

# Education and Care Services National Further Amendment Regulations 2017

under the

Education and Care Services National Law

The Education Council 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.

RICK HARRISON  
Secretary  
Education Council

15 December 2017

## **Education and Care Services National Further Amendment Regulations 2017**

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## **Education and Care Services National Further Amendment Regulations 2017**

### **1 Title**

These Regulations may be cited as the *Education and Care Services National Further Amendment Regulations 2017*.

### **2 Authorising provisions**

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

### **3 Commencement**

- (1) These Regulations (except regulations 5, 6, 16, 17 and 18) commence on 31 December 2017.
- (2) Regulations 5, 6, 16, 17 and 18 commence on 1 February 2018.

### **4 National Regulations**

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

### **5 Significant Improvement Required**

In regulation 59(1) of the National Regulations, for "an unacceptable" **substitute** "a significant".

## **6 New regulation 70A inserted**

Before regulation 71 in Part 3.5 of the National Regulations **insert**—

### **"70A Prescribed rating levels for application for highest rating**

For the purposes of section 152(5) of the Law, an application for the highest rating level may only be made if the approved education and care service is rated at the second highest rating level in each quality area."

## **7 Register of family day care educators, co-ordinators and assistants**

(1) For regulation 153(1)(l) of the National Regulations **substitute**—

"(l) a record of—

- (i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or
- (ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the educator has provided proof of the educator's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or
- (iii) in the case of a service located in Tasmania, the identifying number of the educator's current working with

vulnerable people registration and the expiry date of that registration (if applicable);

- (la) in relation to a check or registration referred to in paragraph (l), the date that the check or registration was sighted by the approved provider or a nominated supervisor of the service;"
- (2) In regulation 153(1)(o)(i) of the National Regulations—
- (a) for "working" (where three times occurring) **substitute** "current working";
- (b) before "teacher registration" **insert** "current".
- (3) For regulation 153(2)(i) of the National Regulations **substitute**—
- "(i) a record of—
- (i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or
- (ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the co-ordinator has provided proof of the co-ordinator's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or

- (iii) in the case of a service located in Tasmania, the identifying number of the co-ordinator's current working with vulnerable people registration and the expiry date of that registration (if applicable);
  - (j) in relation to a check or registration referred to in paragraph (i), the date that the check or registration was sighted by the approved provider or a nominated supervisor of the service."
- (4) For regulation 153(3)(k) of the National Regulations **substitute**—
- "(k) a record of—
- (i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or
  - (ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the educator assistant has provided proof of the educator assistant's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or

- (iii) in the case of a service located in Tasmania, the identifying number of the educator assistant's current working with vulnerable people registration and the expiry date of that registration (if applicable);
- (l) in relation to a check or registration referred to in paragraph (k), the date that the check or registration was sighted by the approved provider or a nominated supervisor of the service."

**Note**

The heading to regulation 153 is to read:

**Register of family day care educators, co-ordinators and educator assistants**

**8 Record of staff engaged or employed by family day care service**

In regulation 154 of the National Regulations, after "record of staff" **insert** "(other than family day care educators, family day care co-ordinators or family day care educator assistants)".

**9 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 "the person's" **insert** "current".

**10 Additional policies and procedures—family day care service**

In regulation 169(2) of the National Regulations—

- (a) in paragraph (a), for "assessment and approval" **substitute** "assessment of proposed family day care venues and proposed family day care residences";

(b) in paragraph (c), after "family day care educators" **insert** ", family day care co-ordinators and family day care educator assistants".

**11 Centre-based services in remote and very remote areas—attendance of early childhood teachers**

For regulation 239A(1) of the National Regulations **substitute**—

"(1) This regulation applies until 1 January 2020 to a centre-based service located in a remote area or a very remote area of a participating jurisdiction other than the Australian Capital Territory or Victoria."

**12 Qualifications for educators—centre-based service**

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

"(a) if the service is located in a remote area or a very remote area of Queensland, Tasmania, South Australia or Western Australia, until 1 January 2020; or"

**Note**

The heading to regulation 240 is to read:

**Centre-based services in remote and very remote areas—qualifications for educators**

**13 Persons taken to be early childhood teachers**

For regulation 242(1) of the National Regulations **substitute**—

"(1) This regulation applies on and after 1 January 2014 and before 1 January 2020 to a participating jurisdiction other than Victoria."



