

TABLING NOTE FOR SUBORDINATE LEGISLATION

SUBORDINATE LEGISLATION NO. 543 OF 2017

EDUCATION AND CARE SERVICES NATIONAL AMENDMENT REGULATIONS 2017

Purpose

The *Education and Care Services (National Uniform Legislation) Act 2011* (the Act) and the Education and Care Services National Regulations 2011 (the National Regulations) provide the legislative foundation for the National Quality Framework for early childhood and school age education and care services in the Northern Territory.

The National Quality Framework is a national regulatory and quality assurance system for long day care, family day care, three year old kindergarten, preschool and outside school hours care.

Summary of key provisions

The Education and Care Services National Amendment Regulations 2017 support the amendments to the Act by providing detail on a range of operational requirements. The appendix in the Act has been amended to apply the *Education and Care Services National Law Amendment Act 2017*.

Amendments to National Law and the National Regulations will take effect in all states and territories (except Western Australia) on 1 October 2017.

The amendments to the National Regulations are consistent with the recommendations from the 2014 review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care, which aim to improve the effectiveness and efficiency of the National Quality Framework.

Key changes in the Amendment Regulations include:

- (a) strengthening regulatory requirements for family day care services to improve the quality of education and care provided to children, including by:
 - (i) prescribing a condition on a service approval of a family day care service for the purposes of section 51(5) of the National Law requiring the approved provider to ensure that the number of family day care educators providing education and care as part of the service does not exceed the maximum number of educators determined by the Regulatory Authority (Regulatory Authorities must amend existing service approvals accordingly by 1 October 2018)
 - (ii) requiring the principal office of an approved family day care service to be located within the jurisdiction in which the service approval for the service is granted (this requirement may be waived)
 - (iii) prescribing the following minimum co-ordinator to educator ratios for a family day care service for the purposes of section 163(1) of the National Law:
 - a. 1:15 for the first 12 months after the services commences operation
 - b. 1:25 after the first 12 months

- (iv) prescribing minimum requirements for registration or engagement, and ongoing management of, family day care educators
- (v) prescribing the circumstances in which a person other than a family day care educator may educate and care for a child for the purposes of section 164A of the National Law
- (vi) prescribing information which must be included in the register of family day care educators, co-ordinators and assistants for the purposes of section 269 of the National Law
- (vii) prescribing matters about which a family day care educator must notify the approved provider of the service for the purposes of section 174A(c) of the National Law
- (b) prescribing an educator-to-child ratio of 1:15 for centre-based services providing education and care services to children over preschool age for the purpose of section 169 of the National Law, noting this ratio has already been in place for this service type through jurisdiction specific regulations since 2012
- (c) revoking supervisor certificate requirements from the National Regulations consistent with amendments to the National Law, and prescribe minimum requirements for:
 - (i) persons in day-to-day charge for the purpose of section 5(1) of the National Law
 - (ii) nominated supervisors for the purpose of section 161A of the National Law
- (d) requiring services to have in place policies and procedures in relation to sleep and rest for children
- (e) requiring an approved provider to notify the Regulatory Authority of actual or alleged physical or sexual abuse of a child being educated or cared for by the service for the purposes of section 174(1)(b) of the National Law
- (f) simplifying and clarify the National Regulations to reduce administrative costs for Regulatory Authorities in participating jurisdictions and the regulatory burden for services
- (g) making minor and technical changes to specific provisions in the National Regulations to clarify their operation and effect, and to improve consistency within the National Regulations and with other legislation
- (h) revoking other provisions which are no longer required
 - (i) providing that in the Northern Territory, New South Wales and Queensland outside school hours care services will be taken to meet the program documentation requirements for regulation 74 if the documentation provides evidence about the development of the program.

Legislative Authority

Section 303 of the *Education and Care Services (National Uniform Legislation) Act 2011*.

Education and Care Services National Amendment Regulations 2017

under the

Education and Care Services National Law

The Education Council has made the following regulations under sections 301 and 324 of the *Education and Care Services National Law* as applied by the law of the States and Territories.

RICK HARRISON
Secretary
Education Council

15 September 2017

Education and Care Services National Amendment Regulations 2017

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Education and Care Services National Law

**Education and Care Services National Amendment
Regulations 2017**

1 Title

These Regulations may be cited as the *Education and Care Services National Amendment Regulations 2017*.

2 Authorising provisions

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

3 Commencement

These Regulations commence on 1 October 2017.

4 National Regulations

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

5 Definitions

In regulation 4(1) of the National Regulations—

(a) for the definition of *emergency substitute*—

"emergency, in relation to an education and care service, means an incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person at the education and care service;

Examples

- 1 Flood.
- 2 Fire.
- 3 A situation that requires the education and care service premises to be locked down.";

(b) the definition of *safety screening clearance* is **revoked**.

6 Services that are not education and care services

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

"(i) a service that provides education and care during school holidays for a total of not more than 28 days in a calendar year;".

7 Regulation 12 substituted

For regulation 12 of the National Regulations **substitute—**

"12 Meaning of *serious incident*

For the purposes of the definition of *serious incident* in section 5(1) of the Law, each of the following is prescribed as a serious incident—

- (a) the death of a child—
 - (i) while that child is being educated and cared for by an education and care service; or
 - (ii) following an incident occurring while that child was being educated and cared for by an education and care service;

- (b) any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an education and care service—
 - (i) which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
 - (ii) for which the child attended, or ought reasonably to have attended, a hospital;

Example

A broken limb.

- (c) any incident involving serious illness of a child occurring while that child is being educated and cared for by an education and care service for which the child attended, or ought reasonably to have attended, a hospital;

Example

Severe asthma attack, seizure or anaphylaxis reaction.

- (d) any emergency for which emergency services attended;
 - (e) any circumstance where a child being educated and cared for by an education and care service—
 - (i) appears to be missing or cannot be accounted for; or
 - (ii) appears to have been taken or removed from the education and care service premises in a manner that contravenes these Regulations; or
-

- (iii) is mistakenly locked in or locked out of the education and care service premises or any part of the premises."

Note

The Guide to Chapter 2 is amended as follows:

Guide to Chapter 2. This Chapter sets out requirements for obtaining provider approvals and service approvals.

Part 2.1 deals with the process of obtaining provider approvals and includes the information required for applications.

Part 2.2 contains matters relating to service approvals.

Division 1 deals with applications for service approvals, conditions on service approvals and annual fees for service approvals.

Division 2 deals with amendment of service approvals and notices of change to nominated supervisors.

Division 3 deals with the transfer of service approvals from one approved provider to another.

Division 4 deals with the suspension of service approvals.

Division 5 deals with the process for obtaining a service waiver.

Division 6 deals with the process for obtaining a temporary waiver.

8 Application for provider approval by individual

In regulation 14(fc) of the National Regulations
omit "safety screening clearance or".

9 Application by individual executor for provider approval

In regulation 20(gc) of the National Regulations
omit "safety screening clearance or".

10 Application by individual for provider approval on incapacity of approved provider

In regulation 22(gc) of the National Regulations
omit "safety screening clearance or".

11 Application for service approval—centre-based service

In regulation 24 of the National Regulations—

(a) for "An application" **substitute** "Subject to regulation 25A, an application";

(b) for paragraph (k) **substitute**—

"(k) the full name and contact details,
including the after-hours telephone
number, of each nominated supervisor.

Note

The application must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 44(1)(da) of the Law."

12 Additional information about proposed education and care service premises

(1) In regulation 25(1) of the National Regulations,
after "subregulation (2)" **insert** "and
regulation 25A".

(2) For regulation 25(2) of the National Regulations
substitute—

"(2) If the approved provider is seeking to locate
the education and care service on a school
site, the Regulatory Authority may determine
that the requirements of subregulation (1)(b),
(d), (e) or (g) do not apply to the application
for the service approval."

