



New South Wales

# Children (Education and Care Services) Supplementary Provisions Regulation 2019

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*.

SARAH MITCHELL, MLC  
Minister for Education and Early Childhood Learning

## Explanatory note

The object of this Regulation is to repeal and remake, with substantial amendments, the provisions of the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

Provisions of the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018* that commence on 27 May 2019 align the regulation of NSW mobile education and care services and occasional education and care services more closely with the regulation of all other education and care services under the *Children (Education and Care Services) National Law (NSW)* (the **National Law**).

This Regulation provides for the following:

- (a) the application of various regulations under the National Law to NSW mobile and occasional education and care services, including regulations relating to approvals, operational requirements, assessment, the National Quality Standard and compliance,
- (b) additional conditions of provider approvals and service approvals for mobile and occasional education and care services,
- (c) the continuation of home based education and care services for a transitional period of 6 months, after which time all home based child care in NSW will be regulated under the National Law.

This Regulation is made under the *Children (Education and Care Services) Supplementary Provisions Act 2011*, including sections 21 (2), 29 and 36 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely:

- (a) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public, and
- (c) matters that are of a machinery nature.

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## Children (Education and Care Services) Supplementary Provisions Regulation 2019

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Children (Education and Care Services) Supplementary Provisions Act 2011

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Children (Education and Care Services) Supplementary Provisions Regulation 2019*.

#### 2 Commencement

This Regulation commences on 27 May 2019 and is required to be published on the NSW legislation website.

**Note.** This Regulation repeals and replaces the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

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

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

***venue management plan***—see clause 17.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Alignment with National Law

### Division 1 Application of National Law Regulations

#### 4 National Law Regulations apply to State regulated education and care services

- (1) The National Law Regulations apply, with the modifications specified in this Part, to State regulated education and care services as if those services were education and care services within the meaning of the National Law.
- (2) Sections 22, 24 and 26 of the Act apply in relation to the National Law Regulations in the same way as they apply in relation to the National Law.

**Note.** Sections 22 and 24 of the Act provide that references in the National Law to education and care services and to the Regulatory Authority are to be read as references to State regulated education and care services and to the NSW Regulatory Authority (which is the Secretary of the Department of Education). Section 26 of the Act provides that the following references in the National Law to national scheme matters are to be disregarded:

- (a) National Authority,
  - (b) Ministerial Council (except in relation to the National Quality Standard),
  - (c) the highest rating level for an education and care service,
  - (d) associated children's services,
  - (e) family day care services.
- (3) To avoid doubt, a provision of the National Law Regulations that is made under a provision of the National Law that is disregarded for the purposes of the National Law Alignment Provisions is to be disregarded for the purposes of this Regulation.

#### 5 Excluded provisions

For the purposes of applying the National Law Regulations to State regulated education and care services, the following provisions of the National Law Regulations are to be disregarded:

- (a) regulations 69–71 (which relate to certain assessment and rating functions of the Australian Children's Education and Care Quality Authority),
- (b) Division 7 of Part 4.4 (which relates to the approval and determination of qualifications by the National Authority),
- (c) Chapter 6 (which relates to administrative matters), except regulations 226–228, 230, 232, 233 and 235–237 (which relate to the publication of information, registers, fees and delegations),
- (d) Chapter 7 (which relates to jurisdiction-specific and transitional matters), except regulations 271, 272 and 274 (which are NSW-specific provisions relating to educator to child ratios and swimming pools).

#### 6 Interpretation of references

For the purposes of applying the National Law Regulations to State regulated education and care services:

- (a) 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, and
- (b) a reference in the National Law Regulations to a provider approval or service approval is to be read as a reference to a provider approval or service approval (as the case requires) under the Act (instead of the National Law), and
- (c) a reference in the National Law Regulations to an approved provider is to be read as a reference to an approved provider under the Act (instead of the National Law), and

- (d) a reference in the National Law Regulations to a centre-based service is to be read as a reference to a State regulated education and care service.

## **Division 2 Modification of National Law Regulations**

### **7 Copy of service approval provided to approved provider**

For the purposes of section 52 (i) of the National Law Alignment Provisions, a copy of a service approval must state the type of State regulated education and care service for which the service approval has been granted (in addition to the matters required under section 52 of the National Law Alignment Provisions).

### **8 Identity cards for authorised officers**

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

- (a) complies with regulation 187 of the National Law Regulations, and
- (b) states that the officer is authorised to exercise functions as an authorised officer under the Act.

### **9 Documentation of educational programs for occasional education and care services**

- (1) Regulation 74 of the National Law Regulations does not apply to the approved provider of an occasional education and care service.
- (2) The approved provider of an occasional education and care service must ensure that evidence is documented about the development of the educational program (as referred to in section 168 of the National Law Alignment Provisions) for the children at the service.

