

Education and Care Services National Further Amendment Regulations 2023

under the

Education and Care Services National Law

The Education Ministers Meeting 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.

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14 July 2023

Education and Care Services National Further Amendment Regulations 2023

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Education and Care Services National Law

**Education and Care Services National Further
Amendment Regulations 2023**

Part 1—Preliminary

1 Title

These Regulations may be cited as the Education and Care Services National Further Amendment Regulations 2023.

2 Authorising provisions

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

3 Commencement

These Regulations come into operation on 1 October 2023.

4 National Regulations

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

Part 2—Amendments to the National Regulations

5 Definitions

In regulation 4(1) of the National Regulations **insert** the following definitions—

"multi-storey building means a building with more than 2 storeys;

storey, of a building, includes the following—

- (a) the ground level;
- (b) a level of a split level;"

6 Additional information about proposed education and care service premises

After regulation 25(1)(b) of the National Regulations **insert**—

"(ba) if the proposed education and care service premises will be located within a multi-storey building shared with other occupants—

- (i) the total number of storeys in the building; and
- (ii) the storey or storeys on which the premises will be located; and
- (iii) if the premises will be located on more than one storey, the ages of the children who will attend on each storey;"

7 Application for service approval for a centre-based service—relocation of existing centre-based service

In regulation 25A(3)(c) of the National Regulations, for "regulation 25(1)(b)," **substitute** "regulation 25(1)(b), (ba),".

8 Application for service approval—family day care service

- (1) After regulation 26(1)(n)(i) of the National Regulations **insert—**
- "(ia) if the proposed family day care venue will be located within a multi-storey building shared with other occupants, the information specified in subregulation (3); and".
- (2) After regulation 26(2) of the National Regulations **insert—**
- "(3) For the purposes of subregulation (1)(n)(ia), the application must include the following information—
- (a) the total number of storeys in the building;
 - (b) the storey or storeys on which the venue will be located;
 - (c) if the venue will be located on more than one storey, the ages of the children who will attend on each storey."

9 Additional matters to have regard to in determining application for service approval

In regulation 27 of the National Regulations—

- (a) in paragraph (b), for "approval." **substitute** "approval;"
 - (b) after paragraph (b) **insert—**

"(c) in the case of a proposed family day care venue or centre-based service to be located within a multi-storey building shared with other occupants, for each storey on which the venue or service is proposed to be located, whether there is direct egress to an assembly area to allow the safe evacuation of all children
-

attending the venue or service,
including non-ambulatory children."

10 Prescribed information for application to amend service approval

(1) After regulation 34(1)(f)(i) of the National Regulations **insert**—

"(ia) whether the family day care venue is proposed to be located within a multi-storey building shared with other occupants and, if so, the additional information specified in subregulation (1A); and"

(2) After regulation 34(1) of the National Regulations **insert**—

"(1A) For the purposes of subregulation (1)(f)(ia), the additional information to be included in an application is—

- (a) the total number of storeys in the multi-storey building; and
- (b) the storey or storeys on which the venue is proposed to be located; and
- (c) if the venue is proposed to be located on more than one storey, the ages of the children who will attend on each storey."

11 Regulation 41 substituted

For regulation 41 of the National Regulations **substitute**—

"41 Service waiver—prescribed regulations

The regulations prescribed for the purposes of section 87(1) of the Law are—

- (a) regulations 104, 107, 108 and 110; and

- (b) in the case of a centre-based service, any provision in Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134; and
- (c) in the case of a family day care service, regulations 72A, 117, 124, 127 and 128; and
- (d) any provision in Chapter 7 that applies in place of a provision referred to in paragraphs (a) to (c)."

12 Prescribed information—application for service waiver

In regulation 42 of the National Regulations—

- (a) in paragraph (d)(i) **omit** "the elements of the National Quality Standard and";
- (b) in paragraphs (d)(ii) and (e) **omit** "elements or" (wherever occurring).

13 Regulation 44 substituted

For regulation 44 of the National Regulations **substitute**—

"44 Temporary waiver—prescribed regulations

The regulations prescribed for the purposes of section 94(1) of the Law are—

- (a) regulations 104, 107, 108 and 110; and
- (b) in the case of a centre-based service, any provision in Division 2 of Part 4.3 and regulations 120, 123, 126, 130 to 134 and 136; and
- (c) in the case of a family day care service, regulations 72A, 117, 124, 127, 128 and 136; and

- (d) any provision in Chapter 7 that applies in place of a provision referred to in paragraphs (a) to (c)."

14 Application for temporary waiver

In regulation 45 of the National Regulations—

- (a) in paragraph (d)(i) **omit** "the elements of the National Quality Standard and";
- (b) in paragraphs (d)(ii), (e), (f) and (h) **omit** "elements or".

15 Offences in relation to giving false or misleading statements about ratings

- (1) For the penalty at the foot of regulation 72(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 72(2) of the National Regulations **substitute**—
"Penalty: \$2200."

16 Guide to Chapter 4

In the Guide to Chapter 4 of the National Regulations, after—

"*Division 1* sets out requirements to be put in place for the health, safety and wellbeing of children."

insert—

"*Division 1A* sets out requirements relating to the sleep and rest of children."

17 Location of principal office of family day care service

For the penalty at the foot of regulation 72A of the National Regulations **substitute**—

"Penalty: \$2200."

18 Health, hygiene and safe food practices

- (1) For the penalty at the foot of regulation 77(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 77(2) of the National Regulations **substitute**—
"Penalty: \$2200."
- (3) For the penalty at the foot of regulation 77(3) of the National Regulations **substitute**—
"Penalty: \$2200."

19 Food and beverages

- (1) For the penalty at the foot of regulation 78(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 78(2) of the National Regulations **substitute**—
"Penalty: \$2200."
- (3) For the penalty at the foot of regulation 78(3) of the National Regulations **substitute**—
"Penalty: \$2200."

