

Education and Care Services National Amendment Regulations 2019

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

11 December 2019

Education and Care Services National Amendment Regulations 2019

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Page</i>
1 Title	1
2 Authorising provisions	1
3 Commencement	1
4 National Regulations	1
5 Definitions	1
6 Meaning of <i>actively working towards</i> a qualification	2
7 Meaning of <i>in attendance</i> at a centre-based service	2
8 Maximum period of suspension of service approval	2
9 Educators must be working directly with children to be included in ratios	2
10 Educator to child ratios—centre-based services	2
11 Centre-based services—general educator qualifications	3
12 Requirement for early childhood teacher—centre-based services—60 to 80 children	3
13 Requirement for early childhood teacher—centre-based services—more than 80 children	4
14 Regulation 135 substituted	4
15 Record of access to early childhood teachers	5
16 Indexation of fees	6
17 Centre-based services in remote and very remote areas—attendance of early childhood teachers	6
18 Centre-based services in remote and very remote areas—qualifications for educators	8
19 Persons taken to be early childhood teachers	8
20 General qualifications for educators—centre-based services	8
21 Required qualifications to be a qualified educator—unexpected absence of qualified educator	9
22 Early childhood teachers—children preschool age or under	9
23 General qualification requirements for educators—children over preschool age	10
24 Educator to child ratios when educator or early childhood teacher on rest pause	11
25 Access to or attendance of early childhood teacher on rest pause	12
26 Educator to child ratios when educator or early childhood teacher absent for 5 minutes or less	13

<i>Regulation</i>	<i>Page</i>
27 Access to or attendance of early childhood teacher absent for 5 minutes or less	14
28 Regulation 301 revoked	15
29 Early childhood teachers—preschools	15
30 Regulation 346 revoked	16
31 Working with children check to be read	16
32 Early childhood teachers—pre-kindergarten programme or kindergarten programme provided by a school	17
33 Regulation 384 revoked	17
34 New Part 7.12 inserted	18
<hr/> <hr/>	
Endnotes	20

Education and Care Services National Law

**Education and Care Services National Amendment
Regulations 2019**

1 Title

These Regulations may be cited as the *Education and Care Services National Amendment Regulations 2019*.

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 regulation 17(3), (4) and (5)) come into operation on 31 December 2019.
- (2) Regulation 17(3), (4) and (5) come into operation on 1 July 2020.

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, in the definition of *in attendance*, after "teacher" insert "or a suitably qualified person".

6 Meaning of *actively working towards* a qualification

In regulation 10(b) of the National Regulations—

- (a) in subparagraph (ii), before "is making" **insert** "the educator";
- (b) in subparagraph (iii), before "is meeting" **insert** "the educator".

7 Meaning of *in attendance* at a centre-based service

In regulation 11 of the National Regulations—

- (a) after "early childhood teacher" **insert** "or a suitably qualified person";
- (b) for "the teacher" **substitute** "the early childhood teacher or the suitably qualified person".

8 Maximum period of suspension of service approval

In regulation 39 of the National Regulations, for "sections 72(a)" **substitute** "sections 72(b)(i)".

9 Educators must be working directly with children to be included in ratios

At the end of regulation 122 of the National Regulations **insert**—

- "(2) In this regulation, a reference to an educator includes an early childhood teacher or a suitably qualified person who is counted as an educator under regulation 123(3)."

10 Educator to child ratios—centre-based services

In regulation 123(3) of the National Regulations—

- (a) after "early childhood teacher" **insert** "or a suitably qualified person";
 - (b) for "that teacher" **substitute** "that early childhood teacher or suitably qualified person".
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11 Centre-based services—general educator qualifications

(1) For regulation 126(3) of the National Regulations **substitute**—

"(3) If Division 5 requires an early childhood teacher to be in attendance at a centre-based service, that teacher, or a person taken to be an early childhood teacher under regulation 135(1), is to be counted as meeting the requirements of subregulation (1)(a)."

(2) After regulation 126(3) of the National Regulations **insert**—

"(4) If Division 5 requires a second early childhood teacher or a suitably qualified person to be in attendance at a centre-based service, that person, or a person taken to be a second early childhood teacher or a suitably qualified person under regulation 135(2), is to be counted as meeting the requirements of subregulation (1)(a)."

Note

Note 2 at the foot of regulation 126 is to read:

- 2 An early childhood teacher or a suitably qualified person can be included in determining the number of educators who have an approved diploma level education and care qualification if the early childhood teacher or suitably qualified person is working directly with children.

12 Requirement for early childhood teacher—centre-based services—60 to 80 children

In regulation 133(1)(b) of the National Regulations, for "another suitably" **substitute** "a suitably".

