Western Australia

Education and Care Services National Regulations 2012

Compare between:

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Western Australia

Education and Care Services National Law (Western Australia)

Education and Care Services National Regulations 2012

Chapter 1 — Preliminary

Guide to Chapter 1.

This Chapter sets out the title to these Regulations, the provisions of the Education and Care Services National Law that authorise these Regulations and the commencement date for these Regulations.

This Chapter also sets out the definitions of key terms used in these Regulations.

1. Citation

These Regulations are the *Education and Care Services National Regulations 2012*.

2. Authorising provisions

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

3. Commencement

These Regulations come into operation as follows —

(a) regulations 1 and 3 — on the day on which these Regulations are published in the *Gazette*;

(b) the rest of the regulations — on the day on which section 3 of the *Education and Care Services National Law (WA) Act 2012* comes into operation.

4. Definitions

(1) In these Regulations —

actively working towards a qualification — see regulation 10;

approved certificate III level education and care qualification means —

(a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved certificate III level education and care qualifications published under regulation 137; or

(b) a qualification included in the list of approved diploma level education and care qualifications or approved early childhood teaching qualifications published under regulation 137;

approved diploma level education and care qualification means —

(a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved diploma level education and care qualifications published under regulation 137; or

(b) a qualification included in the list of approved early childhood teaching qualifications published under regulation 137;

approved early childhood teaching qualification means a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved early childhood teaching qualifications published under regulation 137;

approved number of places, in relation to a centre-based service, means the maximum number of children who can be educated and cared for by the service at any one time, stated on the service approval under section 52(g) of the Law;

authorised emergency contact, in relation to a child, means a person named in the child's enrolment record as a person who is to be notified of an emergency involving the child if any parent of the child cannot be immediately contacted;

bankruptcy declaration means a declaration made by an individual about any proceeding in bankruptcy brought against the individual including —

(a) whether any actions have been taken against the individual under Part IV of the *Bankruptcy Act 1966* of the Commonwealth; and

(b) whether the individual has made any debt agreement under Part IX of the *Bankruptcy Act 1966* of the Commonwealth; and

(c) whether the individual has made any personal insolvency agreement under Part X of the *Bankruptcy Act 1966* of the Commonwealth;

building law means a law generally regulating building construction and demolition;

building permit means a permit or consent to carry out building work issued under a building law or planning and development law of a participating jurisdiction;

building practitioner means —

(a) a person who is registered as a building surveyor, building inspector or draftsperson under a law of a participating jurisdiction; or

(b) a person who is registered as an architect under a law of a participating jurisdiction; or

(c) a person who is licensed as a surveyor under a law of a participating jurisdiction; or

(d) a person who is licensed or registered as a building certifier under a law of a participating jurisdiction; or

(e) a person who is accredited under a law of a participating jurisdiction to design buildings that will be used to provide education and care services;

centre-based service means an education and care service other than a family day care service;

certificate of final inspection means a certificate issued on completion of building work by a building practitioner under a building law or planning and development law of a participating jurisdiction;

child over preschool age means a child who —

(a) is enrolled or registered at a school; and

(b) attends, or in the current calendar year will attend, school in the year before grade 1 or in grade 1 or a higher grade;

child preschool age or under means a child under the age of 7 years who is not a child over preschool age;

criminal history record check means a full disclosure Australia-wide criminal history record check, issued by a police force or other authority of a State or Territory or the Commonwealth;

criminal history statement means a statement made by an individual that —

(a) states whether the individual has been convicted in Australia of any offences relevant to a person seeking to work with children; and

(b) includes details of those convictions;

diagnosed as at risk of anaphylaxis, in relation to a child, means a child who has been diagnosed by a registered medical practitioner as at risk of anaphylaxis;

disciplinary proceedings statement means a statement made by an individual that states —

(a) whether the individual is or has been subject to a formal disciplinary proceeding or action under an education law of a participating jurisdiction (other than a proceeding or action that was unsuccessful or was withdrawn); and

(b) the outcome of the proceeding or action (if known);

early childhood teacher means a person with an approved early childhood teaching qualification;

educational program means a program referred to in section 168 of the Law;

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 for this definition:

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

excursion means an outing organised by an education and care service or family day care educator, but does not include an outing organised by an education and care service provided on a school site if —

(a) the child or children leave the education and care service premises in the company of an educator; and

(b) the child or children do not leave the school site;

family assistance law has the same meaning as it has in the *A New Tax System (Family Assistance) (Administration) Act 1999* of the Commonwealth;

family day care educator assistant means a person engaged by or registered with a family day care service to assist family day care educators;

financial declaration means a declaration made by a person who is not an individual indicating whether the person is or has been declared insolvent or is or has been placed under external administration;

in attendance, at a centre-based service, in relation to an early childhood teacher or a suitably qualified person — see regulation 11;

infectious disease, in relation to a participating jurisdiction, means an infectious disease that is designated under a law of that jurisdiction or by a health authority (however described) as a disease that would require a person with the disease to be excluded from an education and care service;

medication means medicine within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth;

occupancy permit means a certificate or permit issued under a building law or planning and development law of a participating jurisdiction that permits a building to be occupied;

overseas criminal history statement means a statement made by an individual that —

(a) states whether the individual has been convicted outside Australia of any offences relevant to a person seeking to work with children; and

(b) includes details of those convictions;

planning and development law means a law generally regulating the planning of the use and development of land;

planning permit means a permit, approval or consent in respect of the use or development of any land granted under a building law or a planning and development law of a participating jurisdiction;

preschool program means an early childhood educational program delivered by a qualified early childhood teacher to children in the year that is 2 years before grade 1 of school;

previous service statement means a statement made by an individual that states —

(a) whether or not the individual has held any role with an education and care service or a children's service in the previous 3 years; and

(b) includes the following details for each role —

(i) the name of the service; and

(ii) the State or Territory in which the service was located; and

(iii) the nature of the role;

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

regular outing, in relation to an education and care service, means a walk, drive or trip to and from a destination —

(a) that the service visits regularly as part of its educational program; and

(b) where the circumstances relevant to the risk assessment are the same on each outing;

renovate, in relation to premises, means —

(a) construction, demolition, removal or relocation of a building or other fixed structure (or part of a building or other fixed structure); or

(b) carrying out structural alterations on a building or other fixed structure;

responsible person, in relation to an education and care service, means a person referred to in section 162(1)(a) to (c) of the Law;

scheme commencement day means —

(a) for all participating jurisdictions other than Western Australia — 1 January 2012; and

(b) for Western Australia — 1 August 2012;

serious incident — see regulation 12;

soil assessment means an analysis of soil conducted by an environmental consultant, environmental consulting firm, or environmental auditor for the purposes of determining —

(a) the nature, extent and levels of contamination; and

(b) the actual or potential risk to human health resulting from that contamination;

suitably qualified person means a person who has —

(a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved qualifications for suitably qualified persons published under regulation 137; or

(b) a qualification approved by the National Authority as a higher qualification for suitably qualified persons and included in the list of approved qualifications for suitably qualified persons published under regulation 137;

the Law means the *Education and Care Services National Law*;

working directly with children — see regulation 13;

working with children check number has the same meaning as it has in the *Child Protection (Working With Children) Act 2012* of New South Wales;

working with vulnerable people check means a check of a person under a working with vulnerable people law of a participating jurisdiction;

working with vulnerable people registration means a registration issued to a person under the *Registration to Work With Vulnerable People Act 2013* of Tasmania allowing the person to be engaged in childcare services.

(1A) A requirement under these Regulations applying in relation to a stated number of children applies each time there is the stated number of children or a part of the stated number.

Example for this subregulation:

There are 33 children aged 36 months or over (not including children over preschool age) at a centre-based service. Regulation 123(1)(c)(ii) requires 1 educator for each 10 children. In this case 4 educators would be required.

(2) Unless the context otherwise requires, a reference in these Regulations to a Part by a number is a reference to the Part, designated by that number, of these Regulations.

(3) Guides to Chapters do not form part of these Regulations.

Note for this regulation:

This regulation differs from regulation 4 of the national regulations made by the Ministerial Council.

[Regulation 4 amended: Gazette 13 Dec 2013 p. 6151-2; 28 Nov 2014 p. 4402; 26 Jun 2018 p. 2358; 28 Sep 2018 p. 3605-6; 24 Dec 2019 p. 4422.]