20 Service providing food and beverages

- (1) For the penalty at the foot of regulation 79(1) of the National Regulations **substitute**—
"Penalty: \$2200."
 - (2) For the penalty at the foot of regulation 79(2) of the National Regulations **substitute**—
"Penalty: \$2200."
 - (3) For the penalty at the foot of regulation 79(3) of the National Regulations **substitute**—
"Penalty: \$2200."
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21 Weekly menu

- (1) For the penalty at the foot of regulation 80(1) of the National Regulations **substitute**—
"Penalty: \$1100."
- (2) For the penalty at the foot of regulation 80(2) of the National Regulations **substitute**—
"Penalty: \$1100."
- (3) For the penalty at the foot of regulation 80(3) of the National Regulations **substitute**—
"Penalty: \$1100."

22 Regulation 81 revoked

Regulation 81 of the National Regulations is **revoked**.

23 Tobacco, drug and alcohol-free environment

- (1) For the penalty at the foot of regulation 82(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 82(2) of the National Regulations **substitute**—
"Penalty: \$2200."

24 Staff members and family day care educators not to be affected by alcohol or drugs

- (1) For the penalty at the foot of regulation 83(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 83(2) of the National Regulations **substitute**—
"Penalty: \$2200."

- (3) For the penalty at the foot of regulation 83(3) of the National Regulations **substitute**—

"Penalty: \$2200."

25 Awareness of child protection law

- (1) In regulation 84 of the National Regulations—

(a) for "nominated supervisors and staff members at the service who work with children are" **substitute** "a person specified in subregulation (2) who works with children is";

(b) in paragraph (b), for "they" **substitute** "the person".

- (2) For the penalty at the foot of regulation 84 of the National Regulations **substitute**—

"Penalty: \$1100."

- (3) In the note at the foot of regulation 84 of the National Regulations, for "this regulation" **substitute** "subregulation (1)".

- (4) At the end of regulation 84 of the National Regulations **insert**—

"(2) The following persons are specified—

- (a) a nominated supervisor of the service;
- (b) a staff member of the service;
- (c) a volunteer at the service;
- (d) a student who participates in the service."

26 New Division 1A of Part 4.2 inserted

After regulation 84 of the National Regulations
insert—

"Division 1A—Sleep and rest

84A Sleep and rest

- (1) The approved provider of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, developmental stages and individual needs of the children.

Penalty: \$1100.

Note

A compliance direction may be issued for failure to comply with subregulation (1).

- (2) A nominated supervisor of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, developmental stages and individual needs of the children.

Penalty: \$1100.

- (3) A family day care educator must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the educator as part of a family day care service are met, having regard to the ages, developmental stages and individual needs of the children.

Penalty: \$1100.

84B Sleep and rest policies and procedures

The sleep and rest policies and procedures required under regulation 168(2)(a)(v) must address—

- (a) how children will be protected from any risks identified in a risk assessment conducted under regulation 84C; and
- (b) how the sleep and rest needs of children being educated and cared for by the service are met, including how the ages, developmental stages and the sleep and rest needs of individual children are considered; and
- (c) how the health care needs of individual children being educated and cared for by the service are met; and
- (d) how requests from families about a child's sleep and rest and cultural preferences are considered; and
- (e) supervision and monitoring during sleep and rest periods, including—
 - (i) the method and frequency of checking the safety, health and wellbeing of children during sleep and rest periods; and
 - (ii) the documentation of sleep and rest periods; and
- (f) how the sleep and rest practices at the service are consistent with any current health guidelines on the best practices to adopt to ensure the safety of children during sleep and rest; and
- (g) the induction, training and knowledge of staff who educate and care for children at the service in relation to best

- practices for children's sleep and rest;
and
- (h) the location and arrangement of sleep and rest areas at the service and how this meets the sleep and rest needs of children being educated and cared for by the service; and
- (i) safety and suitability of cots, bedding and bedding equipment, having regard to the ages and developmental stages of children who will use the cots, bedding and bedding equipment; and
- (j) management of potential hazards—
 - (i) in sleep and rest areas; and
 - (ii) on a child during sleep and rest periods; and
- (k) management of physical safety and suitability of sleep and rest environments (including temperature, lighting and ventilation); and
- (l) in the case of a family day care service that provides overnight care, management of risks relating to overnight care at each family day care residence or approved family day care venue of the service; and
- (m) communication of the sleep and rest policies and procedures to a parent.

84C Risk assessment for purposes of sleep and rest policies and procedures

- (1) The approved provider of an education and care service must ensure that a sleep and rest risk assessment is conducted in accordance with this regulation—
-

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- (a) at least once every 12 months; and
- (b) as soon as practicable after becoming aware of any circumstance that may affect the safety, health or wellbeing of children during sleep and rest.

Penalty: \$2200.

Note

A compliance direction may be issued for failure to comply with subregulation (1).

- (2) A risk assessment must consider the following—
 - (a) the number, ages and developmental stages of children being educated and cared for—
 - (i) by the education and care service; or
 - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;
 - (b) the sleep and rest needs of children being educated and cared for (including health care needs, cultural preferences, sleep and rest needs of individual children and requests from families about a child's sleep and rest)—
 - (i) by the education and care service; or
 - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;

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- (c) the suitability of staffing arrangements to adequately supervise and monitor children during sleep and rest periods;
- (d) the level of knowledge and training of staff supervising children during sleep and rest periods;
- (e) the location of sleep and rest areas, including the arrangement of cots and beds within the sleep and rest areas—
 - (i) at the education and care service; or
 - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;
- (f) the safety and suitability of any cots, beds and bedding equipment, having regard to the ages and developmental stages of the children who will use the cots, bed and bedding equipment;
- (g) any potential hazards—
 - (i) in sleep and rest areas; or
 - (ii) on a child during sleep and rest periods;
- (h) the physical safety and suitability of sleep and rest environments (including temperature, lighting and ventilation)—
 - (i) at the education and care service; or
 - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;

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- (i) in the case of a family day care service that provides overnight care to a child, any risks that the overnight care provided at the family day care residence or approved family day care venue of the service may pose to the safety, health or wellbeing of the child.
- (3) As soon as practicable after conducting a risk assessment under this regulation, the approved provider of an education and care service must make any necessary updates to the sleep and rest policies and procedures.
- (4) The approved provider must keep a record of each risk assessment conducted under this regulation."