**14 General qualifications for educators—centre-based services**

In regulation 264(1) of the National Regulations, for "31 December 2017" **substitute** "31 December 2020".

**15 Educator to child ratios—children aged 15 months to 24 months**

In regulation 300(4) of the National Regulations, for "31 December 2017" **substitute** "1 January 2020".

**16 New Part 7.11 inserted**

After Part 7.10 of the National Regulations **insert—**

**"Part 7.11—Transitional and savings provisions—Education and Care Services National Further Amendment Regulations 2017**

**395 Definition**

(1) In this Part—

*commencement day* means 1 February 2018.

(2) For the purposes of this Part, an assessment or a reassessment and re-rating is finalised when the National Authority publishes the rating level for the service under section 160 of the Law.

**396 Quality improvement plan held prior to commencement day**

A quality improvement plan that, immediately before the commencement day, was a current quality improvement plan for an approved education and care service continues, on and after the commencement

day, to be a current quality improvement plan for the service for the purposes of these Regulations until the earlier of the following—

- (a) the approved provider for the service next reviews and revises the plan under regulation 56(1)(a);
- (b) the approved provider for the service reviews and revises the plan at the direction of the Regulatory Authority under regulation 56(1)(b).

**397 Assessments commenced prior to commencement day**

If, immediately before the commencement day, the Regulatory Authority had commenced but not finalised an assessment of an education and care service under section 133(1) of the Law, the Regulatory Authority must, on and after the commencement day, continue to conduct the assessment against the National Quality Standard as in force immediately before the commencement day.

**398 Reassessment or partial reassessment commenced prior to commencement day**

- (1) This regulation applies to an approved education and care service if, immediately before the commencement day—
  - (a) the Regulatory Authority had commenced but not finalised a reassessment and re-rating of the education and care service or a reassessment and re-rating of an aspect or element of the education and care service under section 138 of the Law; or

- (b) the Regulatory Authority had decided to commence but had not commenced a reassessment and re-rating of the education and care service or a reassessment and re-rating of an aspect or element of the education and care service on an application under section 139 of the Law.
- (2) Any reassessment and re-rating of the service must, on and after the commencement day, be conducted against the National Quality Standard as in force immediately before the commencement day.

**399 Partial reassessment between the commencement day and the relevant day**

- (1) This regulation applies to an approved education and care service that has not been assessed and rated, or reassessed and re-rated, against the National Quality Standard as in force on and after the commencement day.
- (2) Any reassessment and re-rating of an aspect or element of the education and care service conducted by the Regulatory Authority under section 138 of the Law or on an application under section 139 of the Law on or after the commencement day but before the relevant day must be conducted against the National Quality Standard as in force immediately before the commencement day, whether the reassessment was commenced or the application made before, on or after the commencement day.

- (3) In this regulation, *relevant day* means—
- (a) in relation to an approved education and care service that was assessed and rated before the commencement day, the day that is 6 months after the commencement day; or
  - (b) in relation to an approved education and care service that was assessed and rated after the commencement day, the day that is 6 months after the day on which the rating for the service is published under section 160 of the Law.

**400 Suspension of initial assessment or reassessment commenced prior to commencement day**

- (1) This regulation applies to an approved education and care service if—
- (a) before the commencement day, the Regulatory Authority had commenced—
    - (i) an assessment of the service under section 133(1) of the Law; or
    - (ii) a reassessment and re-rating of the service under section 138 or on an application under section 139 of the Law; and
  - (b) the assessment or reassessment and re-rating was suspended under section 137(1) of the Law, whether that suspension occurred before, on or after the commencement day; and
  - (c) the suspension is lifted on or after the commencement day.

- (2) The Regulatory Authority must, on and after the commencement day, assess or reassess the approved education and care service against the National Quality Standard as in force on and after the commencement day.

**401 Suspension of partial reassessment commenced prior to commencement day**

- (1) This regulation applies to an approved education and care service if—
- (a) the Regulatory Authority had commenced conducting a reassessment and re-rating of an aspect or element of the service before the commencement day; and
  - (b) the reassessment and re-rating was suspended under section 137(1) of the Law, whether that suspension occurred before, on or after the commencement day; and
  - (c) the suspension is lifted on or after the commencement day.
- (2) The Regulatory Authority must, on and after the commencement day, continue to conduct a reassessment against the National Quality Standard as in force immediately before the commencement day.