5. Services that are not education and care services

(1) For the purposes of paragraph (g) of the definition of ***education and care service*** in section 5(1) of the Law, the following classes of disability service are excluded from the definition of education and care service —

(a) a service that is a designated service within the meaning of the *Disability Services Act 1993* of New South Wales;

(b) services that are disability services under the *Disability Services Act 2006* of Queensland;

(c) a disability service provided by a disability service provider within the meaning of the *Disability Act 2006* of Victoria;

(d) a service providing education and care to a child with a disability that is funded by a grant of financial assistance approved under the *Disability Services Act 1993* of Western Australia;

(e) an early childhood intervention service provided for the principal purpose of providing intervention or support for children with a disability, additional needs or developmental delay.

(2) For the purposes of paragraph (h) of the definition of ***education and care service*** in section 5(1) of the Law, the following

classes of service are excluded from the definition of education and care service —

(a) a service providing education and care to children in premises where the majority of the children usually reside and the educator does not reside;

(b) in all participating jurisdictions other than Western Australia — a service providing education and care to children in the service provider's residence other than as part of a service that is delivered through the use of 2 or more educators to provide education and care to children in residences;

(c) a service providing education and care to children primarily on an ad hoc or casual basis where —

(i) the service does not usually offer full-time or all day education and care to children on an ongoing basis; and

(ii) most of the children provided with education and care are preschool age or under;

(d) a service provided by a hotel or resort to provide education and care to children who are temporary guests of the hotel or resort;

Example: A ski resort that offers child-minding services for children staying at the resort.

(e) a service providing education and care to a child on an ad hoc basis at premises where the parent of, or other person responsible for, the child is —

(i) a guest, visitor or patron; and

(ii) readily available at all times that the child is being educated and cared for;

Examples:

1 A service that provides education and care to a child at a conference attended by the parent.

2 A service that provides education and care to a child at a sports and leisure centre or shopping centre where the parent is a patron.

(f) a service that provides education and care to children where the education and care is primarily provided or shared by parents or family members of the children and a parent or family member is readily available for the period that the child is educated and cared for and retains responsibility for the child;

(g) a secondary school or college providing education and care to the children of students attending the school or college where a parent of each child retains responsibility for the child while the child is being educated and cared for;

(h) a service providing education and care primarily to children preschool age or under that transports its equipment and materials or staff to one or more locations on each occasion that the service is provided;

Note: This form of care is commonly called a mobile service.

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

(j) a short term program provided by and at a school to children who will attend the school in the following year, for the purpose of orienting children to the school;

(k) a service providing education and care if, on 30 June 2018 —

(i) the service provider was, in respect of the service, in receipt of funding under the Budget Based Funded program administered by the Department of Education and Training of the Commonwealth; and

(ii) the service was not approved for the purposes of the family assistance law;

(ka) a service providing education and care if, on 30 June 2018 —

(i) the service provider was, in respect of the service, in receipt of funding under the Indigenous Advancement Strategy administered by the Department of Prime Minister and Cabinet of the Commonwealth; and

(ii) the service was not approved for the purposes of the family assistance law; and

(iii) the service was not regulated under the National Quality Framework;

(l) a licensed playschool under the *Children and Young People Act 2008* of the Australian Capital Territory;

(m) a stand alone service under a children's services law of Queensland;

(n) a service funded by the Queensland Government to provide limited hours care;

(o) a South Australian Government operated Playcentre;

(p) a service licensed as a Centre Based Care Class 4 or Centre Based Care Class 5 service under the *Child Care Act 2001* of Tasmania;

(q) a licensed limited hours service or short term service under the *Children's Services Act 1996* of Victoria;

(r) a service funded by the government department principally administering the *Children and Community Services Act 2004* of Western Australia for the purposes of preventive, support and recreation services for at risk children.

Note for this regulation:

This regulation differs from regulation 5 of the national regulations made by the Ministerial Council.

[Regulation 5 amended: Gazette 5 Mar 2013 p. 1107; 3 Nov 2017 p. 5481; 26 Jun 2018 p. 2358-9.]