27 Notification to parents of incident, injury, trauma and illness

For the penalty at the foot of regulation 86 of the National Regulations **substitute**—

"Penalty: \$2200."

28 Infectious diseases

- (1) For the penalty at the foot of regulation 88(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 88(2) of the National Regulations **substitute**—

"Penalty: \$2200."

- (3) For the penalty at the foot of regulation 88(3) of the National Regulations **substitute**—

"Penalty: \$2200."

29 First aid kits

- (1) For the penalty at the foot of regulation 89(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 89(2) of the National Regulations **substitute**—

"Penalty: \$2200."

30 Administration of medication

- (1) For the penalty at the foot of regulation 93(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 93(2) of the National Regulations **substitute**—

"Penalty: \$1100."

- (3) For the penalty at the foot of regulation 93(3) of the National Regulations **substitute**—

"Penalty: \$2200."

- (4) For the penalty at the foot of regulation 93(4) of the National Regulations **substitute**—

"Penalty: \$2200."

31 Emergency and evacuation procedures

- (1) In regulation 97(1)(b) of the National Regulations, for "plan." **substitute** "plan; and".

- (2) After regulation 97(1)(b) of the National Regulations **insert**—

"(c) if the education and care service premises is located within a multi-storey building shared with other occupants and on a storey with no direct egress to an assembly area—

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- (i) all possible evacuation routes from each storey on which the premises is located; and
 - (ii) the evacuation routes that are proposed to be used in an evacuation; and
 - (iii) how all children will be safely evacuated from the premises, including non-ambulatory children; and
 - (iv) the stages in which an evacuation will be carried out; and
 - (v) the identity of the person in charge of an evacuation; and
 - (vi) the roles and responsibilities of staff members during an evacuation; and
 - (vii) the arrangements made with the other occupants of the multi-storey building in relation to the evacuation of the multi-storey building."
- (3) For the penalty at the foot of regulation 97(2) of the National Regulations **substitute**—
- "Penalty: \$2200."
- (4) After regulation 97(2) of the National Regulations **insert**—
- "(2A) The approved provider of a centre-based service must review the risk assessment conducted under subregulation (2)—
- (a) at least once every 12 months; and
 - (b) as soon as practicable after becoming aware of any circumstance that may affect the safe evacuation of children from the service.
- Penalty: \$2200.
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(2B) As soon as practicable after reviewing the risk assessment under subregulation (2A), the approved provider of a centre-based service must make any necessary updates to the emergency and evacuation policies and procedures.

Penalty: \$2200."

(5) For the penalty at the foot of regulation 97(3) of the National Regulations **substitute**—

"Penalty: \$2200."

(6) For the penalty at the foot of regulation 97(4) of the National Regulations **substitute**—

"Penalty: \$2200."

(7) In the note at the foot of regulation 97 of the National Regulations, for "(2), (3)" **substitute** "(2), (2A), (3)".

32 Telephone or other communication equipment

For the penalty at the foot of regulation 98 of the National Regulations **substitute**—

"Penalty: \$1100."

33 Children leaving the education and care service premises

(1) For the penalty at the foot of regulation 99(1) of the National Regulations **substitute**—

"Penalty: \$2200."

(2) For the penalty at the foot of regulation 99(2) of the National Regulations **substitute**—

"Penalty: \$2200."

(3) For the penalty at the foot of regulation 99(3) of the National Regulations **substitute**—

"Penalty: \$2200."

34 Risk assessment must be conducted before excursion

(1) For the penalty at the foot of regulation 100(1) of the National Regulations **substitute**—

"Penalty: \$2200."

(2) For the penalty at the foot of regulation 100(2) of the National Regulations **substitute**—

"Penalty: \$2200."

(3) For the penalty at the foot of regulation 100(3) of the National Regulations **substitute**—

"Penalty: \$2200."

35 Authorisation for excursions

(1) For the penalty at the foot of regulation 102(1) of the National Regulations **substitute**—

"Penalty: \$1100."

(2) For the penalty at the foot of regulation 102(2) of the National Regulations **substitute**—

"Penalty: \$1100."

(3) For the penalty at the foot of regulation 102(3) of the National Regulations **substitute**—

"Penalty: \$1100."

36 New Division 6A of Part 4.2 inserted

After regulation 102 of the National Regulations **insert**—

"Division 6A—Safe arrival of children

102AA Definition

In this Division—

education or early childhood service

means—

(a) a school; or

- (b) an education and care service; or
- (c) a children's service; or
- (d) any other service which provides education or care to children.

102AAB Safe arrival of children policies and procedures

- (1) The safe arrival of children policies and procedures required under regulation 168(2)(gb) must set out the procedures to be followed by an education and care service to ensure the safe arrival of children who travel between an education and care service and any other education or early childhood service.
- (2) In preparing the safe arrival of children policies and procedures, the approved provider of an education and care service must consult with—
 - (a) staff of the service; and
 - (b) parents of children being educated and cared for by the service; and
 - (c) children being educated and cared for by the service (if applicable).

102AAC Risk assessment for the purposes of safe arrival of children policies and procedures

- (1) For the purposes of preparing the safe arrival of children policies and procedures under regulation 102AAB(1), the approved provider of an education and care service must ensure that a risk assessment is conducted in accordance with this regulation.

