

# **Education and Care Services National Amendment Regulations 2024**

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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3 May 2024

# Education and Care Services National Amendment Regulations 2024

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*Education and Care Services National Law*

**Education and Care Services National Amendment  
Regulations 2024**

**Part 1—Preliminary**

**1 Title**

These Regulations may be cited as the Education and Care Services National Amendment Regulations 2024.

**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 the day on which they are published on the NSW Legislation website.

**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 definition—

"*ABN* has the same meaning as in section 41 of the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth;"

### 6 New regulation 9A inserted

After regulation 9 of the National Regulations **insert**—

#### "9A Approval in principle criteria

For the purposes of the definition of *approval in principle criteria* in section 5(1) of the Law, the following regulations are prescribed—

- (a) regulation 109(b);
- (b) regulation 110(a) and (b);
- (c) regulation 112(4);
- (d) regulation 115."

### 7 Additional information about proposed education and care service premises

In regulation 25(1) of the National Regulations—

- (a) in paragraph (g)(ii), for "jurisdiction." **substitute** "jurisdiction;"
- (b) after paragraph (g) **insert**—
  - "(h) if the proposed premises has an approval in principle—
    - (i) the approval in principle number (if any); and

- (ii) a statement made by the applicant that, to the best of the applicant's knowledge, the premises were constructed, altered or repaired in accordance with the plans, drawings or specifications attached to, or specified in, the approval in principle."

**8 New Part 2.3 inserted**

After Part 2.2 of the National Regulations  
insert—

**"Part 2.3—Premises approvals in principle**

**46 Application for approval in principle of proposed premises**

An application under section 106 of the Law for the approval in principle of proposed education and care service premises must include the following information—

- (a) if the applicant is an individual—
    - (i) the applicant's full name; and
    - (ii) any former or other name the applicant may be known by; and
    - (iii) proof of the applicant's identity;
  - (b) if the applicant is a person other than an individual—
    - (i) the applicant's name; and
    - (ii) any trading or other name used by the applicant; and
    - (iii) documentary evidence of the legal status of the applicant and its constitution;
-

**Example**

The partnership agreement for a partnership.

- (c) the applicant's ABN (if any);
- (d) the applicant's provider approval number (if any);
- (e) if the applicant does not have a provider approval number, whether the applicant has applied for a provider approval but the application has not been decided;

**Note**

A provider approval is not required for an application for an approval in principle.

- (f) the applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office;
- (g) the name and contact details of the contact person for the purposes of the application;
- (h) the location and street address of the proposed education and care service premises;
- (i) a description of the land on which the proposed education and care service premises will be located;

**Example**

Lot and plan numbers on the certificate of title.

- (j) a soil assessment for the site of the proposed education and care service premises;

- (k) plans prepared by a building practitioner showing—
    - (i) all possible evacuation routes from each storey of the proposed education and care service premises; and
    - (ii) the assembly area proposed to be used in an emergency evacuation of the proposed education and care service premises;
  - (l) a description of—
    - (i) any other occupants or proposed occupants of the building in which the premises are proposed to be located; and
    - (ii) the types of any enterprises operating from properties within 50 metres of the proposed education and care service premises;
- Example**
- A supermarket.
- (m) a plan showing the direct sunlight to be received by the proposed education and care service premises between 9:00 am and 3:00 pm on the winter solstice and the summer solstice.

**47 Application for amendment of approval in principle**

An application under section 115 of the Law for an amendment of an approval in principle must include the following information—

- (a) the approval in principle number (if any);
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- (b) the name of the approval in principle holder;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the location and street address of the proposed education and care service premises;
- (e) a description of the land on which the proposed education and care service premises will be located;

**Example**

Lot and plan numbers on the certificate of title.

- (f) the details of the amendment applied for;
- (g) any plans prepared by a building practitioner that are relevant to the amendment applied for.

**48 Notice of transfer of approval in principle**

A notice under section 118 of the Law of a transfer of an approval in principle must include the following information—

- (a) the approval in principle number (if any);
- (b) the name of the transferring approval in principle holder;
- (c) the name and contact details of the contact person for the transferring approval in principle holder for the purposes of the transfer;
- (d) the location and street address of the proposed education and care service premises;



- (e) a description of the land on which the proposed education and care service premises will be located;

**Example**

Lot and plan numbers on the certificate of title.

- (f) if the receiving approval in principle holder is an individual—
  - (i) the individual's full name; and
  - (ii) any former or other name the individual may be known by; and
  - (iii) proof of the individual's identity;
- (g) if the receiving approval in principle holder is a person other than an individual—
  - (i) the person's name; and
  - (ii) any trading or other name used by the person; and
  - (iii) documentary evidence of the legal status of the person and its constitution;

**Example**

The partnership agreement for a partnership.

