

Education and Care Services National Amendment Regulations 2014

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.

STEVE METCALFE
Secretary
Standing Council on School Education
and Early Childhood

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Education and Care Services National Law Act 2010

**Education and Care Services National Amendment
Regulations 2014**

1 Title

These Regulations may be cited as the *Education and Care Services National Amendment Regulations 2014*.

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 June 2014.

4 National Regulations

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

5 Definitions

In regulation 4(1) of the National Regulations—

(a) in the definition of *working with vulnerable people check*, for "jurisdiction." substitute "jurisdiction;"

(b) **insert** the following definition—

"working with vulnerable people registration means a registration issued to a person under the *Registration to Work With Vulnerable People Act 2013*

of Tasmania allowing the person to be engaged in childcare services."

6 Meaning of *actively working towards a qualification*

In regulation 10 of the National Regulations—

(a) in paragraph (b)(iv)(B), for "National Authority." **substitute** "National Authority; or";

(b) after paragraph (b)(iv)(B) **insert**—

"(C) has completed the percentage of total units of study required for completion of an approved early childhood teaching qualification determined by the National Authority."

7 Meaning of *serious incident*

The note at the foot of regulation 12 of the National Regulations is **revoked**.

8 Application for provider approval by individual

In regulation 14(fc) of the National Regulations, after "safety screening clearance" **insert** "or working with vulnerable people registration".

9 Application by individual executor for provider approval

In regulation 20(gc) of the National Regulations, after "safety screening clearance" **insert** "or working with vulnerable people registration".

10 Application by individual for provider approval on incapacity of approved provider

In regulation 22(gc) of the National Regulations, after "safety screening clearance" **insert** "or working with vulnerable people registration".

11 Annual fees

The note at the foot of regulation 33 of the National Regulations is **revoked**.

12 Application for supervisor certificate

In regulation 46(1)(i) of the National Regulations, after "safety screening clearance" **insert** "or working with vulnerable people registration".

13 Issue of supervisor certificate—supervisor in prescribed class

In regulation 50(b) of the National Regulations, before "the name of the school" **insert** "if applicable,".

14 Quality improvement plans

- (1) In regulation 55(1) of the National Regulations, after "ensure that" **insert** ", within 3 months of the grant of the service approval,".
- (2) In regulation 55(2) of the National Regulations, for "within 3 months of the grant of the service approval" **substitute** "on request".

15 Fencing

After regulation 104(2) of the National Regulations **insert**—

- (3) This regulation does not apply in respect of a family day care residence or a family day care venue if all the children being educated and cared for at that residence or venue as part of a family day care service are over preschool age."

16 Glass

For regulation 117(1)(b) of the National Regulations **substitute**—

"(b) either—

- (i) is of or below the height above floor level, specified by AS 1288-2006 Glass in buildings—Selection and installation, approved on behalf of the Council of Standards Australia, published on 16 January 2006, incorporating Amendments Nos 1 and 2; or

Note

The height above floor level specified in subparagraph (i) does not apply in Western Australia. The applicable height above floor level is 1 metre—see regulation 117(1)(b) of the *Education and Care Services National Regulations 2012* of Western Australia.

- (ii) if the residence or family day care venue was approved before 1 June 2014, is 0.75 metres or less above floor level."

17 Educator to child ratios—centre-based services

At the foot of regulation 123 of the National Regulations **insert**—

Note

The *Education and Care Services National Regulations 2012* of Western Australia include an extra subregulation before subregulation (1) as follows—

"(1A) In this regulation—

emergency, in relation to a child, means a serious and unexpected short term care emergency that requires the child to be provided with immediate education and care.

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.".'.

18 Centre-based services—general educator qualifications

(1) After regulation 126(1) of the National Regulations **insert**—

"(1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.

(1B) Subregulation (1A) does not apply in relation to New South Wales or South Australia."

(2) In regulation 126(3) of the National Regulations, after "that teacher" **insert** ", or a person taken to be an early childhood teacher under regulation 135(1)(b),".

19 First aid qualifications

For regulation 136(2) of the National Regulations **substitute**—

"(2) If children are being educated and cared for at service premises on the site of a school, it is sufficient for the purposes of subregulation (1) if the following are in attendance at the school site and immediately available in an emergency—

- (a) an educator referred to in subregulation (1)(a) or at least one staff member of the school who holds a current approved first aid qualification;

- (b) an educator referred to in subregulation (1)(b) or at least one staff member of the school who has undertaken current approved anaphylaxis management training;
- (c) an educator referred to in subregulation (1)(c) or at least one staff member of the school who has undertaken current approved emergency asthma management training."

20 Approval of qualifications

For regulation 137(4) of the National Regulations **substitute**—

- "(4) The National Authority may publish on its website the following for the purposes of the definition of *actively working towards* a qualification—
- (a) units of approved certificate III level education and care qualifications;
 - (b) the percentage of total units required for completion of an approved early childhood teaching qualification."