Penalty: \$2200.

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Note

A compliance direction may be issued for failure to comply with subregulation (1).

- (2) The approved provider must conduct a risk assessment—
 - (a) at least once every 12 months; and
 - (b) as soon as practicable after becoming aware of any circumstance that may affect the safe arrival of children travelling between an education and care service and any other education or early childhood service.
- (3) A risk assessment must—
 - (a) identify and assess any risks that a child's travel between an education and care service and any other education or early childhood service may pose to the safety, health or wellbeing of the child; and
 - (b) specify how the identified risks will be managed and minimised.
- (4) Without limiting subregulation (3), a risk assessment must consider the following, in respect of a child who travels between an education and care service and any other education or early childhood service—
 - (a) the age, developmental stage and individual needs of the child;
 - (b) the role and responsibilities of the following persons (if applicable)—
 - (i) in the case of a child who leaves the service premises to travel to an education and care service premises of another education and

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- care service, the nominated supervisor of each service;
 - (ii) the child's parent;
 - (iii) an authorised nominee named in the child's enrolment record;
 - (iv) a person authorised by—
 - (A) the child's parent; or
 - (B) an authorised nominee named in the child's enrolment record;
 - (c) the role and responsibilities of the service the care of which the child is entering or leaving;
 - (d) the communication arrangements between the service the child is leaving and the service the child is entering including any communication arrangements if the child is missing or cannot be accounted for during the child's travel;
 - (e) the procedure to be followed by the service if the service has identified that the child is missing or cannot be accounted for during the child's travel;
 - (f) given the risks posed by the child's travel, the number of educators or other responsible adults that are appropriate to provide supervision;
 - (g) the proposed route and destination, including any proximity to harm and hazards;
 - (h) the process for entering and exiting—
 - (i) the service premises; and
-

- (ii) the pick-up location or destination (as required);
 - (i) the procedure to be followed by the service to ensure the child leaves the service premises in accordance with regulation 99(4)(b).
- (5) If, after conducting a risk assessment, a risk relating to a child's travel is identified, the approved provider must make any necessary updates to the safe arrival of children policies and procedures as soon as practicable.
- (6) The approved provider must keep a record of each risk assessment conducted under this regulation."

37 Transport risk assessment must be conducted before service transports child

- (1) For the penalty at the foot of regulation 102B(1) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) For the penalty at the foot of regulation 102B(2) of the National Regulations **substitute**—
"Penalty: \$2200."
- (3) For the penalty at the foot of regulation 102B(3) of the National Regulations **substitute**—
"Penalty: \$2200."

38 Authorisation for service to transport children

- (1) For the penalty at the foot of regulation 102D(1) of the National Regulations **substitute**—
"Penalty: \$1100."

- (2) For the penalty at the foot of regulation 102D(2) of the National Regulations **substitute**—

"Penalty: \$1100."

- (3) For the penalty at the foot of regulation 102D(3) of the National Regulations **substitute**—

"Penalty: \$1100."

**39 Children embarking a means of transport—
centre-based service**

- (1) For the penalty at the foot of regulation 102E(2) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 102E(3) of the National Regulations **substitute**—

"Penalty: \$2200."

**40 Children disembarking a means of transport—
centre-based service**

- (1) For the penalty at the foot of regulation 102F(2) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 102F(3) of the National Regulations **substitute**—

"Penalty: \$2200."

**41 Premises, furniture and equipment to be safe, clean
and in good repair**

For the penalty at the foot of regulation 103(1) of the National Regulations **substitute**—

"Penalty: \$2200."

42 Fencing

For the penalty at the foot of regulation 104(1) of the National Regulations **substitute**—

"Penalty: \$2200."

43 Space requirements—indoor space

For the penalty at the foot of regulation 107(2) of the National Regulations **substitute—**

"Penalty: \$2200."

44 Space requirements—outdoor space

For the penalty at the foot of regulation 108(2) of the National Regulations **substitute—**

"Penalty: \$2200."

45 Ventilation and natural light

For the penalty at the foot of regulation 110 of the National Regulations **substitute—**

"Penalty: \$2200."

46 Nappy change facilities

For the penalty at the foot of regulation 112(3) of the National Regulations **substitute—**

"Penalty: \$1100."

47 Outdoor space—shade

For the penalty at the foot of regulation 114 of the National Regulations **substitute—**

"Penalty: \$1100."

48 Assessments of family day care residences and approved family day care venues

(1) For the penalty at the foot of regulation 116(1) of the National Regulations **substitute—**

"Penalty: \$2200."

(2) For the penalty at the foot of regulation 116(1B) of the National Regulations **substitute—**

"Penalty: \$2200."

(3) After regulation 116(2)(b) of the National Regulations **insert—**

"(ba) if the residence or venue is located in a multi-storey building shared with other occupants, for each storey on which the residence or venue is located, whether there is direct egress to an assembly area to allow the safe evacuation of all children attending the residence or venue, including non-ambulatory children."

49 New regulations 116A, 116B and 116C inserted

After regulation 116 of the National Regulations **insert—**

"116A Inspection of swimming pools, water features and other potential water hazards at family day care residences and approved family day care venues

(1) Without limiting regulation 116(1B), the approved provider of a family day care service must conduct an inspection each month of any swimming pool, water feature or other potential water hazard located at each family day care residence or approved family day care venue of the service to ensure that the health, safety and wellbeing of children who are educated and cared for by the service are protected.

Penalty: \$2200.

Note

A compliance direction may be issued for failure to comply with subregulation (1).