### **10 Qualifications of early childhood teachers**

- (1) For the purposes of the National Law Regulations, a person who is a teaching staff member of a State regulated education and care service immediately before 27 May 2019 is taken to be an early childhood teacher until that person ceases to be employed at the service.
- (2) In this clause, *teaching staff member* has the same meaning as it has in clause 51 of *Children (Education and Care Services) Supplementary Provisions Regulation 2012* as in force immediately before 27 May 2019.

### **11 Service waivers and temporary waivers for mobile education and care services**

Regulations 41 and 44 of the National Law Regulations apply in respect of a mobile education and care service with the following modifications:

- (a) regulations 104, 107, 108 and 110 of the National Law Regulations are not prescribed elements, and
- (b) the provisions of Division 2 of Part 4.3 (other than regulation 111) of the National Law Regulations are not prescribed elements.

**Note.** See also Part 4 of this Regulation, which requires a mobile education and care service to submit a venue management plan to the Regulatory Authority in relation to any non-compliance with the provisions referred to in this clause.

### **Division 3 Further modification of National Law**

#### **12 Approved learning framework**

A reference in section 168 of the National Law to an approved learning framework is to be read, for the purpose of the National Law Alignment Provisions, as including, in addition any learning framework approved by the Ministerial Council under the National Law, the following:

- (a) “Belonging, Being and Becoming: The Early Years Learning Framework for Australia”, published in 2009 by the Commonwealth Department of Education and Training for the Council of Australian Governments and as in force on 1 January 2012,
- (b) “My Time, Our Place: Framework for School Age Care in Australia”, published in 2011 by the Commonwealth Department of Education and Training for the Council of Australian Governments and as in force from time to time.

**Note.** Section 27A of the Act provides that a reference in section 168 of the National Law to an approved learning framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the learning framework approved by the Ministerial Council under the National Law as in force from time to time.

## Part 3 Provider approvals and service approvals

### 13 Conditions of provider approvals

- (1) For the purposes of section 19 (1) of the National Law Alignment Provisions, the conditions of a provider approval are the conditions prescribed in the National Law Regulations that are relevant to the type of State regulated education and care service provided by the approved provider.
- (2) A provider approval for a mobile education and care service is also subject to the following conditions:
  - (a) the approved provider must keep a register of the address of each of the premises at which the service is provided and the name of the proprietor of each of those premises,
  - (b) the approved provider must ensure that the premises of the service comply with the venue management plan for those premises.

### 14 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 conditions prescribed in the National Law Regulations that are relevant to the type of State regulated education and care service authorised by the approval.
- (2) A service approval for a State regulated education and care service is also subject to the following conditions:
  - (a) the approved provider of the 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 conditions of the service approval that apply to them,
  - (b) the approved provider of the education and care service must have the right to occupy the premises at which the service is provided under the approval.
- (3) In this clause:  
*staff* of an education and care service means those persons employed for remuneration to provide the service.

### 15 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.

## Part 4 Mobile education and care services

### 16 Application for service approval for mobile education and care service

An application for a service approval for a mobile education and care service must include:

- (a) the addresses of the premises at which the service will be provided, and
- (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.

### 17 Venue management plans for mobile education and care services

- (1) If a mobile education and care service is to be provided on premises that do not comply with any of regulations 80, 104–110 or 112–115 of the National Law Regulations, a venue management plan must be submitted to, and approved by, the Regulatory Authority.
- (2) A *venue management plan* is a plan describing how the safety and well-being of children being educated at particular premises at which a mobile education and care service is being provided will be ensured despite the premises not complying with specified provisions of the National Law Regulations.
- (3) The Regulatory Authority must not grant a service approval for a mobile education and care service in relation to which a venue management plan is required unless it has approved a venue management plan.
- (4) While an approved venue management plan is in force in relation to a mobile education and care service and the mobile education and care service complies with the venue management plan:
  - (a) the service is taken to comply with the provisions of the National Law Regulations that are specified in the venue management plan, and
  - (b) the provisions of the National Law Regulations that are specified in the venue management plan are taken to not be prescribed for the purposes of section 176 of the National Law Alignment Provisions in relation to that service.

### 18 Amendments to venue management plans for mobile education and care services

- (1) 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.
- (2) An application for an amendment to a service approval that is made under 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.



## Part 5 Miscellaneous

### 19 Repeal and savings and transitional provisions

- (1) The 2012 Regulation is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the 2012 Regulation, had effect under that Regulation continues to have effect under this Regulation.
- (3) The Act and the 2012 Regulation, as in force immediately before 27 May 2019, continue to apply to an existing home based education and care service until 31 October 2019, despite the commencement of Schedule 1 [1]–[33] to the amending Act and the repeal of the 2012 Regulation.

- (4) In this clause:

**2012 Regulation** means the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*.

**amending Act** means the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018*.

**existing home based education and care service** means a home based education and care service that was an approved education and care service immediately before 27 May 2019.