21 Additional information for application for determination of equivalent qualification

At the foot of regulation 141(2)(b) of the National Regulations **insert**—

Note

Western Australia has replaced paragraph (b) with the following—

- "(b) Trades Recognition Australia, located in the Department of Industry of the Commonwealth; or"

See regulation 141(2)(b) of the *Education and Care Services National Regulations 2012* of Western Australia.'

22 Nominated supervisor

For regulation 146(f) of the National Regulations
substitute—

"(f) in relation to Tasmania, a record of the identifying number of the nominated supervisor's safety screening clearance or working with vulnerable people registration and the expiry date of that clearance or registration."

23 Staff members

For regulation 147(f) of the National Regulations
substitute—

"(f) in relation to Tasmania, a record of the identifying number of the staff member's safety screening clearance or working with vulnerable people registration and the expiry date of that clearance or registration."

24 Access for parents

For regulation 157(4)(b) of the National Regulations
substitute—

"(b) the provider, supervisor or family day care educator reasonably believes that permitting the parent's entry would contravene a court order."

25 Health information to be kept in enrolment record

In regulation 162 of the National Regulations—

(a) in paragraph (g), for "effect." **substitute** "effect; and";

(b) after paragraph (g) **insert—**

"(h) in relation to New South Wales, certificates for immunisation or exemption for the child, as required under section 87(1), (2) and (3) of the

Public Health Act 2010 of New South Wales."

26 Residents at family day care residence and family day care educator assistants to be fit and proper persons

In regulation 163(4C) of the National Regulations, after "safety screening clearance" **insert** "or working with vulnerable people registration".

27 Prescribed enrolment and other documents to be kept by approved provider

At the foot of regulation 177(1) of the National Regulations **insert**—

Note

Western Australia includes an extra paragraph after paragraph (d) as follows—

"(da) a record of a decision about a child, that affects educator to child ratios at a centre-based service, made under regulation 123(7);".

See regulation 177(1)(da) of the *Education and Care Services National Regulations 2012* of Western Australia.

28 Register of certified supervisors

In regulation 231(a)(iii) of the National Regulations, before "the name of the school" **insert** "if applicable,".

29 New Division 1A of Part 7.1 of Chapter 7 inserted

After regulation 238 of the National Regulations **insert**—

"Division 1A—Prescribed classes of persons for grant of supervisor certificate

238A Prescribed classes of persons for grant of supervisor certificate

(1) This regulation applies until 31 December 2016.

- (2) The Regulatory Authority may grant a supervisor certificate under section 114 of the Law to a person in one of the following classes of persons—
 - (a) a person employed or engaged by an approved provider to be responsible for the day to day management of an approved education and care service;
 - (b) a family day care co-ordinator;
 - (c) a person employed or engaged by an approved provider to exercise supervisory and leadership responsibilities in relation to a section of an approved education and care service providing education and care to children."

30 New regulation 239A inserted

After regulation 239 of the National Regulations
insert—

"239A Centre-based services in remote and very remote areas—attendance of early childhood teachers

- (1) This regulation applies until 1 January 2018 to a centre-based service that is located in a remote area or a very remote area.
- (2) The centre-based service may meet the requirements of regulation 132, 133 or 134 for attendance of an early childhood teacher if the service has access to an early childhood teacher working with the service at least 20 per cent of the time that the service provides education and care.

- (3) To comply with subregulation (2), the early childhood teacher may be working with the service by means of information communication technology.
- (4) For the purposes of this regulation, the period that an early childhood teacher works with the centre-based service may be calculated on a quarterly basis.
- (5) In this regulation and regulation 240—

ARIA+ score means the score calculated in accordance with the ARIA+ Index, produced by the University of Adelaide;

remote area, in relation to the location of a centre-based service, means a geographic area that is Remote Australia (average ARIA+ score greater than 5.92 but less than or equal to 10.53) in the *Australian Statistical Geography Standard: Volume 5 - Remoteness Structure*. Canberra, Australian Capital Territory: Australian Bureau of Statistics. Cat No. 1270.0.55.005;

very remote area, in relation to the location of a centre-based service, means a geographic area that is Very Remote Australia (ARIA+ score greater than 10.53) in the *Australian Statistical Geography Standard: Volume 5 - Remoteness Structure*. Canberra, Australian Capital Territory: Australian Bureau of Statistics. Cat No. 1270.0.55.005."

31 Qualifications for educators—centre-based service

For regulation 240(1) of the National Regulations **substitute—**

- "(1) This regulation applies to a centre-based service—
- (a) if the service is located in a remote area or a very remote area, until 1 January 2018; or
 - (b) otherwise, until 31 December 2015."

32 Persons taken to hold an approved early childhood teaching qualification

For regulation 241(1)(a) of the National Regulations **substitute—**

- "(a) was—
- (i) recognised under the former education and care services law, or for the purposes of a preschool funding program, of any participating jurisdiction as an early childhood teacher; and
 - (ii) employed or engaged in a declared approved service as an early childhood teacher; or"

33 Persons taken to be early childhood teachers

In regulation 242(1) of the National Regulations, for "1 January 2016" **substitute** "1 January 2018".