(2) An inspection must identify and assess any risks that a swimming pool, water feature or other potential water hazard located at a family day care residence or approved family day care venue may pose to the health, safety

- and wellbeing of children who are attending, or likely to attend, the residence or venue.
- (3) The approved provider may nominate a person (other than a person specified in subregulation (4)) to conduct an inspection of a family day care residence or approved family day care venue.
- (4) The following persons are specified—
- (a) a family day care educator who provides education and care to children at the residence or venue;
 - (b) a family day care educator assistant who provides education and care to children at the residence or venue;
 - (c) a person who resides at the residence or venue.
- (5) An inspection may be conducted—
- (a) in person; or
 - (b) subject to subregulation (6), remotely by means of technology that enables the approved provider or a person nominated by the approved provider to inspect the family day care residence or the approved family day care venue without being physically present.
- (6) An inspection must not be conducted remotely if—
- (a) the previous 2 inspections of the family day care residence or the approved family day care venue were conducted remotely; or
 - (b) 6 or more inspections of the family day care residence or the approved family day care venue of the service were
-

conducted remotely in the current calendar year.

Note

Regulation 116A does not apply in Western Australia.

116B Inspection report

- (1) After conducting an inspection under regulation 116A, the approved provider of a family day care service or a person nominated by the approved provider (as the case may be) must prepare a written inspection report that includes the information specified in subregulation (2).
- (2) The following information is specified—
 - (a) the address of the residence or venue;
 - (b) the date and time of the inspection;
 - (c) the full name of the person who conducted the inspection and their signature;
 - (d) whether the inspection was conducted in person or remotely;
 - (e) if the approved provider or the person nominated by the approved provider identifies that a swimming pool, water feature or other potential water hazard poses a risk to the health, safety and wellbeing of children who are attending, or likely to attend, the residence or venue—details of the risk identified in relation to the swimming pool, water feature or other potential water hazard located at the residence or venue, including—
 - (i) any action that the person who conducted the inspection considers should be taken—

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- (A) to rectify the risk; and
 - (B) to mitigate the risk before it is rectified; and
 - (ii) an estimate of the time required to rectify the risk;
 - (f) if the approved provider or the person nominated by the approved provider identifies that a swimming pool, water feature or other potential water hazard does not pose a risk to the health, safety and wellbeing of children who are attending, or likely to attend, the residence or venue—confirmation that the inspection did not identify any risks in relation to the swimming pool, water feature or other potential water hazard located at the residence or venue.
- (3) If an inspection is conducted by a person nominated by the approved provider, the person must provide the inspection report to the approved provider—
- (a) if subregulation (2)(e) applies—within 24 hours of conducting the inspection; or
 - (b) if subregulation (2)(f) applies—within 7 days of conducting the inspection.
- (4) As soon as practicable after receiving an inspection report under subregulation (3) or preparing an inspection report under subregulation (1), the approved provider must give the inspection report to each family day care educator who provides education and care to children at the residence or venue.
-

- (5) The approved provider must keep a copy of an inspection report prepared under this regulation.

Note

Regulation 116B does not apply in Western Australia.

116C Compliance with fencing requirements for swimming pools at family day care residences and approved family day care venues

The approved provider of a family day care service must ensure that any swimming pool at a family day care residence or approved family day care venue of the service has a fence that complies with the law of the participating jurisdiction that applies to fences around swimming pools in which the residence or venue is located.

Notes

- 1 A compliance direction may be issued for failure to comply with this regulation.
- 2 Regulation 116C does not apply in Western Australia."

50 Glass

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

"(b) is 0.75 metres or less above floor level.

Note

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

51 Family day care educator and family day care educator assistant to be at least 18 years old

For the penalty at the foot of regulation 119 of the National Regulations **substitute**—

"Penalty: \$1100."

52 Educators who are under 18 to be supervised

For the penalty at the foot of regulation 120 of the National Regulations **substitute**—

"Penalty: \$1100."

53 First aid qualifications

(1) For the penalty at the foot of regulation 136(1) of the National Regulations **substitute**—

"Penalty: \$2200."

(2) For the penalty at the foot of regulation 136(3) of the National Regulations **substitute**—

"Penalty: \$2200."

(3) After regulation 136(4) of the National Regulations **insert**—

"(4A) For the purposes of this regulation and regulation 153—

(a) an approved first aid qualification is taken to be current if—

(i) in the case of emergency life support training and cardio-pulmonary resuscitation training that forms part of the approved first aid qualification, the training was completed within the previous year; and

(ii) in the case of any other training that forms part of the approved first aid qualification, the training

was completed within the previous 3 years; and

- (b) approved anaphylaxis management training is taken to be current if the training was completed within the previous 3 years; and
- (c) approved emergency asthma management training is taken to be current if the training was completed within the previous 3 years."

54 Minimum requirements for a family day care educator

For the penalty at the foot of regulation 143A(1) of the National Regulations **substitute**—

"Penalty: \$2200."

55 Ongoing management of family day care educators

For the penalty at the foot of regulation 143B of the National Regulations **substitute**—

"Penalty: \$2200."

56 Family day care educator assistant

In regulation 144(4)(a) of the National Regulations, after "transport" **insert** "or escort".

57 Volunteers and students

For regulation 149(1) of the National Regulations **substitute**—

- "(1) The staff record must include the following information in relation to each student or volunteer who participates in the centre-based service—
 - (a) the full name, address and date of birth of the student or volunteer;

- (b) if the centre-based service is located within a jurisdiction with a working with children law or a working with vulnerable people law and the student or volunteer is required or permitted to obtain a working with children check under that law—a record of the identifying number of the student's or volunteer's current working with children check conducted under that law and the expiry date of that check, unless paragraph (c) applies;
- (c) except in the case of New South Wales, Queensland, South Australia and Tasmania, if the student or volunteer has provided proof of their current teacher registration under an education law of a participating jurisdiction—a record of the identifying number of the teacher registration and the expiry date of that registration."