13 New regulation 25A inserted

After regulation 25 of the National Regulations
insert—

**"25A Application for service approval for a
centre-based service—relocation of
existing centre-based service**

- (1) This regulation applies if—
- (a) an application for a service approval relates to a centre-based service that is an approved education and care service; and
 - (b) the purpose of the application is to change the location of that service.

Note

A service approval cannot be amended to change the location of a centre-based service—see section 54(8) of the Law.

- (2) If the centre-based service is to be relocated for less than 12 months, the Regulatory Authority may determine that the requirements of regulation 25(1)(b) or (g) do not apply to the application for the service approval.
- (3) If the centre-based service is to be relocated due to exceptional circumstances (whether for more or less than 12 months), the Regulatory Authority may determine that any of the following information is not required to be provided in the application for the service approval—
- (a) the information set out in regulation 24(g);
 - (b) the contact details of the nominated supervisor set out in regulation 24(k);

- (c) any of the information set out in regulation 25(1)(b), (c), (d), (e), (f) or (g).
- (4) If the Regulatory Authority makes a determination under subregulation (3), the approved provider must provide the relevant information to the Regulatory Authority as soon as possible.
- (5) A failure by the approved provider to provide the relevant information to the Regulatory Authority under subregulation (4) does not prevent the Regulatory Authority granting the service approval.

Note

The *Education and Care Services National Regulations 2012* of Western Australia do not include regulation 25A."

14 Application for service approval—family day care service

- (1) In regulation 26 of the National Regulations—

- (a) after paragraph (f) **insert**—

"(fa) a statement that the applicant has the right to occupy and use the proposed premises as a principal office and any document evidencing this;

Example

A lease of the premises.";

- (b) after paragraph (g) **insert**—

"(ga) a statement that each family day care residence that will be part of the family day care service and each place other than a residence where education and care is to be provided to children as part of the family day care service will be located in this jurisdiction;"

(c) in paragraph (h) **omit** "jurisdictions and";

(d) for paragraph (m) **substitute**—

"(m) the full name and contact details,
including the after-hours telephone
number, of each nominated supervisor;

Note

The application must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 44(1)(da) of the Law.

(n) if the application includes a request for approval of a place as a family day care venue for the service—

(i) the location and street address of the family day care venue; and

(ii) a statement that the applicant has the right to occupy and use the place as a family day care venue and any document evidencing this; and

Example

A lease of the premises.

(iii) an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children being educated and cared for by the service are protected."

(2) At the end of regulation 26 of the National Regulations **insert—**

"(2) An assessment referred to in subregulation (1)(n)(iii) must consider the matters set out in regulation 116(2).".

15 New regulation 32A inserted

After regulation 32 of the National Regulations **insert—**

"32A Condition on service approval— maximum number of family day care educators

A service approval for a family day care service is granted subject to the condition that the approved provider of the service must ensure that the number of family day care educators providing education and care as part of the service does not exceed the maximum number of family day care educators determined by the Regulatory Authority in the service approval.

Note

See section 51(5) of the Law."

16 Prescribed information for application to amend service approval

(1) In regulation 34 of the National Regulations—

(a) in paragraph (e), for "amendment." **substitute** "amendment;";

(b) after paragraph (e) **insert—**

"(f) if the application includes a request for approval of a place as a family day care venue for the service—

- (i) the location and street address of the family day care venue; and
- (ii) a statement that the applicant has the right to occupy and use the place as a family day care venue and any document evidencing this; and

Example

A lease of the premises.

- (iii) an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children being educated and cared for by the service are protected."
- (2) At the end of regulation 34 of the National Regulations **insert**—
- "(2) An assessment referred to in subregulation (1)(f)(iii) must consider the matters set out in regulation 116(2)."

17 Notice of change to nominated supervisor

In regulation 35 of the National Regulations—

- (a) for "change the person nominated as the nominated supervisor of an education and care service" **substitute** "add a new nominated supervisor of an education and care service";
- (b) paragraphs (e) and (f) are **revoked**;
- (c) for paragraph (g) **substitute**—

"(g) the date on which the new nominated supervisor commences or commenced work as a nominated supervisor."

Notes

1 The heading to regulation 35 is to read:

Notice of addition of new nominated supervisor

2 The note at the foot of regulation 35 is to read:

Note

A notice must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 56(2)(a) of the Law.

18 Service waiver—prescribed elements

In regulation 41(b)(iii) of the National Regulations, for "regulations 117" **substitute** "regulations 72A, 117".

19 Prescribed period—revocation of service waiver

In regulation 43(1)(a) of the National Regulations, for "60 days" **substitute** "14 days".

20 Temporary waiver—prescribed elements

In regulation 44(b)(iii) of the National Regulations, for "regulations 117" **substitute** "regulations 72A, 117".

21 Part 2.3 revoked

Part 2.3 of the National Regulations is **revoked**.

Note

The Guide to Chapter 4 is amended as follows:

Guide to Chapter 4. This Chapter contains requirements for operating an education and care service. This Chapter is relevant for all services and is aligned with the National Quality Standard.

Part 4.1AA sets out a requirement regarding the location of offices of a family day care service.

Part 4.1 sets out requirements for an educational program and practice for a service. The regulations in this Part are relevant to quality area 1 of the National Standard.

Part 4.2 sets out requirements for services relating to children's health and safety. The regulations in this Part are relevant to quality area 2 of the National Standard.

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

Division 2 sets out the requirements for policies and procedures relating to incidents, injuries, trauma and illness.

Division 3 sets out requirements for a medical conditions policy and medication procedures.

Division 4 sets out matters relating to the administration of medication.

Division 5 sets out matters relating to emergencies and communication.

Division 6 sets out requirements for collection of children from premises and excursions.

Part 4.3 sets out the physical environment requirements for services. These requirements may differ depending on whether the service is a centre-based service or a family day care service. The regulations in this Part are relevant to quality area 3 of the National Standard.

Division 1 sets out the requirements for premises for both centre-based services and family day care services.

Division 2 sets out the additional requirements for centre-based services.

Division 3 sets out the additional requirements for family day care services.

Part 4.3A sets out the minimum requirements for persons in day-to-day charge and nominated supervisors.

Part 4.4 sets out staffing requirements for education and care services, including minimum numbers of educators, qualification requirements, requirements for early childhood teachers and family day care educator assistants and staff and educator records and registers. The regulations in this Part are relevant to quality area 4 of the National Standard.

Part 4.5 sets out provisions relating to relationships between children and educators. The regulations in this Part are relevant to quality area 5 of the National Standard.

Part 4.6 sets out a requirement for services to have collaborative relationships with families. The regulations in this Part are relevant to quality area 6 of the National Standard.

Part 4.7 sets out matters relating to management and leadership in services. The regulations in this Part are relevant to quality area 7 of the National Standard.

Division 1 sets out matters relating to the management of services.

Division 2 sets out matters relating to policies and procedures for services.

Division 3 sets out information and record-keeping requirements.

22 New Part 4.1AA inserted

In Chapter 4 of the National Regulations, after regulation 72 **insert**—

"Part 4.1AA—Location of principal office

72A Location of principal office of family day care service

The principal office of an approved family day care service must be located within the jurisdiction in which the service approval for the service is granted.

Penalty: \$2000."

23 Health, hygiene and safe food practices

- (1) In regulation 77(1) of the National Regulations, for "the nominated supervisor" **substitute** "nominated supervisors".
- (2) In regulation 77(2) of the National Regulations, for "The nominated" **substitute** "A nominated".

24 Food and beverages

In regulation 78(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

25 Service providing food and beverages

In regulation 79(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

26 Weekly menu

In regulation 80(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

27 Sleep and rest

In regulation 81(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

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

(1) In regulation 83(1) of the National Regulations—

(a) for "the nominated" **substitute**
"a nominated";

(b) for "his or her" **substitute** "the person's".

(2) In regulation 83(2) of the National Regulations—

(a) for "The nominated" **substitute**
"A nominated";

(b) for "his or her" **substitute** "the supervisor's".

(3) In regulation 83(3)(b) of the National Regulations,
for "his or her" **substitute** "the educator's".