- (h) the receiving approval in principle holder's ABN (if any);
- (i) the receiving approval in principle holder's address and postal address or, if there is more than one address, the street address and postal address of the receiving approval in principle holder's principal office;

- (j) the name and contact details of the contact person for the receiving approval in principle holder for the purposes of the transfer.

**49 Application to extend approval in principle**

An application under section 124 of the Law to extend an approval in principle must include the following information—

- (a) the approval in principle number (if any);
- (b) the name of the approval in principle holder;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the location and street address of the proposed education and care service premises;
- (e) a description of the land on which the proposed education and care service premises will be located;

**Example**

Lot and plan numbers on the certificate of title.

- (f) the estimated date of completion of the construction, alteration or repair of the proposed education and care service premises;
  - (g) details of any proposed application for a service approval in respect of the proposed education and care service premises, including—
    - (i) the name of the approved provider (if any); and
-

- (ii) the provider approval number (if any); and
- (iii) the estimated date by which the application for a service approval will be made.

**50 Application to reinstate approval in principle**

An application under section 125 of the Law to reinstate an approval in principle must include the following information—

- (a) the approval in principle number (if any);
- (b) the name of the approval in principle holder at the time of the expiry of the approval in principle;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the location and street address of the proposed education and care service premises;
- (e) a description of the land on which the proposed education and care service premises will be located;

**Example**

Lot and plan numbers on the certificate of title.

- (f) the estimated date of completion of the construction, alteration or repair of the proposed education and care service premises;
  - (g) details of any proposed application for a service approval in respect of the proposed education and care service premises, including—
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- (i) the name of the approved provider (if any); and
- (ii) the provider approval number (if any); and
- (iii) the estimated date by which the application for a service approval will be made."

**9 Prescribed information to be displayed—education and care service other than a family day care service**

- (1) In regulation 173(2) of the National Regulations—
    - (a) for "section 172(2)(f)" **substitute** "section 172(1)(f)";
    - (b) in paragraph (c) **omit** "in the case of a centre-based service,";
    - (c) for paragraphs (f) and (g) **substitute**—
      - "(f) if applicable—
        - (i) a notice stating that a child who has been diagnosed as at risk of anaphylaxis is enrolled at the service; and
        - (ii) a notice stating that there has been an occurrence of an infectious disease at the service premises."
  - (2) For regulation 173(3) of the National Regulations **substitute**—
    - "(3) An approved provider of an education and care service (other than a family day care service) must display information specified in subregulation (1)(d) by displaying one or both of the following certificates—
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- (a) the certificate issued to the approved provider by or on behalf of the Regulatory Authority about—
  - (i) the current rating levels for each quality area stated in the National Quality Standard; and
  - (ii) the overall rating of the service;
- (b) if the National Authority has given the service the highest rating level—the certificate about the overall rating of the service issued to the approved provider by the National Authority."

**10 Prescribed information to be displayed—family day care service**

After regulation 173A(5) of the National Regulations **insert**—

- "(6) An approved provider of a family day care service must display information specified in subregulation (1)(d) by displaying one or both of the following certificates—
- (a) the certificate issued to the approved provider by or on behalf of the Regulatory Authority about—
    - (i) the current rating levels for each quality area stated in the National Quality Standard; and
    - (ii) the overall rating of the service;
  - (b) if the National Authority has given the service the highest rating level—the certificate about the overall rating of the service issued to the approved provider by the National Authority."
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**11 Prescribed fees—application for service approval**

- (1) In regulation 236D(4) of the National Regulations, for "or (2)" **substitute** ", (2) or (3)".
- (2) In regulation 236D(5) of the National Regulations, for "(3)" **substitute** "(4)".

**12 New regulations 236JA, 236JB, 236JC and 236JD inserted**

After regulation 236J of the National Regulations **insert—**

**"236JA Prescribed fees—application for an approval in principle**

- (1) For the purposes of section 107(1)(e) of the Law, the prescribed fee for the financial year beginning on 1 July 2023 is \$815.
- (2) For the purposes of section 107(1)(e) of the Law, the prescribed fee for the financial year beginning on 1 July 2024 is to be calculated in accordance with the following formula—

$$\$815 \times FX \times 1.1$$

where—

***FX*** is the indexation factor for the financial year beginning on 1 July 2024.

- (3) For the purposes of section 107(1)(e) of the Law, the prescribed fee for the financial year beginning on 1 July 2025 is to be calculated in accordance with the following formula—

$$P \times FX \times 1.1$$

where—

***P*** is the amount of the fee payable for the financial year beginning on 1 July 2024 calculated in accordance with subregulation (2);

