of the identifying number of the teacher registration and the expiry date of that registration;
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- (f) in relation to Tasmania, a record of the identifying number of the nominated supervisor's safety screening clearance and the expiry date of that clearance."
- (2) For regulation 147(d) of the National Regulations **substitute**—
- "(d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
 - (e) except in the case of New South Wales, Queensland and Tasmania, if the staff member has provided proof of the staff member's current teacher registration under an education law of a participating jurisdiction, a record of the identifying number of the teacher registration and the expiry date of that registration;
 - (f) in relation to Tasmania, a record of the identifying number of the staff member's safety screening clearance and the expiry date of that clearance."
- (3) In regulation 163(4) of the National Regulations for "The approved provider" **substitute** "Except in the case of New South Wales, Queensland, Tasmania or Victoria, the approved provider".
- (4) After regulation 163(4) of the National Regulations **insert**—
- "(4A) In New South Wales or Queensland, the approved provider must consider the person's current working with children check or working with children card.
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- (4B) In Victoria, the approved provider must consider the person's current working with children check or current teacher registration.
 - (4C) In Tasmania, the approved provider must consider the person's safety screening clearance."

22 Prescribed information to be notified to Regulatory Authority

- (1) After regulation 175(2)(c) of the National Regulations **insert**—
 - "(ca) the attendance at the approved education and care service of any additional child or children being educated and cared for in an emergency in the circumstances set out in regulation 123(5), including—
 - (i) a description of the emergency; and
 - (ii) a statement by the approved provider that the approved provider had taken into account the safety, health and wellbeing of all the children attending the education and care service when deciding to provide education and care to the additional child or children."
- (2) After regulation 176(2)(b) of the National Regulations **insert**—
 - "(ba) in the case of a notice under regulation 175(2)(ca), within 24 hours of the commencement of the attendance of the child or children at the education and care service;"

23 FOI Act modification

In regulation 208(c) of the National Regulations for "principal executive" **substitute** "principal officer".

24 Quality improvement plans

At the foot of regulation 238 of the National Regulations **insert**—

Notes

- 1 The date specified in subregulation (1)(a) does not apply in Western Australia. The applicable date in Western Australia for the preparation of quality improvement plans is 30 November 2012—see regulation 238(1)(a) of the *Education and Care Services National Regulations 2012* of Western Australia.
- 2 Western Australia has replaced subregulation (3) with the following—
 - "(3) Regulation 55(2) applies to the approved provider of an education and care service for which a service approval is granted under the Law before 31 August 2012 as if it required the quality improvement plan to be submitted to the Regulatory Authority on or before—
 - (a) for all participating jurisdictions other than Western Australia—30 April 2012; and
 - (b) for Western Australia—30 November 2012."

See regulation 238(3) of the *Education and Care Services National Regulations 2012* of Western Australia.

25 Persons taken to hold an approved early childhood teaching qualification

In regulation 241 of the National Regulations for "*Queensland College of Teaching*" (wherever occurring) **substitute** "*Queensland College of Teachers*".

26 Persons taken to be early childhood teachers

In regulation 242(2)(a) of the National Regulations before "early" **insert** "approved".

27 New regulation 243A inserted

After regulation 243 of the National Regulations
insert—

"243A Persons taken to hold an approved diploma level education and care qualification for regulation 128 in Queensland

Without limiting regulation 243, a person is taken to hold an approved diploma level education and care qualification for the purposes of regulation 128 if, immediately before the scheme commencement day, the person, in Queensland, held a qualification that is published under regulation 137(2)(d) in the list of qualifications and former qualifications for family day care coordinators."

28 Person taken to hold approved first aid qualification

At the foot of regulation 245(2) of the National Regulations **insert—**

"Note

The date specified in subregulation (2)(a) does not apply in Western Australia. The applicable date in Western Australia is 31 July 2013—see regulation 245(2)(a) of the *Education and Care Services National Regulations 2012* of Western Australia."

29 Anaphylaxis training

At the foot of regulation 246(2) of the National Regulations **insert—**

"Note

The date specified in subregulation (2) does not apply in Western Australia. The applicable date in Western Australia is 1 August 2013—see regulation 246(2) of the *Education and Care Services National Regulations 2012* of Western Australia."

30 Asthma management training

At the foot of regulation 247(2) of the National Regulations **insert**—

"Note

The date specified in subregulation (2) does not apply in Western Australia. The applicable date in Western Australia is 1 August 2013—see regulation 247(2) of the *Education and Care Services National Regulations 2012* of Western Australia."

31 New Subdivision 3 inserted in Division 3 of Part 7.2

After Subdivision 2 of Division 3 of Part 7.2 of the National Regulations **insert**—

"Subdivision 3—Criminal history record checks

269A Criminal history clearance—staff members

- (1) The approved provider of an education and care service must not engage a person as a staff member of that service unless—
 - (a) the approved provider has undertaken a criminal history records check in relation to the person; or
 - (b) the person has provided the approved provider with—
 - (i) the person's current working with vulnerable people check; or
 - (ii) proof of current registration as a teacher under the education law of the Australian Capital Territory.

Penalty: \$2000.

- (2) A person must not work as a staff member of an approved education and care service unless the staff member—
- (a) has consented to the approved provider undertaking a criminal history records check in relation to the person within the previous 3 years; or
 - (b) the person has a current working with vulnerable people check and has provided the approved provider with that check; or
 - (c) the person has a current registration as a teacher under the education law of the Australian Capital Territory and has provided the approved provider with proof of that registration.

Penalty: \$2000.

- (3) The staff record must also include, in relation to a staff member, a record of the identifying number of any police record check or current teacher registration obtained or provided under this regulation and the date of expiry of that check or registration.
- (4) This regulation ceases to apply on 7 November 2013."