29 Awareness of child protection law

In regulation 84 of the National Regulations, for
"the nominated supervisor" **substitute** "nominated
supervisors".

30 Medical conditions policy

In regulation 90(1)(b) of the National Regulations,
for "the nominated supervisor" **substitute**
"nominated supervisors".

31 Administration of medication

In regulation 93(3) of the National Regulations,
for "The nominated" **substitute** "A nominated".

**32 Exception to authorisation requirement—
anaphylaxis or asthma emergency**

In regulation 94(2) of the National Regulations,
for "nominated supervisor" **substitute**
"a nominated supervisor".

33 Telephone or other communication equipment

In regulation 98 of the National Regulations, for
"the nominated supervisor" **substitute** "nominated
supervisors".

**34 Children leaving the education and care service
premises**

In regulation 99(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

35 Risk assessment must be conducted before excursion

- (1) In regulation 100(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".
- (2) In regulation 100(4) of the National
Regulations—
 - (a) in paragraph (b), for "excursion." **substitute**
"excursion; and";
 - (b) after paragraph (b) **insert**—

"(c) that risk assessment has been conducted
not more than 12 months before the
excursion is to occur."

36 Authorisation for excursions

In regulation 102(2) of the National Regulations,
for "The nominated" **substitute** "A nominated".

**37 Assessments of family day care residences and
approved family day care venues**

For regulation 116(1) of the National Regulations
substitute—

"(1) The approved provider of a family day care service must conduct an assessment (including a risk assessment) of each proposed residence and each proposed family day care venue of the service before education and care is provided to children at the residence or venue as part 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: \$2000.

(1A) Subregulation (1) does not apply in respect of an approved family day care venue if an assessment (including a risk assessment) of the family day care venue was included in—

- (a) an application for a service approval under regulation 26(n)(iii); or
- (b) an application to amend a service approval under regulation 34(f)(iii).

(1B) The approved provider of a family day care service must conduct an assessment (including a risk assessment) of each residence and each approved family day care venue of the service at least annually to ensure that the health, safety and wellbeing of children who are educated and cared for by the service are protected.

Penalty: \$2000."

38 New Part 4.3A inserted

After Part 4.3 of the National Regulations
insert—

**"Part 4.3A—Minimum
requirements for persons in
day-to-day charge and nominated
supervisors**

117A Placing a person in day-to-day charge

For the purposes of the definition of a *person in day-to-day charge* in section 5(1) of the Law, a person is in day-to-day charge of an education and care service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the education and care service; and
- (b) the person consents to the placement in writing.

117B Minimum requirements for a person in day-to-day charge

- (1) An approved provider or a nominated supervisor of an education and care service must not place a person in day-to-day charge unless—
 - (a) the person has attained the age of 18 years; and
 - (b) the approved provider or nominated supervisor (as the case requires)—
 - (i) has had regard to the matters set out in subregulation (2); and

- (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.
 - (2) For the purposes of subregulation (1)(b)(i), the matters are—
 - (a) the person's history of compliance with—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction; and
 - (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
-

- (iv) an education law of a participating jurisdiction.

117C Minimum requirements for a nominated supervisor

- (1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must—
 - (a) have attained the age of 18 years; and
 - (b) have adequate knowledge and understanding of the provision of education and care to children; and
 - (c) have the ability to effectively supervise and manage an education and care service.
- (2) In determining whether to nominate a person as a nominated supervisor, an approved provider of an education and care service must have regard to the following matters—
 - (a) the history of the person's compliance with—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction;

- (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction."

39 Heading to Division 3 of Part 4.4 amended

In the heading to Division 3 of Part 4.4 of the National Regulations, after "**educators**" insert "**and family day care co-ordinators**".

40 Educator to child ratios—centre-based services

For regulation 123(1)(d) of the National Regulations **substitute—**

"(d) for children over preschool age, 1 educator to 15 children."

41 New regulation 123A inserted

After regulation 123 of the National Regulations **insert—**

"123A Family day care co-ordinator to educator ratios—family day care service

For the purposes of section 163(1) of the Law, the prescribed minimum number of qualified persons employed or engaged as family day care co-ordinators of the family

day care service is to be calculated in accordance with the following ratios—

- (a) for the first 12 months after the service commences providing education and care to children as part of the family day care service, 1 full-time equivalent family day care co-ordinator for every 15 family day care educators;
- (b) after the end of that 12 month period, 1 full-time equivalent family day care co-ordinator for every 25 family day care educators."

42 Application of Division 4

In regulation 125(b) of the National Regulations, for "section 163" **substitute** "sections 55A and 163".

43 Early childhood teacher illness or absence

For regulation 135(2) of the National Regulations **substitute**—

- "(2) The combined total of all periods of absence for which persons are taken to be an early childhood teacher of an education and care service under subregulation (1) in any 12 month period must not exceed 60 days."

44 First aid qualifications

- (1) In regulation 136(1) of the National Regulations—

- (a) after "ensure that" **insert** "each of";
- (b) for "one educator" (wherever occurring) **substitute** "one staff member or one nominated supervisor of the service".

(2) In regulation 136(2) of the National Regulations—

- (a) in paragraph (a), for "an educator referred to in subregulation (1)(a) or" **substitute** "for the purposes of subregulation (1)(a),";
- (b) in paragraph (b), for "an educator referred to in subregulation (1)(b) or" **substitute** "for the purposes of subregulation (1)(b),";
- (c) in paragraph (c), for "an educator referred to in subregulation (1)(c) or" **substitute** "for the purposes of subregulation (1)(c),".

45 New Division 7A of Part 4.4 inserted

After Division 7 of Part 4.4 of the National Regulations **insert—**

**"Division 7A—Minimum requirements
for a family day care educator**

**143A Minimum requirements for a family day
care educator**

- (1) An approved provider of a family day care service must not register or engage a person as a family day care educator unless the approved provider—
 - (a) has had regard to the matters set out in subregulation (2); and
 - (b) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children.

Penalty: \$2000.

- (2) For the purposes of subregulation (1)(a), the matters are—
 - (a) the person's history of compliance with—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction; and
 - (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction.

143B Ongoing management of family day care educators

An approved provider of a family day care service must take reasonable steps to ensure that—

- (a) each family day care educator engaged by or registered with the service maintains an adequate knowledge and understanding of the provision of education and care to children; and
- (b) any serious incident that occurs while a child is being educated and cared for by a family day care educator as part of the service is adequately addressed; and
- (c) any complaints alleging that this Law has been contravened or that a serious incident has occurred or is occurring while a child was or is being educated and cared for by a family day care educator is adequately addressed.

Penalty: \$2000."

46 Regulation 144 substituted

For regulation 144 of the National Regulations
substitute—

"144 Family day care educator assistant

- (1) For the purposes of section 164A(1) and (2) of the Law, a person other than a family day care educator may educate and care for a child as part of a family day care service if—
 - (a) the person is a family day care educator assistant approved under subregulation (2); and
 - (b) the person provides education and care in the circumstances set out in subregulation (4).

- (2) An approved provider of a family day care service may approve a person as a family day care educator assistant to assist a family day care educator in providing education and care to children as part of the family day care service.
 - (3) An approved provider must not approve a person under subregulation (2) unless the family day care educator provides the written consent of a parent of each child being educated and cared for by the educator to the use of the family day care educator assistant in the circumstances set out in subregulation (4).
 - (4) An approved family day care educator assistant may assist the family day care educator—
 - (a) in the absence of the family day care educator, to transport a child between the family day care residence or approved family day care venue and—
 - (i) a school; or
 - (ii) another education and care service or children's service; or
 - (iii) the child's home; or
 - (b) in the absence of the family day care educator, in emergency situations, including when the educator requires urgent medical care or treatment; or
 - (c) in the absence of the family day care educator, to enable the educator to attend an appointment (other than a regular appointment) in unforeseen or exceptional circumstances, if—
-

- (i) the absence is for less than 4 hours; and
- (ii) the approved provider of the family day care service has approved that absence; and
- (iii) notice of that absence has been given to the parents of the child; or
- (d) while the educator is educating and caring for children as part of the family day care service."