6. Eligible association

For the purposes of the definition of ***eligible association*** in section 5(1) of the Law, a parents and citizens association formed under Chapter 7 of the *Education (General Provisions) Act 2006* of Queensland is a prescribed association.

7. Prescribed rating system

For the purposes of paragraph (d) of the definition of ***national education and care services quality framework*** in section 5(1) of the Law, the prescribed rating system is set out in Parts 3.2 to 3.5.

8. National Quality Standard

For the purposes of the definition of ***National Quality Standard*** in section 5(1) of the Law, the prescribed National Quality Standard is set out in Schedule 1.

9. Prescribed entities

For the purposes of paragraph (e) of the definition of ***person*** in section 5(1) of the Law, the following are prescribed entities —

(a) the Catholic Education Commission of Western Australia;

(b) a body politic.

[Regulation 9 inserted: Gazette 13 Dec 2013 p. 6152.]

10. Meaning of *actively working towards* a qualification

For the purposes of these Regulations, an educator is ***actively working towards*** a qualification if the educator —

(a) is enrolled in the course for the qualification; and

(b) provides the approved provider with documentary evidence from the provider of the course that —

(i) the educator has commenced the course; and

(ii) the educator is making satisfactory progress towards completion of the course; and

(iii) the educator is meeting the requirements for maintaining the enrolment; and

(iv) in the case of an approved diploma level education and care qualification, the educator —

(A) holds an approved certificate III level education and care qualification; or

(B) has completed the units of study in an approved certificate III level education and care qualification determined by the National Authority; or

(C) has completed the percentage of total units of study required for completion of an approved early childhood teaching qualification determined by the National Authority.

[Regulation 10 amended: Gazette 28 Nov 2014 p. 4402; 24 Dec 2019 p. 4422.]

11. Meaning of *in attendance* at a centre-based service

For the purposes of these Regulations, an early childhood teacher or a suitably qualified person is ***in attendance*** at a centre-based service if the early childhood teacher or the suitably qualified person —

(a) is physically present at the service; and

(b) carries out education and care activities at the service including one or more of the following —

(i) working directly with children;

(ii) planning programs;

(iii) mentoring, coaching or supporting educators;

(iv) facilitating education and care research;

(v) performing the role of educational leader of the service referred to in regulation 118.

[Regulation 11 amended: Gazette 24 Dec 2019 p. 4423.]

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 for this subparagraph:

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 for this paragraph:

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.

[Regulation 12 inserted: Gazette 28 Sep 2018 p. 3606-8.]

13. Meaning of *working directly with children*

For the purposes of these Regulations a person is ***working directly with children*** at a given time if at that time the person —

(a) is physically present with the children; and

(b) is directly engaged in providing education and care to the children.

Chapter 2 — Approvals

[Heading amended: Gazette 28 Sep 2018 p. 3608.]

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.

Part 2.1 — Provider approvals

14. Application for provider approval by individual

For section 10(3)(a) of the Law, the following information is prescribed information —

(a) the applicant's full name, and any former or other name the applicant may be known by;

(b) the applicant's residential address and contact details;

(c) the applicant's date and place of birth;

(d) proof of the applicant's identity;

(e) a previous service statement made by the applicant;

(f) except in the case of an application to the New South Wales Regulatory Authority or the Queensland

Regulatory Authority, if the participating jurisdiction has a working with children law —

(i) if held by the applicant, a copy of the applicant's current working with children card or working with children check; or

(ii) if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law;

(fa) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;

(fb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;

(fc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's working with vulnerable people registration;

(g) except in the case of an application to the Queensland Regulatory Authority —

(i) a copy of the applicant's current working with vulnerable people check; or

(ii) a criminal history record check in respect of the applicant issued not more than 6 months before the date of the application;

(h) if a criminal history record check has been provided under paragraph (g)(ii), a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check was issued to the date of the application;

(i) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;

(j) a disciplinary proceedings statement made by the applicant;

(k) a bankruptcy declaration made by the applicant.

Notes for this regulation:

1. If there is more than one applicant, the prescribed information must be provided in respect of each applicant — see section 10(3) of the Law.
2. This regulation differs from regulation 14 of the national regulations made by the Ministerial Council.