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

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

- "(j) evidence that the educator holds a current approved first aid qualification;
- (ja) evidence that the educator has undertaken—
 - (i) current approved anaphylaxis management training; and
 - (ii) current approved emergency asthma management training;"

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- (2) After regulation 153(1)(m) of the National Regulations **insert**—
- "(ma) if regulation 124(5) applies, a record of an approval granted in relation to the educator that includes the following information—
- (i) the nature of the exceptional circumstances described in regulation 124(6);
 - (ii) the date on which the approval was granted;
 - (iii) the name of the person who granted the approval;
 - (iv) for each child educated and cared for by the educator as part of the approval, the child's name and date of birth;
 - (v) the period during which the educator is approved to educate and care for more than 7 children, or more than 4 children who are preschool age or under, at any one time, in exceptional circumstances;"
- (3) For regulation 153(2)(g) of the National Regulations **substitute**—
- "(g) if the co-ordinator will be providing education and care to children, evidence that the co-ordinator holds a current approved first aid qualification;
- (ga) if the co-ordinator will be providing education and care to children, evidence that the co-ordinator has undertaken—
- (i) current approved anaphylaxis management training; and
 - (ii) current approved emergency asthma management training;"
-

- (4) For regulation 153(3)(i) of the National Regulations **substitute**—
- "(i) evidence that the educator assistant holds a current approved first aid qualification;
- (ia) evidence that the educator assistant has undertaken—
- (i) current approved anaphylaxis management training; and
- (ii) current approved emergency asthma management training;"
- (5) At the foot of regulation 153 of the National Regulations **insert**—
- Note**
- See regulation 136(4A) in relation to how an approved first aid qualification, approved anaphylaxis management training or approved emergency asthma management training is taken to be current."

59 Access for parents

- (1) For the penalty at the foot of regulation 157(1) of the National Regulations **substitute**—
- "Penalty: \$1100."
- (2) For the penalty at the foot of regulation 157(2) of the National Regulations **substitute**—
- "Penalty: \$1100."
- (3) For the penalty at the foot of regulation 157(3) of the National Regulations **substitute**—
- "Penalty: \$1100."

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

- (1) For the penalty at the foot of regulation 163(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 163(2) of the National Regulations **substitute**—

"Penalty: \$2200."

61 Requirement for notice of new persons at residence

- (1) In the heading to regulation 164 of the National Regulations, for "**of new**" **substitute** "**in relation to**".

- (2) For regulation 164(1)(b) of the National Regulations **substitute**—

"(b) any circumstance relating to a person who resides, or intends to reside, at the educator's family day care residence that may affect whether the person is a fit and proper person to be in the company of children."

- (3) For the penalty at the foot of regulation 164(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (4) For regulation 164(2)(b) of the National Regulations **substitute**—

"(b) any circumstance relating to a person who resides, or intends to reside, at the educator's family day care residence that may affect whether the person is a fit and proper person to be in the company of children."

- (5) For the penalty at the foot of regulation 164(2) of the National Regulations **substitute**—

"Penalty: \$2200."

(6) After regulation 164(2) of the National Regulations **insert**—

"(3) For the purposes of subregulations (1)(b) and (2)(b), a circumstance that may affect whether a person is a fit and proper person to be in the company of children includes any of the following—

(a) the person is charged with or convicted of any of the following—

(i) an offence of a sexual nature;

(i) an offence of a violent nature;

(iii) an offence involving drugs;

(iv) an offence involving a weapon;

(b) the rejection of the person's application for any of the following, or the revocation or suspension of any of the following held by the person—

(i) a working with vulnerable people check;

(ii) a working with vulnerable people registration;

(iii) a working with children check;

(iv) a working with children card;

(c) the person is prohibited from working with children.

(4) A person who provides notification under subregulation (1)(b) or (2)(b) is not required to provide specific details of the circumstance that they consider may affect whether a person is a fit and proper person to be in the company of children."

62 Children not to be alone with visitors

- (1) For the penalty at the foot of regulation 166(1) of the National Regulations **substitute**—

"Penalty: \$2200."

- (2) For the penalty at the foot of regulation 166(2) of the National Regulations **substitute**—

"Penalty: \$2200."

63 Education and care service must have policies and procedures

- (1) For the penalty at the foot of regulation 168(1) of the National Regulations **substitute**—

"Penalty: \$1100."

- (2) In regulation 168(2)(a)(v) of the National Regulations, for "children;" **substitute** "children, including the matters set out in regulation 84B;"

- (3) After regulation 168(2)(ga) of the National Regulations **insert**—

"(gb) the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB;"

- (4) For regulation 168(2)(h) of the National Regulations **substitute**—

"(h) providing a child safe environment, including matters relating to—

- (i) the promotion of a culture of child safety and wellbeing within the service; and

- (ii) the safe use of online environments at the service;"

(5) For regulation 168(2)(o) of the National Regulations **substitute**—

"(o) dealing with complaints, including matters relating to—

(i) the provision of a complaint handling system at the service that is child focused; and

(ii) the management of a complaint that alleges a child is exhibiting harmful sexual behaviours."

64 Additional policies and procedures—family day care service

For the penalty at the foot of regulation 169(1) of the National Regulations **substitute**—

"Penalty: \$1100."

65 Policies and procedures to be followed

(1) For the penalty at the foot of regulation 170(1) of the National Regulations **substitute**—

"Penalty: \$1100."

(2) For the penalty at the foot of regulation 170(2) of the National Regulations **substitute**—

"Penalty: \$1100."

66 Policies and procedures to be kept available

(1) For the penalty at the foot of regulation 171(1) of the National Regulations **substitute**—

"Penalty: \$1100."

(2) For the penalty at the foot of regulation 171(2) of the National Regulations **substitute**—

"Penalty: \$1100."