47 Nominated supervisor

In regulation 146 of the National Regulations—

- (a) for "in relation to the" **substitute** "in relation to each";
- (b) for "the supervisor" (wherever occurring) **substitute** "the nominated supervisor";
- (c) for paragraph (e) **substitute**—
 - "(e) if the nominated supervisor is a teacher registered under an education law of a participating jurisdiction and has provided proof of that registration, a record of the identifying number of the teacher registration and the expiry date of that registration;"
- (d) for paragraph (f) **substitute**—
 - "(f) in relation to Tasmania, a record of the identifying number of the nominated supervisor's working with vulnerable people registration and the expiry date of that registration."

48 Staff members

For regulation 147(f) of the National Regulations
substitute—

"(f) in relation to Tasmania, a record of the identifying number of the staff member's working with vulnerable people registration and the expiry date of that registration."

49 Heading to Division 10 of Part 4.4 amended

In the heading to Division 10 of Part 4.4 of the National Regulations, after "**educators**" **insert** "**, co-ordinators and assistants**".

50 Register of family day care educators

(1) In regulation 153 of the National Regulations—

(a) for "For the purposes of section 269 of the Law, the register of family day care educators" **substitute** "For the purposes of section 269(1)(a) of the Law, the register";

(b) for paragraph (e) **substitute—**

"(e) the date that the educator ceased to be engaged by or registered with the service (if applicable);";

(c) paragraph (h) is **revoked**;

(d) in paragraph (o)(ii)—

(i) for "or nominated" **substitute** "or a nominated";

(ii) for "the service." **substitute** "the service;";

(e) after paragraph (o) **insert—**

"(p) evidence that the educator is adequately monitored and supported by a family day care co-ordinator while the educator is providing education and

care to children, including the following information—

- (i) the dates and times of any visits by the co-ordinator to the family day care residence or family day care venue for the purpose of monitoring or support;
- (ii) the dates and times of any telephone calls between the co-ordinator and the educator for the purpose of monitoring or support;
- (iii) details of any correspondence or written materials provided to the educator by the co-ordinator for the purpose of monitoring or support and the dates and times the correspondence or materials were provided to the educator."

(2) At the end of regulation 153 of the National Regulations **insert**—

"(2) For the purposes of section 269(1)(b) of the Law, the register must include the following information in relation to each family day care co-ordinator employed or engaged by the service—

- (a) the full name, address and date of birth of the co-ordinator;
 - (b) the contact details of the co-ordinator;
 - (c) the date that the co-ordinator was employed or engaged by the service;
 - (d) the date that the co-ordinator ceased to be employed or engaged by the service (if applicable);
-

- (e) if the co-ordinator is an approved provider, the number of the provider approval and the date the approval was granted;
 - (f) evidence of any relevant qualifications held by the co-ordinator;
 - (g) if the co-ordinator will be providing education and care to children, evidence that the co-ordinator has completed—
 - (i) current approved first aid training; and
 - (ii) current approved anaphylaxis management training; and
 - (iii) current approved emergency asthma management training;
 - (h) evidence of any other training completed by the co-ordinator;
 - (i) if the co-ordinator will be providing education and care to children in a jurisdiction with a working with children law or a working with vulnerable people law, a record of—
 - (i) the identifying number of the check, card, record or registration that is conducted or issued under that law and the expiry date of that check, card or registration (if applicable); and
 - (ii) the date that the check, card, record or registration was sighted by the approved provider or nominated supervisor of the service.
-

- (3) For the purposes of section 269(1)(c) of the Law, the register must include the following information in relation to each family day care educator assistant engaged by or registered with the service—
- (a) the full name, address and date of birth of the educator assistant;
 - (b) the contact details of the educator assistant;
 - (c) the name of the family day care educator to be assisted by the educator assistant;
 - (d) the address of the residence or approved family day care venue where the educator assistant will be providing education and care to children as part of the service, including a statement as to whether it is a residence or a venue;
 - (e) the date that the educator assistant was engaged by or registered with the service;
 - (f) the date that the educator assistant ceased to be engaged by or registered with the service (if applicable);
 - (g) if the educator assistant is an approved provider, the number of the provider approval and the date the approval was granted;
 - (h) evidence of any relevant qualifications held by the educator assistant;
 - (i) evidence that the educator assistant has completed—
 - (i) current approved first aid training;
 - and
-

- (ii) current approved anaphylaxis management training; and
 - (iii) current approved emergency asthma management training;
- (j) evidence of any other training completed by the educator assistant;
- (k) if the educator assistant will be providing education and care to children in a jurisdiction with a working with children law or a working with vulnerable people law, a record of—
 - (i) the identifying number of the check, card, record or registration that is conducted or issued under that law and the expiry date of that check, card or registration (if applicable); and
 - (ii) the date that the check, card, record or registration was sighted by the approved provider or a nominated supervisor of the service.
- (4) Information held on the register in relation to a family day care educator, a family day care co-ordinator or a family day care educator assistant must be kept on the register until the end of 3 years after the date on which the family day care educator, the family day care co-ordinator or the family day care educator assistant ceased to be employed or engaged by or registered with the service."

Note

The heading to regulation 153 is to read:

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

51 Record of staff, family day care co-ordinators and family day care educator assistants

In regulation 154 of the National Regulations—

- (a) for ", of family day care co-ordinators engaged by the service and of family day care educator assistants approved by the service" **substitute** "engaged or employed by the service";
- (b) in paragraph (b), for "the nominated" **substitute** "a nominated";
- (c) paragraph (e) is **revoked**.

Note

The heading to regulation 154 is to read:

Record of staff engaged or employed by family day care service

52 Access for parents

In regulation 157(2) of the National Regulations, for "The nominated" **substitute** "A nominated".

53 Children's attendance record to be kept by approved provider

In regulation 158(1)(c)(ii) of the National Regulations, for "the nominated" **substitute** "a nominated".

54 Authorisations to be kept in enrolment record

In regulation 161(1)(a) of the National Regulations, for "provider, nominated" **substitute** "provider, a nominated".

55 Health information to be kept in enrolment record

For regulation 162(i) of the National Regulations
substitute—

- "(i) in relation to Victoria, in the case of an education and care service specified in paragraph (a) of the definition of *early childhood service* in section 3(1) of the *Public Health and Wellbeing Act 2008* of Victoria—
- (i) an immunisation status certificate within the meaning of section 147 of the *Public Health and Wellbeing Act 2008* of Victoria that is issued in relation to the child and that is provided under section 143B of *Public Health and Wellbeing Act 2008* of Victoria; or
 - (ii) details of any exemption in relation to the child under section 143C of the *Public Health and Wellbeing Act 2008* of Victoria."

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

In regulation 163(4C) of the National Regulations
omit "safety screening clearance or".

57 Requirement for notice of new persons at residence

At the end of regulation 164 of the National Regulations **insert—**

- "(2) The family day care educator must notify the approved provider of—
- (a) any new person aged 18 years or over who resides, or intends to reside, at the educator's family day care residence; and
-

- (b) any circumstance relating to a person who has previously been considered under regulation 163 in relation to the family day care residence that may affect whether the person is a fit and proper person to be in the company of children.

Penalty: \$2000."

Note

The note at the foot of regulation 164 is to be amended to read:

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

58 Education and care service must have policies and procedures

In regulation 168(2)(a) of the National Regulations—

- (a) in subparagraph (iv), for "aid;" **substitute** "aid; and";
- (b) after subparagraph (iv) **insert**—
"(v) sleep and rest for children;"

59 Policies and procedures to be followed

In regulation 170 of the National Regulations, for "the nominated supervisor" (where twice occurring) **substitute** "nominated supervisors".

60 Policies and procedures to be kept available

In regulation 171(1) of the National Regulations, for "the nominated supervisor," **substitute** "nominated supervisors and".