[Regulation 14 amended: Gazette 13 Dec 2013 p. 6153-4; 28 Nov 2014 p. 4402; 28 Sep 2018 p. 3608.]

15. Application for provider approval by person other than an individual

An application for a provider approval made by a person other than an individual under section 10 of the Law must include the following information —

(a) the applicant's name and any trading or other name used by the applicant;

(b) the applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office;

(c) the name and contact details of the contact person for the purposes of the application;

(d) documentary evidence of the legal status of the applicant and its constitution;

Example: The partnership agreement for a partnership.

(e) a financial declaration regarding the applicant;

(f) for each individual who will be a person with management or control of an education and care service

to be operated by the applicant, the information set out in regulation 14.

Note for this regulation:

If there is more than one applicant, the prescribed information must be provided in respect of each applicant — see section 10(3) of the Law.

16. Matters relating to criminal history

The matters relating to the criminal history of a person that the Regulatory Authority must have regard to under section 13(1)(c)(i) of the Law are —

(a) if the participating jurisdiction has a working with children law, whether the person —

(i) holds a current working with children card or working with children check issued under that law; or

(ii) is a registered teacher under an education law of that jurisdiction;

and

(b) except in the case of an application made to the Queensland Regulatory Authority, any matters included in a criminal history record check.

17. Application for amendment of provider approval

An application under section 22 of the Law for an amendment of a provider approval must include the following information —

(a) the full name of the approved provider;

(b) the provider approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the details of the amendment applied for;

(e) sufficient information or documentation to support the application for amendment.

18. Maximum period of suspension of provider approval

The prescribed maximum period of suspension of a provider approval under section 27(a) or 33(1)(a)(ii) of the Law is 12 months.

19. Application for voluntary suspension of provider approval

An application under section 37 of the Law for the suspension of a provider approval must include the following information —

(a) the full name of the approved provider;

(b) the provider approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the reasons for the suspension;

(e) the date on which the suspension is proposed to take effect and the duration of the suspension;

(f) what is intended to happen to each education and care service operated by the approved provider during the proposed suspension;

(g) a statement indicating that the approved provider has notified the parents of children enrolled at the education and care services operated by the approved provider in accordance with section 37(3) of the Law.

20. Application by individual executor for provider approval

For section 39(6)(b) of the Law, the following information is prescribed information —

(a) the applicant's full name, and any former or other name the applicant may be known by;

(b) the applicant's residential address and contact details;

(c) the applicant's date and place of birth;

(d) in relation to the current approved provider —

(i) the approved provider's full name;

(ii) the provider approval number;

(iii) the date of the approved provider's death;

(iv) a copy of the death certificate or other evidence of the death of the approved provider;

(e) the proposed duration of the provider approval;

Note: This period cannot exceed 6 months.

(f) proof of the applicant's identity;

(g) except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority, if the participating jurisdiction has a working with children law —

(i) if held by the applicant, a copy of the applicant's current working with children card or working with children check; or

(ii) if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law;

(ga) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;

(gb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;

(gc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's working with vulnerable people registration;

(h) except in the case of an application made to the Queensland Regulatory Authority —

(i) a copy of the applicant's current working with vulnerable people check; or

(ii) a criminal history record check issued not more than 6 months before the date of the application;

(i) if a criminal history record check has been provided under paragraph (h)(ii), a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check was issued to the date of the application;

(j) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;

(k) a disciplinary proceedings statement made by the applicant;

(l) a bankruptcy declaration made by the applicant.

Note for this regulation:

This regulation differs from regulation 20 of the national regulations made by the Ministerial Council.

[Regulation 20 amended: Gazette 13 Dec 2013 p. 6154-5; 28 Nov 2014 p. 4403; 28 Sep 2018 p. 3608-9.]

21. Application by executor other than an individual for provider approval

An application for a provider approval made under section 39(5) of the Law by an executor other than an individual must include the following information —

(a) the applicant's name and any trading or other name used by the applicant;

(b) the applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office;

(c) the name and contact details of the contact person for the purposes of the application;

(d) in relation to the current approved provider —

(i) the approved provider's full name;

(ii) the provider approval number;

(iii) the date of the approved provider's death;

(iv) a copy of the death certificate or other evidence of the death of the approved provider;

(e) the proposed duration of the provider approval;

Note: This period cannot exceed 6 months.