**402 Prescribed provisional rating level held prior to commencement day**

If, immediately before the commencement day, an approved education and care service held a prescribed provisional rating level, the service continues, on and after the commencement day, to hold that rating level for the purposes of the Law unless or until the service is assessed under section 133(1)

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of the Law and rated under section 135 of the Law.

**403 Prescribed rating level held prior to commencement day**

If, immediately before the commencement day, an approved education and care service held a prescribed rating level, the service continues, on and after the commencement day, to hold that rating level for the purposes of the Law unless or until the service—

- (a) is assessed under section 133(1) of the Law and rated under section 135 of the Law; or
- (b) is reassessed and re-rated under section 138 of the Law or on an application under section 139 of the Law; or
- (c) is awarded the highest rating level under section 155 of the Law."

**17 Schedule 1 substituted**

For Schedule 1 to the National Regulations substitute—

**"SCHEDULE 1—NATIONAL QUALITY STANDARD**

**Quality area 1—Educational program and practice**

The educational program and practice is stimulating, engaging and enhances children's learning and development. In services for children over preschool age the program nurtures the development of life skills and complements children's experiences, opportunities and relationships at school, at home and in the community.

**Standard 1.1—Program**

The educational program enhances each child's learning and development.

**Element 1.1.1—Approved learning framework**

Curriculum decision-making contributes to each child's learning and development outcomes in relation to that child's identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.

**Element 1.1.2—Child-centred**

Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.

**Element 1.1.3—Program learning opportunities**

All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.

**Standard 1.2—Practice**

Educators facilitate and extend each child's learning and development.

**Element 1.2.1—Intentional teaching**

Educators are deliberate, purposeful, and thoughtful in their decisions and actions.

**Element 1.2.2—Responsive teaching and scaffolding**

Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.

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**Element 1.2.3—Child-directed learning**

Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world.

**Standard 1.3—Assessment and planning**

Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.

**Element 1.3.1—Assessment and planning cycle**

Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing, learning, documentation, planning, implementation and reflection.

**Element 1.3.2—Critical reflection**

Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.

**Element 1.3.3—Information for families**

Families are informed about the program and their child's progress.

**Quality area 2—Children's health and safety**

Every child's health and wellbeing is safeguarded and promoted.

**Standard 2.1—Health**

Each child's health and physical activity is supported and promoted.

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**Element 2.1.1—Wellbeing and comfort**

Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.

**Element 2.1.2—Health practices and procedures**

Effective illness and injury management and hygiene practices are promoted and implemented.

**Element 2.1.3—Healthy lifestyle**

Healthy eating and physical activity are promoted and appropriate for each child.

**Standard 2.2—Safety**

Each child is protected.

**Element 2.2.1—Supervision**

At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.

**Element 2.2.2—Incident and emergency management**

Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.

**Element 2.2.3—Child protection**

Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.

**Quality area 3—Physical environment**

The physical environment is safe, suitable and provides a rich and diverse range of experiences which promote children's learning and development.

**Standard 3.1—Design**

The design and location of the premises is appropriate for the operation of a service.

**Element 3.1.1—Fit for purpose**

Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.

**Element 3.1.2—Upkeep**

Premises, furniture and equipment are safe, clean and well maintained.

**Standard 3.2—Use**

The service environment is inclusive, promotes competence and supports exploration and play-based learning.

**Element 3.2.1—Inclusive environment**

Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.

**Element 3.2.2—Resources support play-based learning**

Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play-based learning.

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**Element 3.2.3—Environmentally responsible**

The service cares for the environment and supports children to become environmentally responsible.

**Quality area 4—Staffing arrangements**

Staffing arrangements create a safe and predictable environment for children and support warm, respectful relationships. Qualified and experienced educators and coordinators encourage children's active engagement in the learning program. Positive relationships among educators, coordinators and staff members contribute to an environment where children feel emotionally safe, secure and happy.

**Standard 4.1—Staffing arrangements**

Staffing arrangements enhance children's learning and development.

**Element 4.1.1—Organisation of educators**

The organisation of educators across the service supports children's learning and development.

**Element 4.1.2—Continuity of staff**

Every effort is made for children to experience continuity of educators at the service.

**Standard 4.2—Professionalism**

Management, educators and staff are collaborative, respectful and ethical.

**Element 4.2.1—Professional collaboration**

Management, educators and staff work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.