67 Prescribed information to be displayed

- (1) In the heading to regulation 173 of the National Regulations, for "**displayed**" substitute "**displayed—education and care service other than a family day care service**".
- (2) In regulation 173(1) of the National Regulations, for "172" substitute "172(1)".
- (3) In regulation 173(1)(e)(i) of the National Regulations **omit** "the elements of the National Quality Standard and".
- (4) In regulation 173(2) of the National Regulations, for "172(f)" substitute "172(2)(f)".
- (5) For the penalty at the foot of regulation 173(3) of the National Regulations **substitute—**
"Penalty: \$2200."

68 New regulation 173A inserted

After regulation 173 of the National Regulations **insert—**

**"173A Prescribed information to be displayed—
family day care service**

- (1) For the purposes of section 172(2) of the Law, the following information is prescribed in respect of the matters in paragraphs (a) to (e) of that section—
 - (a) in relation to the provider approval—
 - (i) the name of the approved provider; and
 - (ii) the provider approval number; and
 - (iii) any conditions on the provider approval;

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- (b) in relation to the service approval—
 - (i) the name of the family day care service; and
 - (ii) the service approval number; and
 - (iii) any conditions on the service approval;
 - (c) the name of each nominated supervisor;
 - (d) in relation to the rating of the service—
 - (i) the current rating levels for each quality area stated in the National Quality Standard; and
 - (ii) the overall rating of the service;
 - (e) in relation to any service waivers or temporary waivers held by the service, the details of the waivers including—
 - (i) the regulations that have been waived; and
 - (ii) the duration of the waiver; and
 - (iii) whether the waiver is a service waiver or a temporary waiver.
- (2) For the purposes of section 172(2)(f) of the Law, the following matters and information are prescribed—
- (a) the hours and days of operation of each office of a family day care service;
 - (b) the name and telephone number of the person at the family day care service to whom complaints may be addressed;
 - (c) the name of the educational leader at the service;
 - (d) the contact details of the Regulatory Authority.
-

- (3) The prescribed information referred to in subregulations (1) and (2) must be positioned so that it is clearly visible to anyone from the main entrance to—
 - (a) each office of the family day care service; and
 - (b) each family day care residence of the service; and
 - (c) each approved family day care venue of the service.
- (4) In addition to the matters and information set out in subregulation (2), the following matters and information are prescribed in relation to each family day care residence and each approved family day care venue of a family day care service—
 - (a) the hours and days of operation of the family day care residence or family day care venue;
 - (b) in relation to a family day care residence, a diagram of the area or areas within the residence that are assessed, as part of an assessment conducted in accordance with regulation 116, to be suitable for education and care provided to children;
 - (c) in relation to an approved family day care venue, a diagram of the venue;
 - (d) if applicable—
 - (i) a notice stating that a child who has been diagnosed as at risk of anaphylaxis—

- (A) is enrolled at the family day care residence or family day care venue; and
 - (B) attends the family day care residence or family day care venue; and
 - (ii) a notice stating that there has been an occurrence of an infectious disease at the family day care residence or family day care venue.
- (5) The prescribed information referred to in subregulation (4) must be positioned so that it is clearly visible to anyone from the main entrance to the family day care residence or approved family day care venue to which the information relates."

69 Prescribed information to be notified to Regulatory Authority

After regulation 175(2)(a) of the National Regulations **insert**—

- "(ab) in the case of a centre-based service, any change to the ages of children being educated or cared for by the service;
- (ac) in the case of a centre-based service, any change to the nature of education and care offered by the service;

Example

If a centre-based service educates and cares for children over preschool age and the service proposes to offer education and care to children who are preschool age and under."

70 Regulation 176A substituted

For regulation 176A of the National Regulations **substitute—**

"176A Prescribed information to be notified to approved provider by family day care educator

- (1) For the purposes of section 174A(c) of the Law, the following matters are prescribed—
 - (a) any circumstances arising at the family day care residence that may pose a risk to the health, safety and wellbeing of children attending or likely to attend the family day care residence;
 - (b) any circumstances arising at the approved family day care venue that may pose a risk to the health, safety and wellbeing of children attending or likely to attend the family day care venue.
- (2) For the purposes of subregulation (1)(a) and (b), relevant circumstances include any of the following—
 - (a) any renovations or other changes to the residence or venue;
 - (b) an infectious disease outbreak at the residence or venue;
 - (c) a bushfire, flood or other natural disaster that may affect the residence or venue."

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

- (1) For the penalty at the foot of regulation 177(2) of the National Regulations **substitute—**

"Penalty: \$2200."

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- (2) In regulation 177(3)(a) of the National Regulations, for "subregulation (4)" **substitute** "subregulations (4) and (4A)".
- (3) For the penalty at the foot of regulation 177(3) of the National Regulations **substitute**—
"Penalty: \$2200."
- (4) After regulation 177(4) of the National Regulations **insert**—
 - "(4A) Before disclosing to a parent of a child enrolled at the service any personal information relating to a person specified in subregulation (4B) that is contained in a document referred to in subregulation (1), the approved provider must obtain the written consent of the person to whom the personal information relates to the disclosure of that personal information.
 - (4B) The following persons are specified—
 - (a) a parent of a child enrolled at the service, if that person is not the parent making the request under subregulation (3)(a);
 - (b) a person who is required to be notified of an emergency involving a child enrolled at the service if a parent of the child cannot be immediately contacted;
 - (c) an authorised nominee of a child enrolled at the service;
 - (d) a person who is authorised to consent to medical treatment of, or to authorise administration of medication to, a child enrolled at the service;

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- (e) a person who is authorised to authorise an educator to take a child enrolled at the service outside the service premises;
 - (f) a person who is authorised to authorise the service to transport a child enrolled at the service or arrange transportation of a child enrolled at the service.
- (4C) A person who has given their written consent under subregulation (4A) may withdraw their consent in writing at any time before the personal information is disclosed."
- (5) After regulation 177(5) of the National Regulations **insert**—
- "(6) In this regulation—
- personal information* has the same meaning as it has in the Privacy Act 1988 of the Commonwealth."