(f) documentary evidence of the legal status of the applicant and its constitution;

Example: The partnership agreement for a partnership.

(g) a financial declaration regarding the applicant;

(h) for each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in regulation 20.

22. Application by individual for provider approval on incapacity of approved provider

For section 40(3)(b) of the Law, the following information is prescribed information if the applicant is an individual —

(a) the applicant's full name, and any former or other name the applicant may be known by;

(b) the applicant's residential address and contact details;

(c) the applicant's date and place of birth;

(d) the current approved provider's full name and provider approval number;

(e) the proposed duration of the provider approval;

Note: This period cannot exceed 6 months.

(f) proof of the applicant's identity;

(g) except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority, if the participating jurisdiction has a working with children law —

(i) if held by the applicant, a copy of the applicant's current working with children card or working with children check; or

(ii) if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law;

(ga) in the case of an application to the New South Wales Regulatory Authority, the applicant's working with children check number or a copy of the applicant's current working with children card or working with children check;

(gb) in the case of an application to the Queensland Regulatory Authority, a copy of the applicant's current working with children card or working with children check;

(gc) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's working with vulnerable people registration;

(h) except in the case of an application made to the Queensland Regulatory Authority —

(i) a copy of the applicant's current working with vulnerable people check; or

(ii) a criminal history record check issued not more than 6 months before the date of the application;

(i) if a criminal history record check has been provided under paragraph (h)(ii), a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check was issued until the application is made;

(j) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;

(k) a disciplinary proceedings statement made by the applicant;

(l) a bankruptcy declaration made by the applicant.

Note for this regulation:

This regulation differs from regulation 22 of the national regulations made by the Ministerial Council.

[Regulation 22 amended: Gazette 13 Dec 2013 p. 6155-6; 28 Nov 2014 p. 4403; 28 Sep 2018 p. 3609.]

23. Application by person other than an individual for provider approval on incapacity of approved provider

For section 40(3)(b) of the Law, the following information is prescribed information if the application for a provider approval is made by the legal personal representative or guardian of an approved provider if the applicant is a person other than an individual —

(a) the applicant's name and any trading or other name used by the applicant;

(b) the applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the current approved provider's full name and provider approval number;

(e) the proposed duration of the provider approval;

Note: This period cannot exceed 6 months.

(f) documentary evidence of the legal status of the applicant and its constitution;

Example: The partnership agreement for a partnership.

(g) a financial declaration regarding the applicant;

(h) for each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in regulation 22.

Note for this regulation:

This regulation differs from regulation 23 of the national regulations made by the Ministerial Council.

[Regulation 23 amended: Gazette 28 Sep 2018 p. 3609-10.]

Part 2.2 — Service approvals

Division 1 — Applications for service approvals

24. Application for service approval — centre-based service

For section 44(1)(c) of the Law, the following information is prescribed information for an application for a service approval for a centre-based service —

(a) the applicant's full name and —

(i) provider approval number; or

(ii) if the applicant has applied for a provider approval but the application has not been decided, the applicant's contact details;

(b) the name of the proposed education and care service;

(c) the proposed date on which the education and care service will commence operation;

(d) if known, the contact details, including an after-hours telephone number, for the proposed education and care service;

(e) the proposed ages of children to be educated and cared for by the education and care service;

(f) the proposed maximum number of children to be educated and cared for by the education and care service;

(g) the proposed hours and days of operation of the education and care service;

(h) a description of the nature of the education and care service;

(i) the details of any associated children's service for which approval is sought;

(j) a statement that the applicant has prepared the policies and procedures referred to in regulation 168;

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

Notes for this regulation:

1. 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.
2. This regulation differs from regulation 24 of the national regulations made by the Ministerial Council.

[Regulation 24 amended: Gazette 28 Sep 2018 p. 3610.]