**Element 4.2.2—Professional standards**

Professional standards guide practice, interactions and relationships.

**Quality area 5—Relationships with children**

Relationships that are responsive, respectful and promote children's sense of security and belonging free them to explore the environment and engage in learning.

**Standard 5.1—Relationships between educators and children**

Respectful and equitable relationships are maintained with each child.

**Element 5.1.1—Positive educator to child interactions**

Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.

**Element 5.1.2—Dignity and rights of the child**

The dignity and rights of every child are maintained.

**Standard 5.2—Relationships between children**

Each child is supported to build and maintain sensitive and responsive relationships.

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**Element 5.2.1—Collaborative learning**

Children are supported to collaborate, learn from and help each other.

**Element 5.2.2—Self-regulation**

Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.

**Quality area 6—Collaborative partnerships with families and communities**

Collaborative relationships with families are fundamental to achieve quality outcomes for children. Community partnerships that focus on active communication, consultation and collaboration also contribute to children's learning and wellbeing.

**Standard 6.1—Supportive relationships with families**

Respectful relationships with families are developed and maintained and families are supported in their parenting role.

**Element 6.1.1—Engagement with the service**

Families are supported from enrolment to be involved in the service and contribute to service decisions.

**Element 6.1.2—Parent views are respected**

The expertise, culture, values and beliefs of families are respected and families share in decision-making about their child's learning and wellbeing.

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**Element 6.1.3—Families are supported**

Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.

**Standard 6.2—Collaborative partnerships**

Collaborative partnerships enhance children's inclusion, learning and wellbeing.

**Element 6.2.1—Transitions**

Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.

**Element 6.2.2—Access and participation**

Effective partnerships support children's access, inclusion and participation in the program.

**Element 6.2.3—Community engagement**

The service builds relationships and engages with its community.

**Quality area 7—Governance and leadership**

Effective leadership contributes to sustained quality relationships and environments that facilitate children's learning and development. Well documented policies and practices that are developed and regularly evaluated in partnership with educators, co-ordinators, staff members and families contribute to the ethical management of the service. There is a focus on continuous improvement.

**Standard 7.1—Governance**

Governance supports the operation of a quality service.

**Element 7.1.1—Service philosophy and purpose**

A statement of philosophy guides all aspects of the service's operations.

**Element 7.1.2—Management systems**

Systems are in place to manage risk and enable the effective management and operation of a quality service.

**Element 7.1.3—Roles and responsibilities**

Roles and responsibilities are clearly defined and understood, and support effective decision-making and operation of the service.

**Standard 7.2—Leadership**

Effective leadership builds and promotes a positive organisational culture and professional learning community.

**Element 7.2.1—Continuous improvement**

There is an effective self-assessment and quality improvement process in place.

**Element 7.2.2—Educational leadership**

The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.

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**Element 7.2.3—Development of professionals**

Educators', co-ordinators' and staff members' performance is regularly evaluated and individual plans are in place to support learning and development."

**Note**

The notes to Schedule 1 are to read:

- 1 The National Quality Standard is used to assess education and care services to determine rating levels under Part 5 of the Law.
- 2 The Regulatory Authority may suspend a service approval if an education and care service has operated at a rating level as not meeting the National Quality Standard and there has been no improvement in that rating level and a service waiver or temporary waiver does not apply to the service in relation to the non-compliance—see section 70(d) of the Law.
- 3 To determine whether and at what rating level an education and care service meets the National Quality Standard and the requirements of these regulations, Part 5 of the Law provides that the Regulatory Authority that granted the service approval for the service may assess the service in accordance with these Regulations.

**18 Schedule 2—Prescribed fees**

After item 16 in Part 1 of Schedule 2 to the National Regulations **insert—**

"

17	Section 152(3)(c)	Application for highest rating	24 or fewer approved places	5 or fewer family day care educators
			Nil	Nil
			25 to 80 approved places	6 to 20 family day care educators
			Nil	Nil
			81 or more approved places	21 or more family day care educators
			Nil	Nil



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18	Section 159(3)(c)	Re- application for highest rating	24 or fewer approved places	5 or fewer family day care educators
			Nil	Nil
			25 to 80 approved places	6 to 20 family day care educators
			Nil	Nil
			81 or more approved places	21 or more family day care educators
			Nil	Nil

".



## **Endnotes**