**13 Requirement for early childhood teacher—
centre-based services—more than 80 children**

In regulation 134(1)(b) of the National Regulations, for "another suitably" **substitute** "a suitably".

14 Regulation 135 substituted

For regulation 135 of the National Regulations **substitute—**

**"135 Illness or absence of early childhood
teacher or suitably qualified person**

- (1) If an early childhood teacher who is required under regulation 132(1), 133(1)(a) or 134(1)(a) to be in attendance at a centre-based service is absent from the centre-based service because of short-term illness or leave, the following persons may be taken to be an early childhood teacher during that absence—
 - (a) in any case—
 - (i) a person who holds an approved diploma level education and care qualification; or
 - (ii) a person who holds a qualification in primary teaching; and
 - (b) in the case of an early childhood teacher who is required to be in attendance under regulation 133(1)(a) or 134(1)(a), a suitably qualified person.
 - (2) If a second early childhood teacher or a suitably qualified person who is required under regulation 133(1)(b) or 134(1)(b) to be in attendance at a centre-based service is absent from the centre-based service because of short-term illness or leave, the following
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persons may be taken for the purposes of regulations 133(1)(b) or 134(1)(b) to be a second early childhood teacher or suitably qualified person 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.
- (3) An early childhood teacher required to be in attendance under regulation 132(1), 133(1)(a) or 134(1)(a) may be replaced in accordance with subregulation (1) for a maximum of 60 days in any 12 month period.
- (4) A second early childhood teacher or a suitably qualified person required to be in attendance under regulation 133(1)(b) or 134(1)(b) may be replaced in accordance with subregulation (2) for a maximum of 60 days in any 12 month period.
- (5) For the purposes of subregulations (3) and (4), in relation to a part-time early childhood teacher, part-time second early childhood teacher or part-time suitably qualified person (as the case requires), 60 days is to be calculated on a pro rata basis."

15 Record of access to early childhood teachers

- (1) In regulation 152(2) of the National Regulations, after "more" **insert** "but not more than 59".
 - (2) After regulation 152(2) of the National Regulations **insert**—
 - "(3) The approved provider of a centre-based service that provides education and care to 60 or more children preschool age or under
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must ensure that a record is kept of the period that each early childhood teacher and each suitably qualified person is in attendance at the service."

16 Indexation of fees

- (1) Regulation 235(1) of the National Regulations is **revoked**.
- (2) In regulation 235(2) of the National Regulations, after "paid" **insert** "under the Law or these Regulations".

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

- (1) For regulation 239A(1) of the National Regulations **substitute**—
 - "(1) This regulation applies—
 - (a) until 31 December 2021, in the case of a centre-based service located in a remote area or very remote area of New South Wales, Queensland, South Australia or Tasmania; and
 - (b) until 31 December 2023, in the case of a centre-based service located in a remote area or very remote area of the Northern Territory or Western Australia."
 - (2) In regulation 239A(2) of the National Regulations, for "or 134" **substitute** ", 134 or 272(1A)".
 - (3) For regulation 239A(2) of the National Regulations **substitute**—
 - "(2) The centre-based service may meet the requirements of regulation 132(1) or 272(1A) for attendance of an early childhood teacher if the service has access to an early childhood teacher working with the service
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- at least 20 per cent of the time that the service provides education and care.
- (2A) The centre-based service may meet the requirements of regulation 133(1) or 134(1) for attendance of an early childhood teacher if—
- (a) the service has access to an early childhood teacher working with the service at least 40 per cent of the time that the service provides education and care; or
 - (b) the service has access to—
 - (i) an early childhood teacher working with the service at least 20 per cent of the time that the service provides education and care; and
 - (ii) a second early childhood teacher or a suitably qualified person working with the service at least 20 per cent of the time that the service provides education and care."
- (4) In regulation 239A(3) of the National Regulations—
- (a) for "subregulation (2)" **substitute** "subregulation (2) or (2A)";
 - (b) after "teacher" **insert** "or suitably qualified person".
- (5) In regulation 239A(4) of the National Regulations, after "teacher" **insert** "or suitably qualified person".
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18 Centre-based services in remote and very remote areas—qualifications for educators

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

- "(1) This regulation applies—
- (a) until 31 December 2021, in the case of a centre-based service located in a remote area or very remote area of Queensland, South Australia or Tasmania; and
 - (b) until 31 December 2023, in the case of a centre-based service located in a remote area or very remote area of Western Australia."

19 Persons taken to be early childhood teachers

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

- "(1) This regulation applies—
- (a) until 31 December 2021, in the case of the Australian Capital Territory, New South Wales, Queensland, South Australia or Tasmania; and
 - (b) until 31 December 2023, in the case of the Northern Territory or Western Australia."