61 Prescribed information to be displayed

- (1) For regulation 173(1)(c) of the National Regulations **substitute**—

"(c) the name of each nominated supervisor;"

- (2) In regulation 173(2) of the National Regulations—

- (a) in paragraph (c), for "except in the case of a family day care residence or approved family day care venue" **substitute** "in the case of a centre-based service";

- (b) for paragraphs (f) and (g) **substitute**—

"(f) if applicable—

- (i) in the case of a centre-based service, a notice stating that a child who has been diagnosed as at risk of anaphylaxis is enrolled at the service; or

- (ii) in the case of a family day care residence or approved family day care venue, a notice stating that a child who has been diagnosed as at risk of anaphylaxis—

(A) is enrolled at the family day care service; and

(B) attends the family day care residence or family day care venue;

- (g) if applicable—

- (i) in the case of a centre-based service, a notice stating that there has been an occurrence of an infectious disease at the premises; or
-

- (ii) in the case of a family day care residence or approved family day care venue, a notice stating that there has been an occurrence of an infectious disease at the family day care residence or family day care venue."

62 Time to notify certain circumstances to Regulatory Authority

- (1) In regulation 174(1) of the National Regulations, for "section 173(3)" **substitute** "section 173(4)".
- (2) In regulation 174(2) of the National Regulations—
 - (a) for "section 173(4)" **substitute** "section 173(5)";
 - (b) before paragraph (a) **insert**—
 - "(aa) in the case of a notice under section 173(2)(e), at least 14 days before the change in the location of the principal office takes place; or".

63 New regulation 174A inserted

After regulation 174 of the National Regulations
insert—

"174A Prescribed information to accompany notice

A notice under section 173(2)(e) of the Law must be accompanied by a statement that the applicant has the right to occupy and use the premises as a principal office and any document evidencing this.

Example

A lease of the premises."

64 Prescribed information to be notified to Regulatory Authority

For regulation 175(2)(d) and (e) of the National Regulations **substitute—**

- "(d) any incident where the approved provider reasonably believes that physical abuse or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service;
- (e) allegations that physical or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service (other than an allegation that has been notified under section 174(2)(b) of the Law).".

65 New regulation 176A inserted

After regulation 176 of the National Regulations **insert—**

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

For the purposes of section 174A(c) of the Law, the following matters are prescribed—

- (a) any renovations or other changes to the family day care residence that create a serious risk to the health, safety and wellbeing of children attending or likely to attend the family day care residence;

- (b) any renovations or other changes to an approved family day care venue that create a serious risk to the health, safety and wellbeing of children attending or likely to attend the approved family day care venue."

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

In regulation 177(1) of the National Regulations—

- (a) in paragraph (j), for ", family day care co-ordinators engaged by the service and family day care educator assistants approved by the service," **substitute** "engaged or employed by the service";
- (b) in paragraph (n), for "certified supervisors placed in day to day" **substitute** "each nominated supervisor and any person in day-to-day".

Note

The note at the foot of regulation 177(1) is to read:

See section 269(1) of the Law which requires the approved provider to keep a register of each family day care educator, each family day care co-ordinator and each family day care educator assistant engaged, employed or registered to provide education and care to a child.

The *Education and Care Services National Regulations 2012* of Western Australia include an extra paragraph after paragraph (d) as follows—

- "(da) a record of a decision about a child, that affects educator to child ratios at a centre-based service, made under regulation 123(7);".

See regulation 177(1)(da) of the *Education and Care Services National Regulations 2012* of Western Australia.

67 Confidentiality of records kept by family day care educator

In regulation 182(c) of the National Regulations, for "or nominated" **substitute** "or a nominated".

68 Storage of records and other documents

In regulation 183(2)(f) of the National Regulations, for "to the nominated" **substitute** "to a nominated".

69 Law and regulations to be available

In regulation 185 of the National Regulations, for "by the nominated supervisor" **substitute** "by nominated supervisors".

70 Application for internal review of reviewable decision

In regulation 186 of the National Regulations—

- (a) in paragraph (c), for ", service approval number or supervisor certificate number" **substitute** "or service approval number";
- (b) in paragraph (d), for ", service approval or supervisor certificate" **substitute** "or service approval".

71 Modifications relating to National Authority and Regulatory Authorities

In regulation 208 of the National Regulations—

- (a) in paragraph (d), for "Council; and" **substitute** "Council.";
- (b) paragraphs (e) and (f) are **revoked**.

72 Miscellaneous modifications

- (1) In regulation 216(n)(v) of the National Regulations, for "*Corruption and Crime Commission Act 2003*" **substitute** "*Corruption, Crime and Misconduct Act 2003*".
- (2) After regulation 216(n)(v) of the National Regulations **insert**—
 - "(va) the Public Sector Commissioner, where information is divulged or any document or other thing is produced to the Public Sector Commissioner for the purposes of the Public Sector Commissioner's functions under the *Corruption, Crime and Misconduct Act 2003* of Western Australia;"

73 Modifications relating to Education and Care Services Ombudsman and staff

In regulation 219(a) of the National Regulations, **omit** "and the appointment of an acting Ombudsman".

74 Compliance and enforcement information

- (1) In regulation 227(2) of the National Regulations—
 - (a) in paragraphs (d) and (e), for ", service approval or supervisor certificate" **substitute** "or service approval";
 - (b) in paragraph (e), for "enforcement." **substitute** "enforcement;"
 - (c) after paragraph (e) **insert**—
 - "(f) the giving of an emergency action notice under section 179 of the Law."

(2) In regulation 227(3) of the National Regulations—

(a) after paragraph (a) **insert**—

"(ab) where enforcement action has been taken against the approved provider and if the Regulatory Authority is satisfied that it is in the public interest to do so, information which identifies a person with management or control of an education and care service;"

(b) after paragraph (b)(iii)(A) **insert**—

"(AB) the service approval number; and";

(c) for paragraph (b)(iv) **substitute**—

"(iv) for an individual, the name of the individual;"

(d) in paragraphs (d)(iv), (v), and (vi), for
", service approval or supervisor certificate"
substitute "or service approval".

75 Regulation 231 revoked

Regulation 231 of the National Regulations is **revoked**.

76 Divisions 1 and 1A of Part 7.1 revoked

Divisions 1 and 1A of Part 7.1 of the National Regulations are **revoked**.

77 Regulations 245, 246 and 247 revoked

Regulations 245, 246 and 247 of the National Regulations are **revoked**.

78 Declared approved services (other than declared approved family day care services)

In regulation 249(2) of the National Regulations—

- (a) in paragraph (a)(ii), for "Law; and"
substitute "Law.";
- (b) paragraph (b) is **revoked**.

79 Declared approved learning frameworks

- (1) For regulation 254(2) of the National Regulations **substitute—**

"(2) For the purpose of section 323 of the Law, the Curriculum Framework for Kindergarten to Year 12 Education in Western Australia, as in force on the scheme commencement day, is a declared approved learning framework for the purpose of the Law as it applies in that jurisdiction."

- (2) Regulation 254(3) of the National Regulations is **revoked**.

80 Regulation 260 substituted

For regulation 260 of the National Regulations **substitute—**

"260 Educator to child ratio—children over preschool age—centre-based services

- (1) This regulation applies in place of regulation 123(1)(d).
- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children."

81 Regulation 263 revoked

Regulation 263 of the National Regulations is **revoked**.

82 Regulation 266 revoked

Regulation 266 of the National Regulations is **revoked**.

83 Early childhood teacher—60 or more children

Regulation 267(2) of the National Regulations is **revoked**.

84 Subdivisions 2 and 3 of Division 3 of Part 7.2 revoked

Subdivisions 2 and 3 of Division 3 of Part 7.2 of the National Regulations are **revoked**.

85 New regulation 274A inserted

After regulation 274 of the National Regulations **insert—**

"274A Programs for children over preschool age

- (1) This regulation applies in place of regulation 74(1)(b).
- (2) The approved provider of the education and care service must ensure that, for the purposes of the educational program for a child over preschool age, evidence about the development of the program is documented."