***FX*** is the indexation factor for the financial year beginning on 1 July 2025.

- (4) For the purposes of section 107(1)(e) of the Law, in a financial year beginning on 1 July 2026 or 1 July in a later year (the ***relevant financial year***), the prescribed fee is to be calculated in accordance with the following formula—

$$P \times FX$$

where—

***P*** is the amount of the fee payable in the previous financial year;

***FX*** is the indexation factor for the relevant financial year.

**236JB Prescribed fees—amendment of approval in principle**

- (1) For the purposes of section 115(2)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2023 is \$124.
- (2) For the purposes of section 115(2)(c) of the Law, in a financial year beginning on 1 July 2024 or 1 July in a later year (the ***relevant financial year***), the prescribed fee is to be calculated in accordance with the following formula—

$$P \times FX$$

where—

***P*** is the amount of the fee payable in the previous financial year;

***FX*** is the indexation factor for the relevant financial year.

**236JC Prescribed fees—application to extend approval in principle**

(1) For the purposes of section 124(3)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2023 is \$130.

(2) For the purposes of section 124(3)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2024 is to be calculated in accordance with the following formula—

$$\$130 \times FX \times 1.1$$

where—

**FX** is the indexation factor for the financial year beginning on 1 July 2024.

(3) For the purposes of section 124(3)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2025 is to be calculated in accordance with the following formula—

$$P \times FX \times 1.1$$

where—

**P** is the amount of the fee payable for the financial year beginning on 1 July 2024 calculated in accordance with subregulation (2);

**FX** is the indexation factor for the financial year beginning on 1 July 2025.

(4) For the purposes of section 124(3)(c) of the Law, in a financial year beginning on 1 July 2026 or 1 July in a later year (the **relevant financial year**), the prescribed fee is to be calculated in accordance with the following formula—

$$P \times FX$$

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where—

*P* is the amount of the fee payable in the previous financial year;

*FX* is the indexation factor for the relevant financial year.

**236JD Prescribed fees—application to reinstate approval in principle**

- (1) For the purposes of section 125(2)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2023 is \$130.
- (2) For the purposes of section 125(2)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2024 is to be calculated in accordance with the following formula—

$$\$130 \times FX \times 1.1$$

where—

*FX* is the indexation factor for the financial year beginning on 1 July 2024.

- (3) For the purposes of section 125(2)(c) of the Law, the prescribed fee for the financial year beginning on 1 July 2025 is to be calculated in accordance with the following formula—

$$P \times FX \times 1.1$$

where—

*P* is the amount of the fee payable for the financial year beginning on 1 July 2024 calculated in accordance with subregulation (2);

*FX* is the indexation factor for the financial year beginning on 1 July 2025.

- (4) For the purposes of section 125(2)(c) of the Law, in a financial year beginning on 1 July 2026 or 1 July in a later year (the ***relevant financial year***), the prescribed fee is to be calculated in accordance with the following formula—

$$P \times FX$$

where—

***P*** is the amount of the fee payable in the previous financial year;

***FX*** is the indexation factor for the relevant financial year."

**13 Prescribed fee—application for review by the Ratings Review Panel of rating level**

In regulation 236L(4) of the National Regulations, for "1 July 2023" **substitute** "1 July 2024".

**14 Prescribed fees for other applications**

In regulation 236N of the National Regulations, after "85(2)(c)," **insert** "118(3)(d),".

## **Part 3—Amendments relating to the Australian Capital Territory**

### **15 Regulation 108(2), new note**

At the foot of regulation 108(2) of the National Regulations *insert*

**Note—**

Additional requirements apply to centre-based services in the ACT (see regulation 259A).

### **16 Part 7.2, new division 1A**

After regulation 259 of the National Regulations *insert*

#### **Division 1A Additional outdoor space requirements for certain centre-based services**

##### **259A Unencumbered outdoor space—exposure to natural environment**

- (1) The requirements in this regulation apply in addition to the requirements in regulation 108.
- (2) This regulation applies in relation to the following centre-based services only:
  - (a) a service for which the application for service approval is made under section 43 of the Law on or after 1 July 2024;
  - (b) a service for which an application to amend a service approval to increase the maximum number of children to be educated and cared for at the service is made and approved under section 54 of the Law on or after 1 July 2024.

- (3) In calculating the unencumbered outdoor space required for regulation 108(2) each area included must—
- (a) be outside the external walls of a building on the premises; and
  - (b) be at ground level or finished ground level; and
  - (c) receive at least 60% direct sunlight, for at least 3.5 hours, between 9:00 am and 3:00 pm on the winter solstice and the summer solstice; and
  - (d) be under not more than 30% permanent cover.

**Example—**

Cover under a verandah or fixed roofing.

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## **Endnotes**