

Education and Care Services National Amendment Regulations 2020

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.

STEVE METCALFE

Secretary

Education Council

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Education and Care Services National Amendment Regulations 2020

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Education and Care Services National Law

**Education and Care Services National Amendment
Regulations 2020**

1 Title

These Regulations may be cited as the *Education and Care Services National Amendment Regulations 2020*.

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 (other than regulations 5, 7, 8, 9, 10 and 12) come into operation on 1 September 2020.
- (2) Regulations 5, 7, 8, 9, 10 and 12 come into operation on 1 October 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—

- (a) **insert** the following definition—

"regular transportation, in relation to an education and care service, means the transportation by the service or

arranged by the service (other than as part of an excursion) of a child being educated and cared for by the service, where the circumstances relevant to a risk assessment are substantially the same for each occasion on which the child is transported;"

- (b) in paragraph (b) of the definition of *regular outing*, before "the same" insert "substantially".

6 Services that are not education and care services

For regulation 5(2)(q) of the National Regulations **substitute**—

- "(q) an approved children's service under the Children's Services Act 1996 of Victoria that, immediately before 17 May 2020, was a licensed limited hours Type 2 service under that Act;"

7 Risk assessment must be conducted before excursion

In regulation 100(1), (2) and (3) of the National Regulations, for "is sought under regulation 102" **substitute** "referred to in regulation 102(4) is sought".

8 Conduct of risk assessment for excursion

For regulation 101(2)(d) of the National Regulations **substitute**—

- "(d) if the excursion involves transporting children—
- (i) the means of transport; and
 - (ii) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and

- (iii) the process for entering and exiting—
 - (A) the education and care service premises; and
 - (B) the pick-up location or destination (as required); and
- (iv) procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking; and".

9 Authorisation for excursions

In regulation 102(4) of the National Regulations—

- (a) for paragraph (c) **substitute**—
 - "(c) if the authorisation is for a regular outing, a description of when the child is to be taken on the regular outings; and
 - (ca) if the authorisation is for an excursion that is not a regular outing, the date the child is to be taken on the excursion; and";
- (b) for paragraph (e) **substitute**—
 - "(e) if the excursion involves transporting children—
 - (i) the means of transport; and
 - (ii) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and".

10 New Division 7 of Part 4.2 inserted

After regulation 102 of the National Regulations
insert—

**"Division 7—Transportation of children
other than as part of an excursion**

102A Application of Division

This Division does not apply to transportation of a child by or arranged by an education and care service that is undertaken as part of an excursion.

102B Transport risk assessment must be conducted before service transports child

- (1) The approved provider of an education and care service must ensure a risk assessment is carried out in accordance with regulation 102C before an authorisation referred to in regulation 102D(4) is sought to transport a child.

Penalty: \$2000.

- (2) A nominated supervisor of an education and care service must ensure a risk assessment is carried out in accordance with regulation 102C before an authorisation referred to in regulation 102D(4) is sought to transport a child.

Penalty: \$2000.

- (3) A family day care educator must carry out a risk assessment in accordance with regulation 102C before an authorisation referred to in regulation 102D(4) is sought to transport a child.

Penalty: \$2000.

- (4) A risk assessment is not required under this regulation for transporting a child if—
 - (a) the transportation is regular transportation; and
 - (b) a risk assessment has been conducted for the regular transportation of the child within the previous 12 months.

102C Conduct of risk assessment for transporting of children by the education and care service

- (1) A risk assessment for the transportation of a child by or arranged by the education and care service must—
 - (a) identify and assess risks that transporting the child may pose to the safety, health or wellbeing of the child; and
 - (b) specify how the identified risks will be managed and minimised.
- (2) Without limiting subregulation (1), a risk assessment must consider—
 - (a) the proposed route and duration of the transportation; and
 - (b) the proposed pick-up location and destination; and
 - (c) the means of transport; and
 - (d) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - (e) any water hazards; and
 - (f) the number of adults and children involved in the transportation; and

- (g) given the risks posed by transportation, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and
- (h) whether any items should be readily available during transportation; and

Example

A mobile phone and a list of emergency contact numbers for the children being transported.

- (i) the process for entering and exiting—
 - (i) the education and care service premises; and
 - (ii) the pick-up location or destination (as required); and
- (j) procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking.

102D Authorisation for service to transport children

- (1) The approved provider of an education and care service must ensure that a child being educated and cared for by the service is not transported by the service or on transportation arranged by the service unless written authorisation has been given under subregulation (4).

Penalty: \$1000.

- (2) A nominated supervisor of an education and care service must ensure that a child being educated and cared for by the service is not transported by the service or on
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transportation arranged by the service unless written authorisation has been given under subregulation (4).

Penalty: \$1000.

- (3) A family day care educator must ensure that a child being educated and cared for by the educator as part of a family day care service is not transported by the service or on transportation arranged by the service unless written authorisation has been given under subregulation (4).

Penalty: \$1000.

- (4) The authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise the child being transported by the service or on transportation arranged by the service and must state—
- (a) the child's name; and
 - (b) the reason the child is to be transported; and
 - (c) if the authorisation is for regular transportation, a description of when the child is to be transported; and
 - (d) if the authorisation is not for regular transportation, the date the child is to be transported; and
 - (e) a description of the proposed pick-up location and destination; and
 - (f) the means of transport; and
 - (g) the period of time during which the child is to be transported; and
 - (h) the anticipated number of children likely to be transported; and
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- (i) the anticipated number of staff members and any other adults who will accompany and supervise the children during the transportation; and
 - (j) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
 - (k) that a risk assessment has been prepared and is available at the education and care service; and
 - (l) that written policies and procedures for transporting children are available at the education and care service.
- (5) If the transportation is regular transportation, the authorisation is only required to be obtained once in a 12 month period."

11 Centre-based services—general educator qualifications

In regulation 126(1B) of the National Regulations **omit** "or South Australia".

12 Education and care service must have policies and procedures

After regulation 168(2)(g) of the National Regulations **insert**—

- "(ga) if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4;"

13 Regulations 322 and 323 revoked

Regulations 322 and 323 of the National Regulations are **revoked**.

Endnotes