86 Regulations 273, 275, 276, 277 and 279 revoked

Regulations 273, 275, 276, 277 and 279 of the National Regulations are **revoked**.

87 Subdivision 2 of Division 4 of Part 7.3 revoked

Subdivision 2 of Division 4 of Part 7.3 of the National Regulations is **revoked**.

88 Division 5 of Part 7.3 revoked

Division 5 of Part 7.3 of the National Regulations is **revoked**.

89 Declared out of scope services—indoor space requirements

After regulation 287(2) of the National Regulations **insert—**

"(3) If the service approval for the declared out of scope service is transferred under section 58 of the Law, a notice under section 59 of the Law must include all of the information required to be provided under regulations 24 and 25."

90 Heading to Division 2 of Part 7.4 substituted

For the heading to Division 2 of Part 7.4 of the National Regulations **substitute—**

"Division 2—Children over preschool age—educator qualification and other requirements".

91 Regulation 289 revoked

Regulation 289 of the National Regulations is **revoked.**

92 New regulation 289A inserted

Before regulation 290 of the National Regulations **insert—**

"289A Programs for children over preschool age

- (1) This regulation applies in place of regulation 74(1)(b).
- (2) The approved provider of the education and care service must ensure that, for the purposes of the educational program for a child over preschool age, evidence about the development of the program is documented."

93 Regulations 291, 292 and 293 revoked

Regulations 291, 292 and 293 of the National Regulations are **revoked**.

94 Early childhood teacher—60 or more children

Regulation 294(2) of the National Regulations is **revoked**.

95 Subdivision 2 of Division 3 of Part 7.4 revoked

Subdivision 2 of Division 3 of Part 7.4 of the National Regulations is **revoked**.

96 Heading to Division 2 of Part 7.5 substituted

For the heading to Division 2 of Part 7.5 of the National Regulations **substitute—**

"Division 2—Children over preschool age—educator qualification and other requirements".

97 Regulation 298 revoked

Regulation 298 of the National Regulations is **revoked**.

98 New regulation 298A inserted

Before regulation 299 of the National Regulations **insert—**

"298A Programs for children over preschool age

- (1) This regulation applies in place of regulation 74(1)(b).
- (2) The approved provider of the education and care service must ensure that, for the purposes of the educational program for a child over preschool age, evidence about the development of the program is documented."

99 New Division 2A of Part 7.5 inserted

After Division 2 of Part 7.5 of the National Regulations **insert—**

"Division 2A—Rest period conditions

Subdivision 1—Definitions

299A Definitions

In this Division—

rest pause means a short break taken by a person from duties of the person's employment;

rest period condition means a condition on a service approval providing for one or more periods during a day, totalling not more than 2 hours during the day, to be rest periods for an approved education and care service.

Subdivision 2—Service approval with rest period condition

299B Application of Subdivision 2

This Subdivision applies if a service approval includes a rest period condition.

299C Educator to child ratios during rest period

- (1) Despite anything to the contrary in these Regulations, the educator to child ratios during a rest period specified in a rest period condition are—
 - (a) for children over 24 months but less than 36 months of age—
 - (i) for the first 12 children, 1 educator to 12 children;

- (ii) for any additional children,
1 educator to 6 children;
 - (b) for children over 30 months but less than 36 months of age—
 - (i) for the first 16 children, 1 educator to 16 children;
 - (ii) for any additional children,
1 educator to 8 children;
 - (c) for children at least 3 years but under 7 years of age—
 - (i) for the first 24 children, 1 educator to 24 children;
 - (ii) for any additional children,
1 educator to 12 children;
 - (d) for children at least 4 years but under 7 years of age—
 - (i) for the first 26 children, 1 educator to 26 children;
 - (ii) for any additional children,
1 educator to 13 children;
 - (e) for children at least 4 years but under 13 years of age—
 - (i) for the first 24 children, 1 educator to 24 children;
 - (ii) for any additional children,
1 educator to 12 children.
- (2) If an approved education and care service educates and cares for fewer than 31 children, during a rest period specified in a rest period condition one staff member or volunteer may be counted as an educator for every 3 educators included in the required educator to child ratio.
-

299D Additional staff members or volunteers

In addition to the educators required to meet the educator to child ratios in regulation 299C(1), the following additional staff members or volunteers must be present at the approved service premises during a rest period specified in a rest period condition and be able to attend to children immediately (if required)—

- (a) for an approved education and care service with no more than 30 approved places—one staff member or volunteer;
- (b) for an approved education and care service with at least 31 but no more than 75 approved places—2 staff members or volunteers;
- (c) for an approved education and care service with 76 or more approved places—3 staff members or volunteers.

299E Qualifications for educators

- (1) All educators required to meet the relevant educator to child ratio during a rest period set out in regulation 299C must have attained the age of at least 17 years and hold or be actively working towards an approved certificate III level education and care qualification.
- (2) If an approved education and care service complies with subregulation (1), the service is taken to meet the relevant qualification requirements for educators during rest periods.

Subdivision 3—Rest pauses and short absences

299F Educator to child ratios when educator or early childhood teacher on rest pause

- (1) A centre-based service is taken to meet the relevant educator to child ratio while an educator or early childhood teacher is on a rest pause if—
 - (a) the rest pause is not more than 10 minutes duration; and
 - (b) the educator or early childhood teacher has not already taken more than one rest pause that day; and
 - (c) there is a specified person present at the education and care service premises during the rest pause who is—
 - (i) not working with children; and
 - (ii) able to attend to children immediately if required; and

Note

The person may be the educator or early childhood teacher who is taking the rest pause.

- (d) only one educator or early childhood teacher counted in the relevant required educator to child ratio is absent on a rest pause at any one time; and
- (e) if the centre-based service has a rest period condition, the educator or early childhood teacher does not take the rest pause during a rest period.

- (2) During a rest pause taken by an educator or early childhood teacher in accordance with subregulation (1), the centre-based service is taken to meet the relevant qualification requirements for educators.
- (3) In this regulation, a reference to an early childhood teacher is a reference to an early childhood teacher who is counted as an educator in calculating the educator to child ratio of the service.

Note

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

- (4) In this regulation—

qualification in a relevant area of study

means a qualification published under regulation 137(2) in a list of approved qualifications for Queensland in one of the following areas of study—

- (a) early childhood education and care;
- (b) nursing, physiotherapy, occupational therapy, diversional therapy or speech pathology;
- (c) primary, secondary or special education;
- (d) human welfare studies and services;
- (e) behavioural science;
- (f) sport and recreation;

- (g) creative arts, fine arts, drama or music;
- (h) community services;

specified person means—

- (a) a staff member or volunteer who is at least 18 years of age; or
- (b) a staff member or volunteer who is at least 17 years of age and who holds or is actively working towards one of the following qualifications—
 - (i) unless subparagraph (ii) applies, an approved certificate III level education and care qualification;
 - (ii) if the centre-based service educates and cares only for children over preschool age—
 - (A) a certificate III or IV in community services under the Australian Qualifications Framework; or
 - (B) a 1 year qualification in a relevant area of study; or
 - (C) a qualification that is higher than a qualification referred to in sub-subparagraph (A) or (B).

299G Access to or attendance of early childhood teacher on rest pause

An early childhood teacher is taken to be in attendance at the centre-based service or the service is taken to have access to an early childhood teacher (as the case requires), while the early childhood teacher is on a rest pause if—

- (a) the early childhood teacher's rest pause is not more than 10 minutes duration; and
- (b) the early childhood teacher has not already taken more than one rest pause that day; and
- (c) if the centre-based service has a rest period condition, the early childhood teacher does not take a rest pause during a rest period.