(2) In regulation 242(3) of the National Regulations, after "267," **insert** "272(1A),".

20 General qualifications for educators—centre-based services

In regulation 264(1) of the National Regulations, for "31 December 2020" **substitute** "31 December 2021".

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

In regulation 265 of the National Regulations—

(a) in paragraph (d), for "qualification."
substitute "qualification; or";

(b) after paragraph (d) of the National Regulations **insert**—

"(e) in the case of regulation 264(3)(c) or (d)—is a suitably qualified person.".

22 Early childhood teachers—children preschool age or under

(1) In regulation 272(1) of the National Regulations—

(a) for "regulations 131 to 134" **substitute** "regulations 132 to 135";

(b) for "30 or more" **substitute** "25 or more".

(2) After regulation 272(1) of the National Regulations **insert**—

"(1A) If a centre-based service is educating and caring for 25 to 29 children preschool age or under on a given day, one early childhood teacher must be in attendance—

(a) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(b) for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week.".

(3) After regulation 272(5) of the National Regulations **insert**—

"(6) If an early childhood teacher is absent from a centre-based service 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.

(7) An early childhood teacher required to be in attendance under this regulation may be replaced in accordance with subregulation (6) for a maximum of 60 days in any 12 month period.

(8) For the purposes of subregulation (7), in relation to a part-time early childhood teacher, 60 days is to be calculated on a pro rata basis."

23 General qualification requirements for educators—children over preschool age

(1) In regulation 299(2) of the National Regulations—

(a) **omit** "only";

(b) in paragraph (a), after "children" (where twice occurring) **insert** "over preschool age";

(c) in paragraph (b), after "children" **insert** "over preschool age".

(2) In regulation 299(4) of the National Regulations, after "children" (where twice occurring) **insert** "over preschool age".

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

(1) In regulation 299F(1) and (2) of the National Regulations, for "educator or early childhood teacher" (wherever occurring) **substitute** "educator, early childhood teacher or suitably qualified person".

(2) For regulation 299F(3) of the National Regulations **substitute**—

"(3) In this regulation, a reference to an early childhood teacher includes—

(a) a reference to an early childhood teacher who is counted as an educator in calculating the educator to child ratio of the service; and

(b) a reference to a person who is taken to be an early childhood teacher or a second early childhood teacher under regulation 135(1) or (2).

(3A) In this regulation, a reference to a suitably qualified person includes a reference to a person who is taken to be a suitably qualified person under regulation 135(2)."

Notes

1 The heading to regulation 299F is to read:

Educator to child ratios when educator, early childhood teacher or suitably qualified person on rest pause

- 2 The following note is to be inserted at the foot of regulation 299F(3)(a):

Note

An early childhood teacher cannot be counted as an educator in calculating the educator to child ratio unless the teacher is working directly with children—see regulation 122.

- 3 The note at the foot of regulation 299F(3) is to be deleted.

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

At the end of regulation 299G of the National Regulations **insert**—

- "(2) A suitably qualified person is taken to be in attendance at the centre-based service while the suitably qualified person is on a rest pause if—
- (a) the suitably qualified person's rest pause is not more than 10 minutes duration; and
 - (b) the suitably qualified person has not already taken more than one rest pause that day; and
 - (c) if the centre-based service has a rest period condition, the suitably qualified person does not take a rest pause during a rest period.
- (3) In this regulation—
- (a) a reference to an early childhood teacher includes a reference to a person who is taken to be an early childhood teacher or a second early childhood teacher under regulation 135(1) or (2); and

- (b) a reference to a suitably qualified person includes a reference to a person who is taken to be a suitably qualified person under regulation 135(2)."

Note

The heading to regulation 299G is to read:

Access to or attendance of early childhood teacher or suitably qualified person on rest pause

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

- (1) In regulation 299H(1) and (2) of the National Regulations, for "educator or early childhood teacher" (wherever occurring) **substitute** "educator, early childhood teacher or suitably qualified person".
- (2) For regulation 299H(3) of the National Regulations **substitute**—
- "(3) In this regulation, a reference to an early childhood teacher includes—
 - (a) a reference to an early childhood teacher who is counted as an educator in calculating the educator to child ratio of the service; and
 - (b) a reference to a person who is taken to be an early childhood teacher or a second early childhood teacher under regulation 135(1) or (2).
- (4) In this regulation, a reference to a suitably qualified person includes a reference to a person who is taken to be a suitably qualified person under regulation 135(2)."