34 Persons taken to hold an approved diploma level education and care qualification

For regulation 243(a) of the National Regulations
substitute—

"(a) was—

- (i) recognised under the former education and care services law of any participating jurisdiction as a diploma level educator; and
- (ii) employed or engaged in a declared approved service; or".

35 Persons taken to hold an approved certificate III level education and care qualification

For regulation 244(a) of the National Regulations
substitute—

"(a) was—

- (i) recognised under the former education and care services law of any participating jurisdiction as a certificate III level educator; and
- (ii) employed or engaged in a declared approved service; or".

36 Publication where service taken to comply with regulations

In regulation 256(3) of the National Regulations, in the definition of *prescribed regulation*, for "287," **substitute** "287, 325A,".

37 Regulations 264 and 265 substituted

For regulations 264 and 265 of the National Regulations **substitute**—

**"264 General qualifications for educators—
centre-based services**

- (1) Regulation 126(1) applies as modified by this regulation until 31 December 2015.
 - (2) If a qualified educator is not working directly with children or is absent from a centre-based service, the service may meet the requirements under regulation 126(1) by providing the relevant number of full-time equivalent qualified educator positions if—
 - (a) the educator to child ratios are met at all times the service is educating and caring for children; and
 - (b) the number of qualified educators specified in subregulation (3) or (4) (as the case requires) educates and cares for children at all times the service is educating and caring for children.
 - (3) For the purposes of subregulation (2)(b), the number of qualified educators for a centre-based service (other than a preschool) is—
 - (a) for a centre-based service providing education and care to less than 25 children, at least one qualified educator;
 - (b) for a centre-based service providing education and care to 25 to 59 children, at least 2 qualified educators;
 - (c) for a centre-based service providing education and care to 60 to 80 children, at least 3 qualified educators;
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- (d) for a centre-based service providing education and care to more than 80 children, at least 4 qualified educators.
- (4) For the purposes of subregulation (2)(b), the number of qualified educators for a preschool is—
 - (a) for a preschool providing education and care to 50 children or fewer, at least one qualified educator;
 - (b) for a preschool providing education and care to 51 to 100 children, at least 2 qualified educators.
- (5) On request by the Regulatory Authority, an approved provider of a centre-based service must demonstrate that the approved provider has taken into account the best interests of children (including provision of adequate supervision) in relation to replacement of qualified educators.
- (6) This regulation does not apply if the qualified educator is absent from the centre-based service—
 - (a) in case of an unexpected absence, for more than 5 consecutive days; or
 - (b) in case of pre-arranged leave for recreation, illness or other personal leave, for any period.

265 Required qualifications to be a qualified educator—unexpected absence of qualified educator

For the purposes of regulation 264(3) and (4), an educator is qualified if he or she—

- (a) holds or is actively working towards an approved diploma level education and care qualification; or
- (b) holds an approved early childhood teaching qualification; or
- (c) is taken to be an early childhood teacher under regulation 135 or 242; or
- (d) holds a primary teaching qualification."

38 Early childhood teachers—children preschool age or under

In regulation 272(1) of the National Regulations, for "regulations 131 to 135" **substitute** "regulations 131 to 134".

39 Regulation 313 revoked

Regulation 313 of the National Regulations is **revoked**.

40 Educator to child ratios when educator or early childhood teacher on rest pause

In regulation 314 of the National Regulations, for "declared approved service" (wherever occurring) **substitute** "centre-based service".

41 Access to or attendance of early childhood teacher on rest pause

In regulation 315 of the National Regulations, for "declared approved service" (wherever occurring) **substitute** "centre-based service".

42 Educator to child ratios when educator or early childhood teacher absent for 5 minutes or less

In regulation 316 of the National Regulations, for "declared approved service" (wherever occurring) **substitute** "centre-based service".

43 Access to or attendance of early childhood teacher absent for 5 minutes or less

In regulation 317 of the National Regulations, for "declared approved service" **substitute** "centre-based service".

44 New Division 3A of Part 7.6 inserted

After Division 3 of Part 7.6 of the National Regulations **insert—**

"Division 3A—Minimum number of educators during short absences

325A Educator to child ratios during short absence of educators

- (1) A centre-based service is taken to meet the relevant educator to child ratio while an educator is not working directly with children if—
 - (a) the educator's total periods away from working directly with children do not exceed 30 minutes in a day; and
 - (b) during each period away from working directly with children, the educator is available to attend to children immediately if required.
- (2) For the purpose of a rating assessment under Part 5 of the Law, the centre-based service is taken to comply with regulation 123.

Note

See Division 7 of Part 7.1."

45 Safety screening clearance—staff members

- (1) In regulation 344(1) of the National Regulations, for the words and expressions commencing "the Department" and ending at "holds" **substitute** "the staff member holds a working with vulnerable people registration or".
- (2) In regulation 344(2) of the National Regulations, after "he or she holds" **insert** "a working with vulnerable people registration or".

46 Definitions

In regulation 368 of the National Regulations—

- (a) for the definition of *provided by a school* **substitute**—

"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;"

- (b) the note at the foot of the definition of *provided by a school* is **revoked**.
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