32 General qualification requirements for educators— children over pre-school age

In regulation 299(4) of the National Regulations **omit** ", in addition to the requirements of subregulation (2),".

33 Educator to child ratios

- (1) In regulation 301(2) of the National Regulations—
 - (a) in paragraph (c) for "not more than 6 years" **substitute** "under 7 years";
 - (b) in paragraph (d) for "not more than 6 years" **substitute** "under 7 years";
 - (c) in paragraph (e) for "not more than 13 years" **substitute** "under 13 years".
- (2) In regulation 310(2) of the National Regulations—
 - (a) in paragraph (c) for "not more than 6 years" **substitute** "under 7 years";
 - (b) in paragraph (d) for "not more than 6 years" **substitute** "under 7 years";
 - (c) in paragraph (e) for "not more than 13 years" **substitute** "under 13 years".

34 Number of children who can be educated and cared for by a family day care educator

After regulation 305(3) of the National Regulations **insert**—

- "(4) 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 or an approved family day care venue at any one time.
- (5) Subregulation (4) does not apply to children visiting a family day care residence or an approved family day care venue as part of an excursion.

Note

A visiting family day care educator must do a risk assessment for the excursion under regulation 100.

- (6) Despite subregulations (2) to (5), the approved provider of a family day care service may approve, in writing, a family day care educator to educate and care for more than 7 children, or more than 4 children who are preschool age or under, at any one time, in exceptional circumstances.
 - (7) For the purposes of subregulation (6), exceptional circumstances exist if—
 - (a) all the children being educated and cared for by the family day care educator are siblings in the same family; or
 - (b) a child to be educated and cared for is determined to be in need of protection under a child protection law and the family day care educator is determined to be the best person to educate and care for the child; or
 - (c) the family day care residence or approved family day care venue is in a rural or remote area and no alternative education and care service is available.
 - (8) The approved provider must notify the regulatory authority in writing within 24 hours after approving a family day care educator to educate and care for more than 7 children, or more than 4 children who are preschool age or under, at any one time.
 - (9) The notice under subregulation (8) must specify—
 - (a) the total number of children to be educated and cared for by the family day care educator; and
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- (b) the proposed duration of the education and care to be provided to the additional children; and
 - (c) the exceptional circumstances on which the approval was based.
- (10) The approved provider who gave an approval under subregulation (6) must provide the regulatory authority with any additional information requested by the authority to enable the authority to satisfy itself as to the health, safety and wellbeing of the children being educated and cared for."

35 Early childhood teachers—preschools—South Australia

After regulation 324(4) of the National Regulations **insert**—

- "(4A) If an early childhood teacher is absent from a preschool because of short-term illness or leave, the following persons may be taken for the purposes of this regulation to be an early childhood teacher during that absence—
- (a) a person who holds an approved diploma level education and care qualification;
 - (b) a person who holds a qualification in primary teaching.
- (4B) To avoid doubt, subregulation (4A) does not apply in case of a period of leave exceeding 12 weeks."

36 Early childhood teachers—centre-based services—South Australia

- (1) In the heading to regulation 332 of the National Regulations for "**80 children**" **substitute "81 children"**.
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- (2) In regulation 332(1)(a) of the National Regulations for "80 children" **substitute** "81 children".

**37 Centre-based services indoor space requirements—
South Australia**

- In regulation 337(1)(a) of the National Regulations for "1 January 1998" **substitute** "3 April 1999".

38 Educator to child ratios—Tasmania

- (1) In regulation 346(2) of the National Regulations for "aged 24 months or more but less than 72 months" **substitute** "over 24 months but less than 72 months of age".
- (2) For regulation 346(3) of the National Regulations **substitute**—
- "(3) The educator to child ratio for that service is 1 educator to 7 children over 24 months but less than 72 months of age if not more than 3 of the children are less than 36 months of age."
- (3) In regulation 346(4) of the National Regulations for "123(1)(c) and (d)" **substitute** "123(1)(b) and (c)".

39 Number of children who can be educated and cared for—family day care educators (Tasmania)

- (1) After regulation 350(4) of the National Regulations **insert**—
- "(5) Subregulation (4) only applies while the family day care educator is providing the education and care with the declared approved service that granted the extended registration and only while the extended registration is in force.
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- (6) The approved provider of the declared approved service that granted an extended registration referred to in subregulations (4) and (5) may cancel the extended registration if the provider considers it appropriate to do so."

40 Definition

At the foot of the definition of *provided by a school* in regulation 368 of the National Regulations **insert**—

Note

Western Australia has replaced this definition with the following definition—

"provided by a school includes provided by a recognised school system or the Chief Executive Officer of the department referred to in section 228 of the *School Education Act 1999* of Western Australia or the Minister administering that Act;"

See regulation 368 of the *Education and Care Services National Regulations 2012* of Western Australia.'

41 Note re additional regulation 374A

After regulation 374 of the National Regulations **insert**—

Note

The *Education and Care Services National Regulations 2012* of Western Australia include an additional regulation after regulation 374 as follows—

"374A Educator to child ratios—centre-based services during lunch periods

- (1) In this regulation—

lunch period means a period of not more than 3 hours in any day during which educators at centre-based services are permitted to have lunch breaks.

- (2) This regulation applies in place of regulation 123 until 1 August 2014 to a centre-based service during lunch periods.

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- (3) During lunch periods, a centre-based service that educates and cares for children who are 5 years of age or under may meet the educator to child ratio for those children with a number of educators that is not less than 60 per cent of the number of educators that would otherwise be required under regulation 123."!
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-