Notes

1 The heading to regulation 299H is to read:

Educator to child ratios when educator, early childhood teacher or suitably qualified person absent for 5 minutes or less

2 The following note is to be inserted at the foot of regulation 299H(3)(a):

Note

An early childhood teacher cannot be counted as an educator in calculating the educator to child ratio unless the teacher is working directly with children—see regulation 122.

3 The note at the foot of regulation 299H(3) is to be deleted.

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

At the end of regulation 299I of the National Regulations **insert**—

"(2) A suitably qualified person is taken to be in attendance at the centre-based service while the suitably qualified person is absent if—

- (a) the suitably qualified person is absent for not more than 5 minutes; and
- (b) the suitably qualified person is not absent on a rest pause or during a rest period.

(3) In this regulation—

- (a) a reference to an early childhood teacher includes a reference to a person who is taken to be an early childhood teacher or a second early childhood teacher under regulation 135(1) or (2); and

- (b) a reference to a suitably qualified person includes a reference to a person who is taken to be a suitably qualified person under regulation 135(2)."

Note

The heading to regulation 299I is to read:

Access to or attendance of early childhood teacher or suitably qualified person absent for 5 minutes or less

28 Regulation 301 revoked

Regulation 301 of the National Regulations is **revoked**.

29 Early childhood teachers—preschools

- (1) For regulation 324(3) of the National Regulations **substitute—**

"(3) On and after 1 January 2014—

- (a) the first and second educators required to meet the educator to child ratio for preschool aged children in a government preschool (other than a prescribed preschool) must be early childhood teachers; and
- (b) any other educators who are required to meet the educator to child ratio for preschool aged children in a government preschool (other than a prescribed preschool) must have, or be actively working towards, at least an approved certificate III level education and care qualification."

(2) For regulation 324(4) of the National Regulations **substitute**—

"(4) On and after 1 January 2014—

- (a) the first and third educators required to meet the educator to child ratio for preschool aged children in a prescribed preschool must be early childhood teachers; and
- (b) any other educators who are required to meet the educator to child ratio for preschool aged children in a prescribed preschool must have, or be actively working towards, at least an approved certificate III level education and care qualification."

(3) In regulation 324(4A) of the National Regulations—

- (a) in paragraph (b), for "teaching." **substitute** "teaching;"
- (b) after paragraph (b) **insert**—
"(c) a suitably qualified person."

30 Regulation 346 revoked

Regulation 346 of the National Regulations is **revoked**.

31 Working with children check to be read

(1) In regulation 358(1)(d) of the National Regulations, after "member" **insert** "(other than a person in day-to-day charge)".

(2) After regulation 358(1) of the National Regulations **insert**—

"(1A) The approved provider of an education and care service must read, or ensure that a nominated supervisor has read, a person's working with children check before the person is placed as a person in day-to-day charge of the service.

(1B) The approved provider of an education and care service must read a person's working with children check before nominating that person as a nominated supervisor of the service."

(3) In regulation 358(4) of the National Regulations, for "Subregulation (1) does not apply" **substitute** "Subregulations (1), (1A) and (1B) do not apply".

32 Early childhood teachers—pre-kindergarten programme or kindergarten programme provided by a school

For regulation 373(4) of the National Regulations **substitute**—

"(4) An early childhood teacher, or a suitably qualified person if regulation 133 or 134 would otherwise apply, must be in attendance at all times that children are being educated and cared for by the programme."

33 Regulation 384 revoked

Regulation 384 of the National Regulations is **revoked**.

34 New Part 7.12 inserted

After Part 7.11 of the National Regulations
insert—

**"Part 7.12—Transitional and
savings provisions—Education and
Care Services National
Amendment Regulations 2019**

**Division 1—Australian Capital
Territory**

404 Application of Division

This Division applies to the Australian
Capital Territory.

405 Resignation of suitably qualified person

- (1) Regulation 135 applies as if the reasons for the suitably qualified person to be absent included resignation.
- (2) This regulation ceases to have effect on 31 December 2021.

Division 2—Queensland

406 Application of Division

This Division applies to Queensland.

407 Resignation of suitably qualified person

- (1) Regulation 135 applies as if the reasons for the suitably qualified person to be absent included resignation.
- (2) This regulation ceases to have effect on 31 December 2021.

Division 3—Tasmania

408 Application of Division

This Division applies to Tasmania.

409 Resignation of suitably qualified person

- (1) Regulation 135 applies as if the reasons for the suitably qualified person to be absent included resignation.
- (2) This regulation ceases to have effect on 31 December 2021.

Division 4—Western Australia

410 Application of Division

This Division applies to Western Australia.

411 Resignation of suitably qualified person

- (1) Regulation 135 applies as if the reasons for the suitably qualified person to be absent included resignation.
 - (2) This regulation ceases to have effect on 31 December 2021."
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Endnotes