



New South Wales

Children (Education and Care Services) Supplementary Provisions Regulation 2024

under the

Children (Education and Care Services) Supplementary Provisions Act
2011

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

PRUE CAR, MP
Minister for Education and Early Learning

Explanatory note

The object of this regulation is to repeal and remake, with minor changes, the *Children (Education and Care Services) Supplementary Provisions Regulation 2019*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation provides for the following—

- (a) the application of provisions of the *Children (Education and Care Services) National Law (NSW)* and the *Education and Care Services National Regulations* to NSW mobile and occasional education and care services,
- (b) additional conditions for provider approvals and service approvals for mobile and occasional education and care services,
- (c) venue management plans for mobile education and care services.

This regulation is made under the *Children (Education and Care Services) Supplementary Provisions Act 2011*, including sections 29, 36, the general regulation-making power, and 37(2).

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

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

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Children (Education and Care Services) Supplementary Provisions Regulation 2024

under the

Children (Education and Care Services) Supplementary Provisions Act 2011

Part 1 Preliminary

1 Name of regulation

This regulation is the *Children (Education and Care Services) Supplementary Provisions Regulation 2024*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Note— This regulation repeals and replaces the *Children (Education and Care Services) Supplementary Provisions Regulation 2019*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this regulation—

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

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

venue management plan has the same meaning as in section 15.

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

Part 2 Alignment with National Law

Division 1 Application of National Law Regulations—the Act, s 37(2)

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

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

Note— The Act, section 22 provides that references in the National Law to education and care services are to be read as references to State regulated education and care services. The Act, section 24 provides that references in the National Law to the Regulatory Authority are to be read as references to the NSW Regulatory Authority, which is the Secretary of the Department of Education. The Act, section 26 provides that the following references in the National Law to national scheme matters are to be disregarded—

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

5 Excluded provisions

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

- (a) regulations 69–71, which relate to certain assessment and rating functions of the Australian Children's Education and Care Quality Authority,
- (b) Part 4.4, Division 7, which relates to the approval and determination of qualifications by the National Authority,
- (c) the following provisions of Chapter 6, which relate to administration—
 - (i) Part 6.1,
 - (ii) Part 6.2, except regulations 226–228 and 230,
 - (iii) regulation 236,
- (d) Chapter 7, which relates to jurisdiction-specific and transitional matters, except regulations 271–274A, which are NSW-specific provisions relating to educator to child ratios, swimming pools and documentation.

6 Interpretation of references

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

- (a) a reference in the National Law Regulations to a provision of the National Law must be read as a reference to the corresponding provision of the National Law Alignment Provisions, and
- (b) a reference in the National Law Regulations to a provider approval or service approval must be read as a reference to a provider approval or service approval under the Act, instead of the National Law, and

- (c) a reference in the National Law Regulations to an approved provider must be read as a reference to an approved provider under the Act, instead of the National Law, and
- (d) a reference in the National Law Regulations to a centre-based service must be read as a reference to a State regulated education and care service.

Division 2 Modification of National Law Regulations—the Act, ss 36(2)(a) and 37(2)

7 Copy of service approval to be provided to approved provider

For the National Law Alignment Provisions, section 52(i), a copy of a service approval must also state the type of State regulated education and care service for which the service approval has been granted.

8 Identity cards for authorised officers

For the National Law Alignment Provisions, section 196(1), an identity card issued to an authorised officer under the National Law is in the prescribed form if the identity card—

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

9 Documentation of educational programs for occasional education and care services

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

10 Service waivers and temporary waivers for mobile education and care services

The National Law Regulations, regulations 41 and 44 apply to a mobile education and care service with the following modifications—

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

Note— See also this regulation, Part 4, which requires a mobile education and care service to submit a venue management plan to the Regulatory Authority in relation to non-compliance with the provisions to which this section refers.

Part 3 Provider approvals and service approvals

11 Conditions of provider approvals—the Act, s 36(2)(a)

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

12 Conditions of service approvals—the Act, s 36(2)(a)

- (1) For the National Law Alignment Provisions, section 51(5), the conditions of a service approval are the conditions prescribed in the National Law Regulations that are relevant to the type of State regulated education and care service authorised by the approval.
- (2) A service approval for a State regulated education and care service is also subject to the condition that the approved provider must develop, maintain and implement procedures to ensure the following persons comply with the conditions of the service approval that apply to them—
 - (a) the nominated supervisor,
 - (b) all other members of staff of the education and care service.
- (3) In this section—
staff, of an education and care service, means the persons employed for remuneration to provide the service.

13 Associated children's services—the Act, s 29

- (1) The Regulatory Authority may dispense with the requirement to obtain a service approval for an associated children's service that is authorised by a service approval under the National Law.
- (2) In this section—
associated children's service has the same meaning as in the National Law.

Part 4 Mobile education and care services—the Act, s 36(2)(a)

14 Application for service approval for mobile education and care service

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

- (a) the addresses of the premises at which the service will be provided, and
- (b) if an occupation certificate is required under the *Environmental Planning and Assessment Act 1979* for the proposed use of the premises for a mobile education and care service—a copy of the certificate.

15 Venue management plans for mobile education and care services

- (1) If a mobile education and care service is to be provided on premises that do not comply with the National Law Regulations, regulations 80, 104–110 or 112–115, a venue management plan must be submitted to and approved by the Regulatory Authority.
- (2) The Regulatory Authority must not grant a service approval for a mobile education and care service for which a venue management plan is required unless the service has approved a venue management plan.
- (3) While an approved venue management plan is in force in relation to a mobile education and care service and the mobile education and care service complies with the venue management plan—
 - (a) the service is taken to comply with the provisions of the National Law Regulations specified in the venue management plan, and
 - (b) the provisions of the National Law Regulations specified in the venue management plan are taken to not be prescribed for the National Law Alignment Provisions, section 176 in relation to the service.

- (4) In this section—

venue management plan means a plan describing how the safety and well-being of children being educated at particular premises at which a mobile education and care service is being provided will be ensured despite the premises not complying with specified provisions of the National Law Regulations.

16 Amendments to venue management plans for mobile education and care services

- (1) An approved provider of a mobile education and care service who intends to change a venue management plan must apply to the Regulatory Authority for the following—
 - (a) approval of the revised venue management plan,
 - (b) an amendment to the service approval for the service to reflect the revised venue management plan.
- (2) An application for an amendment to a service approval made under this section must include a copy of the revised venue management plan, in addition to the information required in relation to an amendment under the National Law Regulations, regulation 34.

Part 5 Miscellaneous

17 Transitional provision for existing teaching staff

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

18 Repeal and savings

- (1) The *Children (Education and Care Services) Supplementary Provisions Regulation 2019* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Children (Education and Care Services) Supplementary Provisions Regulation 2019*, had effect under that regulation continues to have effect under this regulation.