72 Prescribed enrolment and other documents to be kept by family day care educator

- (1) For the penalty at the foot of regulation 178(2) of the National Regulations **substitute**—
"Penalty: \$2200."
- (2) In regulation 178(3) of the National Regulations, for "subregulation (4)" **substitute** "subregulations (4) and (5)".
- (3) For the penalty at the foot of regulation 178(3) of the National Regulations **substitute**—
"Penalty: \$2200."

(4) After regulation 178(4) of the National Regulations **insert**—

"(5) Before disclosing to a parent of a child enrolled at the service any personal information relating to a person specified in subregulation (6) that is contained in a document referred to in subregulation (1), the family day care educator must obtain the written consent of the person to whom the personal information relates to the disclosure of that personal information.

(6) The following persons are specified—

- (a) a parent of a child enrolled at the service, if that person is not the parent making the request under subregulation (3);
- (b) a person who is required to be notified of an emergency involving a child enrolled at the service if a parent of the child cannot be immediately contacted;
- (c) an authorised nominee of a child enrolled at the service;
- (d) a person who is authorised to consent to medical treatment of, or to authorise administration of medication to, a child enrolled at the service;
- (e) a person who is authorised to authorise a family day care educator to take a child enrolled at the service outside the service premises;
- (f) a person who is authorised to authorise the service to transport a child enrolled at the service or arrange transportation of a child enrolled at the service.

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(7) A person who has given their written consent under subregulation (5) may withdraw their consent in writing at any time before the personal information is disclosed.

(8) In this regulation—

personal information has the same meaning as it has in the Privacy Act 1988 of the Commonwealth."

73 Confidentiality of records kept by approved provider

(1) For regulation 181(b) of the National Regulations **substitute**—

"(b) a parent of the child to whom the information relates in accordance with regulation 177 (except in the case of information kept in a staff record); or"

(2) For the penalty at the foot of regulation 181 of the National Regulations **substitute**—

"Penalty: \$2200."

74 Confidentiality of records kept by family day care educator

(1) For regulation 182(b) of the National Regulations **substitute**—

"(b) a parent of the child to whom the information relates in accordance with regulation 178; or"

(2) For the penalty at the foot of regulation 182 of the National Regulations **substitute**—

"Penalty: \$2200."

75 Prescribed form of identity card

For the penalty at the foot of regulation 187(3) of the National Regulations **substitute**—

"Penalty: \$1100."

76 False or misleading information or documents

For the penalty at the foot of regulation 191(1) of the National Regulations **substitute**—

"Penalty: \$2200."

77 Modifications relating to National Education and Care Services Freedom of Information Commissioner and staff

In regulation 205(f) of the National Regulations, before subparagraph (i) **insert**—

"(iaa) the power conferred under section 8(3) of that Act as modified under regulation 209(ja);

(iab) the power conferred under section 11C(2) of that Act as modified under regulation 209(ja);".

78 Miscellaneous modifications

After regulation 209(j) of the National Regulations **insert**—

"(ja) as if a reference in sections 8(3) and 11C(2) to legislative instrument were a reference to instrument; and".

79 Relevant fee for an application for qualification to be assessed for inclusion on the list of approved qualifications

In regulation 236O(4) of the National Regulations, for "prescribed fee" **substitute** "relevant fee".

80 Publication where service taken to comply with regulations

In regulation 256(3) of the National Regulations, in the definition of *prescribed regulation*, for "339, 353" substitute "339".

81 Application for removal of exemption

In regulation 257(5) of the National Regulations, in the definition of *prescribed regulation*, for "339, 353" substitute "339".

82 Swimming pools

Regulation 274(3) of the National Regulations is revoked.

83 Working with vulnerable people registration—staff members

For the penalty at the foot of regulation 344(1) of the National Regulations substitute—

"Penalty: \$2200."

84 Regulation 353 revoked

Regulation 353 of the National Regulations is revoked.

85 New Part 7.15 inserted

After Part 7.14 of the National Regulations insert—

"Part 7.15—Transitional and savings provisions—Education and Care Services National Further Amendment Regulations 2023

416 First aid qualifications

Regulation 136(4A), as inserted by the Education and Care Services National

Further Amendment Regulations 2023, does not apply until 1 April 2024."

86 Schedule 3 Compliance directions—prescribed provisions

- (1) In Schedule 3 to the National Regulations **omit** the words and expressions beginning "Regulation 81(1)" and ending "rest".
- (2) In Schedule 3 to the National Regulations, after the words and expressions beginning "Regulation 84" and ending "law" **substitute**—
 - "Regulation 84(1) Awareness of child protection law
 - Regulation 84A(1) Reasonable steps to ensure that the needs for sleep and rest of children are met
 - Regulation 84C(1) Risk assessment for the purposes of preparing sleep and rest policies and procedures".
- (3) In Schedule 3 to the National Regulations, for "Regulation 97(2)," **substitute** "Regulation 97(2), (2A),".
- (4) In Schedule 3 to the National Regulations, after the words and expressions beginning "Regulation 98" and ending "equipment" **insert**—
 - "Regulation 102AAC(1) Risk assessment for the purposes of preparing safe arrival of children policies and procedures".

- (5) In Schedule 3 to the National Regulations, after the words and expressions beginning "Regulation 116(1)" and ending "venues" **insert—**

"Regulation 116A(1) Inspection of swimming pools, water features and other potential water hazards at family day care residences and approved family day care venues

Regulation 116C Compliance with fencing requirements for swimming pools at family day care residences and approved family day care venues".

Endnotes

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