299H Educator to child ratios when educator or early childhood teacher absent for 5 minutes or less

- (1) A centre-based service is taken to meet the relevant educator to child ratio during the absence of an educator or early childhood teacher if—
 - (a) the educator or early childhood teacher is absent for not more than 5 minutes; and
 - (b) the educator or early childhood teacher is not absent on a rest pause or during a rest period; and

- (c) no other educator or early childhood teacher counted in the relevant required educator to child ratio is absent during that absence.
- (2) During the absence of an educator or early childhood teacher in accordance with subregulation (1), the centre-based service is taken to meet the relevant qualification requirements for educators.
- (3) In this regulation, a reference to an early childhood teacher is a reference to an early childhood teacher who is counted as an educator in calculating the educator to child ratio of the service.

Note

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

299I Access to or attendance of early childhood teacher absent for 5 minutes or less

An early childhood teacher is taken to be in attendance at the centre-based service or the service is taken to have access to an early childhood teacher (as the case requires), while the early childhood teacher is absent if—

- (a) the early childhood teacher is absent for not more than 5 minutes; and
- (b) the early childhood teacher is not absent on a rest pause or during a rest period."

100 Regulations 302 and 303 revoked

Regulations 302 and 303 of the National Regulations are **revoked**.

101 Early childhood teacher—60 or more children

Regulation 304(2) of the National Regulations is **revoked**.

102 Subdivision 2 of Division 3 of Part 7.5 revoked

Subdivision 2 of Division 3 of Part 7.5 of the National Regulations is **revoked**.

103 Division 4 of Part 7.5 revoked

Division 4 of Part 7.5 of the National Regulations is **revoked**.

104 Heading to Division 2 of Part 7.6 substituted

For the heading to Division 2 of Part 7.6 of the National Regulations **substitute—**

"Division 2—Children over preschool age—qualifications required".

105 Regulation 320 revoked

Regulation 320 of the National Regulations is **revoked**.

106 Early childhood teachers—preschools

Regulation 324(2) of the National Regulations is **revoked**.

107 Regulations 326, 327, 328, 329, 330 and 331 revoked

Regulations 326, 327, 328, 329, 330 and 331 of the National Regulations are **revoked**.

108 Early childhood teacher—60 or more but fewer than 81 children

Regulation 332(2) of the National Regulations is **revoked**.

109 Early childhood teacher in attendance—more than 80 children

Regulation 333(2) of the National Regulations is **revoked**.

110 Regulation 336 revoked

Regulation 336 of the National Regulations is **revoked**.

111 Centre-based services indoor space requirements

For regulation 337(5) of the National Regulations **substitute—**

"(5) This regulation ceases to apply if—

- (a) the service premises are renovated and that renovation reduces—
 - (i) the existing unencumbered indoor space suitable for children's use;
or
 - (ii) the existing unencumbered outdoor space suitable for children's use; or
- (b) the service premises are renovated and the approved provider requests an amendment to the maximum number of children to be educated and cared for at the service; or
- (c) the service approval is transferred to another approved provider.

Note

See also Division 7 of Part 7.1.

- (6) Despite subregulation (5)(a)(ii), this regulation continues to apply if the service premises are renovated and that renovation reduces the existing unencumbered outdoor

space suitable for children's use to not less than 7 square metres per child."

Note

The heading to regulation 337 is to read:

Centre-based services indoor and outdoor space requirements

112 Preschool indoor and outdoor space requirements

For regulation 338(4) of the National Regulations **substitute—**

"(4) This regulation ceases to apply if—

- (a) the service premises are renovated and that renovation reduces—
 - (i) the existing unencumbered indoor space suitable for children's use; or
 - (ii) the existing unencumbered outdoor space suitable for children's use; or
- (b) the services premises are renovated and the approved provider requests an amendment to the maximum number of children to be educated and cared for at the service; or
- (c) the service approval is transferred to another approved provider.

Note

See also Division 7 of Part 7.1.

- (5) Despite subregulation (4)(a)(ii), this regulation continues to apply if the service premises are renovated and that renovation reduces the existing unencumbered outdoor space suitable for children's use to not less than 7 square metres per child."

113 Over preschool age—indoor space requirements

For regulation 339(4) of the National Regulations
substitute—

"(4) This regulation ceases to apply if—

- (a) the service premises are renovated and that renovation reduces—
 - (i) the existing unencumbered indoor space suitable for children's use;
or
 - (ii) the existing unencumbered outdoor space suitable for children's use; or
- (b) the service premises are renovated and the approved provider requests an amendment to the maximum number of children to be educated and cared for at the service; or
- (c) the service approval is transferred to another approved provider.

Note

See also Division 7 of Part 7.1.

- (5) Despite subregulation (4)(a)(ii), this regulation continues to apply if the service premises are renovated and that renovation reduces the existing unencumbered outdoor space suitable for children's use to not less than 7 square metres per child."

Note

The heading to regulation 339 is to read:

Over preschool age—indoor and outdoor space requirements

114 Regulation 341 revoked

Regulation 341 of the National Regulations is **revoked**.

115 New regulation 342A inserted

After regulation 342 of the National Regulations **insert—**

"342A Educator to child ratios during short absence of educators

- (1) A centre-based service is taken to meet the relevant educator to child ratio while an educator is not working directly with children, if—
 - (a) the educator's total periods away from working directly with children does not exceed 30 minutes in a day; and
 - (b) during each period away from working directly with children the program is maintained in a way that continues to support the safety, health and wellbeing of each child.
- (2) For the purposes of a rating assessment under Part 5 of the Law, the centre-based service is taken to comply with regulation 123."

116 Safety screening clearance—staff members

- (1) In regulation 344 of the National Regulations—
 - (a) in subregulation (1) **omit** "or a current safety screening clearance";
 - (b) in subregulation (2) **omit** "or a current safety screening clearance issued by the Department of Education of Tasmania".

- (2) Regulation 344(3) of the National Regulations is **revoked**.

Note

The heading to regulation 344 is to read:

Working with vulnerable people registration—staff members

117 Regulations 347 and 348 revoked

Regulations 347 and 348 of the National Regulations are **revoked**.

118 Early childhood teacher in attendance—60 or more children

Regulation 349(2) of the National Regulations is **revoked**.

119 Subdivision 2 of Division 4 of Part 7.7 revoked

Subdivision 2 of Division 4 of Part 7.7 of the National Regulations is **revoked**.

120 Regulation 355 revoked

Regulation 355 of the National Regulations is **revoked**.

121 Working with children check to be read

- (1) In regulation 358(1) of the National Regulations—
- (a) for "the nominated supervisor of, or the certified supervisor in day to day charge of," **substitute** "a nominated supervisor, or a person in day-to-day charge of";
 - (b) in paragraph (c), for "service." **substitute** "service; or";

(c) after paragraph (c) **insert**—

"(d) engaged or employed as a staff member at the service."

(2) For regulation 358(2)(b) of the National Regulations **substitute**—

"(b) the person cares for or educates children at the education and care service only under the immediate supervision of an educator who has attained the age of 18 years."

(3) For regulation 358(3) of the National Regulations **substitute**—

"(3) Subregulation (1) does not apply to a person who is a volunteer and who provides education and care at the service only under the immediate supervision of an educator who has attained the age of 18 years."

(4) In regulation 358(4) of the National Regulations, for "nominated supervisor or certified supervisor in day to day charge" **substitute** "a nominated supervisor or a person in day-to-day charge".

122 Criminal history record check to be read and considered

In regulation 359 of the National Regulations, for "the nominated supervisor of or the certified supervisor in day to day" **substitute** "a nominated supervisor or the person in day-to-day".

123 Regulations 360, 361, 362 and 365 revoked

Regulations 360, 361, 362 and 365 of the National Regulations are **revoked**.

124 Early childhood teacher in attendance—60 or more children

Regulation 363(2) of the National Regulations is **revoked**.

125 Definitions

At the foot of regulation 368 of the National Regulations **insert**—

Note

The *Education and Care Services National Regulations 2012* of Western Australia include the following regulation 368A—

"368A. Exceeding National Quality Standard: educational program and practice quality area

- (1) For Western Australia, an education and care service is entitled to be given an Exceeding National Quality Standard for the educational program and practice quality area if—
 - (a) the service has a documented arrangement for a kindergarten programme to be provided by a school for children who are educated and cared for by the service; and
 - (b) if the arrangement is generally available to children educated and cared for by the service, the service informs parents of the arrangement.
- (2) This regulation is in addition to regulation 62(2).".'

126 Educator to child ratios—children over preschool age

In regulation 369 of the National Regulations, for "For the purposes of regulation 123(1)(d), the educator to child ratios for children over preschool age are set out in column 3 of the following Table." **substitute**—

- "(1) This regulation applies in place of regulation 123(1)(d).

- (2) The educator to child ratios for children over preschool age are set out in column 3 of the following Table."

127 Regulation 371 revoked

Regulation 371 of the National Regulations is **revoked**.

128 Regulations 374, 375, 376, 377 and 378 revoked

Regulations 374, 375, 376, 377 and 378 of the National Regulations are **revoked**.

129 Educators required to be early childhood teachers

- (1) Regulation 379(1) of the National Regulations is **revoked**.
- (2) In regulation 379(2) of the National Regulations, for "Regulations 133(1)" **substitute** "Regulations 133(1)(b)".

130 Regulations 380, 381 and 382 revoked

Regulations 380, 381 and 382 of the National Regulations are **revoked**.

131 Saving provision—education and care services provided by a school

At the foot of regulation 383 of the National Regulations **insert**—

Note 2

The *Education and Care Services National Regulations 2012* of Western Australia include the following regulations 384 and 385—

"384. Monetary orders under former education and care services law

- (1) If, immediately before the scheme commencement day, a declared approved provider has not paid a monetary order made under, or in relation to proceedings commenced under an allegation made in respect of that person under, section 29 of the *Child Care Services Act 2007* of Western Australia then, on and after the scheme commencement day, the

order is taken to be a monetary order referred to in sections 25(1)(g)(i) and 70(1)(i) of the Law as applying in Western Australia.

(2) In subregulation (1)—

monetary order has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1).

385. Proceedings under former education and care services law

The Regulatory Authority may commence or continue proceedings under section 29 of the *Child Care Services Act 2007* of Western Australia in relation to a person who held a licence under that Act in relation to a service that is taken to be an education and care service.".'.

Note

The Guide to Chapter 7 is amended as follows:

Guide to Chapter 7.

This Chapter contains transitional and saving provisions.

Part 7.1 contains general transitional and saving provisions.

Part 7.2 contains provisions relating to the Australian Capital Territory.

Part 7.3 contains provisions relating to New South Wales.

Part 7.4 contains provisions relating to the Northern Territory.

Part 7.5 contains provisions relating to Queensland.

Part 7.6 contains provisions relating to South Australia.

Part 7.7 contains provisions relating to Tasmania.

Part 7.8 contains provisions relating to Victoria.

Part 7.9 contains provisions relating to Western Australia.

Part 7.10 contains transitional and savings provisions that relate to the Education and Care Services National Amendment Regulations 2017.

132 New Part 7.10 inserted

After Part 7.9 of the National Regulations
insert—

**"Part 7.10—Transitional and
savings provisions—Education and
Care Services National
Amendment Regulations 2017**

Division 1—General

**384 Transitional provision—Condition on
service approval—maximum number of
family day care educators**

- (1) This regulation applies to a family day care service that, immediately before the commencement of regulation 32A, was an approved family day care service.
- (2) The Regulatory Authority must, on or before 1 April 2018, amend the service approval for the family day care service under section 55 of the Law to include a condition specifying a maximum number of family day care educators.

**Division 2—Australian Capital
Territory**

385 Application of Division

This Division applies to the Australian Capital Territory.

386 Resignation of early childhood teacher

- (1) Regulation 135 applies as if the reasons for the early childhood teacher to be absent included resignation.

- (2) This regulation ceases to have effect on 31 December 2021.

Division 3—New South Wales

387 Application of Division

This Division applies to New South Wales.

388 Educator to child ratios—centre-based services

Regulation 123(1)(d) applies on and after 1 October 2018.

Division 4—Queensland

389 Application of Division

This Division applies to Queensland.

390 Resignation of early childhood teacher

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

Division 5—Tasmania

391 Application of Division

This Division applies to Tasmania.

392 Resignation of early childhood teacher

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

Division 6—Western Australia

393 Application of Division

This Division applies to Western Australia.

394 Resignation of early childhood teacher

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

133 Schedule 2 substituted

For Schedule 2 to the National Regulations
substitute—

**"Part 1—Fee relating to provider approvals,
service approvals and ratings**

<i>Item no.</i>	<i>Section of the Law</i>	<i>Description</i>	Fee	
			<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
1	Section 11(d)	Application for provider approval	\$219	\$219
2	Section 22(2)(c)	Application to amend provider approval	Nil	Nil

Education and Care Services National Amendment Regulations 2017

<i>Item no.</i>	<i>Section of the Law</i>	<i>Description</i>	Fee	
			<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
3	Section 37(2)(c)	Application to voluntarily suspend provider approval	Nil	Nil
4	Section 39(6)(c)	Application by executor for provider approval	Nil	Nil
5	Section 40(3)(c)	Application by legal personal representative or guardian for provider approval	Nil	Nil
6	Section 44(1)(e)	Application for service approval	24 places or fewer \$438	\$658
			25 to 80 places \$658	\$658
			81 or more places \$878	\$658

Education and Care Services National Amendment Regulations 2017

<i>Item no.</i>	<i>Section of the Law</i>	<i>Description</i>	Fee	
			<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
7	Section 53	Annual fee—approved service	24 places or fewer approved places \$200	5 or fewer family day care educators \$200
			25 to 80 approved places \$301	6 to 20 family day care educators \$301
			81 or more approved places \$399	21 or more family day care educators \$399
8	Section 54(2)(c)	Application to amend service approval	Nil	Nil
9	Section 59(2)(c)	Notification of intended transfer of service approval	\$108	\$108
10	Section 85(2)(c)	Application to voluntarily suspend service approval	Nil	Nil

Education and Care Services National Amendment Regulations 2017

<i>Item no.</i>	<i>Section of the Law</i>	<i>Description</i>	Fee	
			<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
11	Section 88(c)	Application for service waiver	\$108	\$108
12	Section 95(c)	Application for temporary waiver	\$108	\$108
13	Section 98(4)	Application to extend temporary waiver	\$108	\$108
14	Section 139(2)(c)	Application for reassessment and re-rating	24 or fewer approved places \$438	5 or fewer family day care educators \$438
			25 to 80 approved places \$658	6 to 20 family day care educators \$658
			81 or more approved places \$878	21 or more family day care educators \$878
15	Section 141(4)(d)	Request for review by Regulatory Authority	Nil	Nil

Education and Care Services National Amendment Regulations 2017

<i>Item no.</i>	<i>Section of the Law</i>	<i>Description</i>	Fee	
			<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
16	Section 145(2)(c)	Application for further review by Ratings Review Panel	24 or fewer approved places \$438	5 or fewer family day care educators \$438
			25 to 80 approved places \$658	6 to 20 family day care educators \$658
			81 or more approved places \$878	21 or more family day care educators \$878

Part 2—Other fees

<i>Item no.</i>	<i>Provision of the Law or regulation</i>	<i>Description</i>	<i>Fee</i>
1	Section 266(4)	Copy or extract from register of approved providers	\$5 per page or \$70 for an electronic copy
2	Section 267(4)	Copy or extract from register of approved education and care services	\$5 per page or \$70 for an electronic copy

Education and Care Services National Amendment Regulations 2017

<i>Item no.</i>	<i>Provision of the Law or regulation</i>	<i>Description</i>	<i>Fee</i>
3	Regulation 138	Application for qualification to be assessed for inclusion on list of approved qualifications	\$2200
4	Regulation 139	Application for determination of equivalent qualification	\$108