25. Additional information about proposed education and care service premises

(1) In addition to the information referred to in regulation 24, the following information about the proposed education and care service premises is prescribed information —

(a) the location and street address of the proposed education and care service premises;

(b) plans prepared by a building practitioner of the proposed education and care service premises showing the following —

(i) the location of all buildings, structures, outdoor play areas and shaded areas;

(ii) the location of all entries and exits;

(iii) the location of all fences and gates, specifying the type of fence or gate used or to be used;

(iv) the location of toilet and washing facilities, nappy changing areas and any food preparation areas;

(v) the boundaries of the premises;

(vi) the landscape of, or landscaping plans for, outdoor spaces that will be used by the education and care service, specifying the natural environments that are or will be provided;

(vii) a floor plan indicating unencumbered indoor and outdoor spaces suitable for children;

(viii) the location of any associated children's service;

(ix) calculations, carried out by a building practitioner, of the areas referred to in regulations 107 and 108 relating to unencumbered indoor and outdoor space;

(x) the elevation plans of the premises;

(c) if a swimming pool or other water hazard is situated on the proposed education and care service premises, a copy of the service's proposed water safety policy;

(d) one of the following —

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

(ii) if a soil assessment for the site of the proposed education and care service premises has previously been undertaken, a statement to that effect, specifying when the soil assessment was undertaken;

(iii) a statement made by the applicant that states that, to the best of the applicant's knowledge the site history does not indicate that the site is likely to

be contaminated in a way that poses an unacceptable risk to the health of children;

(e) a copy of the planning permit for the proposed education and care service premises if a planning permit is required under the planning and development law of the participating jurisdiction;

(f) a statement that the applicant has the right to occupy and use the premises and any document evidencing this;

Example: A lease of the premises.

(g) unless the education and care service premises is a government or registered school, either —

(i) a copy of any occupancy permit, certificate of final inspection, building certificate, certificate of classification or building surveyor's statement issued or given in respect of the final construction and fit out of the education and care service premises; or

(ii) a statement made by a building practitioner that states that the education and care service premises complies with building requirements under a building law or planning and development law of the participating jurisdiction.

[(2) deleted]

Note for this regulation:

This regulation differs from regulation 25 of the national regulations made by the Ministerial Council.

[Regulation 25 amended: Gazette 13 Dec 2013 p. 6156-7; 28 Sep 2018 p. 3611.]

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

Note for this regulation:

Regulation 25A of the national regulations made by the Ministerial Council does not apply as a law of WA.

[Regulation 25A inserted: Gazette 28 Sep 2018 p. 3611.]

26. Application for service approval — family day care service

(1) For section 44(1)(c) of the Law, the following information is prescribed information for a service approval for a family day care service —

(a) the applicant's full name and —

(i) provider approval number; or

(ii) if the applicant has applied for a provider approval but the application has not been decided, the applicant's contact details;

(b) the name of the proposed family day care service;

(c) the proposed date on which the family day care service will commence operation;

(d) if known, the contact details, including after-hours telephone number, for the proposed principal office of the service;

(e) the proposed hours and days of operation of the family day care service including whether the service proposes to engage or register family day care educators who will provide overnight or weekend care;

(f) the proposed location and street address of the principal office of the family day care service;

(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 for this paragraph:

A lease of the premises.

(g) the proposed number of family day care educators expected to be engaged by or registered with the proposed family day care service within 6 months of commencement of the service;

(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;

(h) the proposed local government areas in which the family day care educators expected to be engaged by or registered with the proposed family day care service will provide education and care;

(i) the proposed number of family day care co-ordinators expected to be engaged by the proposed family day care service within 6 months of commencement of the service;

(j) a statement that the applicant has prepared the policies and procedures referred to in regulation 168;

(k) a copy of the proposed policies and procedures referred to in regulation 169;

(l) if the family day care service will permit a family day care residence or venue with a swimming pool or something that may constitute a water hazard, a copy of the service's proposed water safety policy;

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

Note for this paragraph:

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 for this subparagraph:

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

Notes for this regulation:

1. The application must include the certified supervisor's written consent to the nomination — see section 44(1)(d) of the Law.
2. This regulation differs from regulation 26 of the national regulations made by the Ministerial Council.

[Regulation 26 amended: Gazette 28 Sep 2018 p. 3612-14.]

27. Additional matters to have regard to in determining application for service approval

In determining an application for a service approval under section 43 of the Law, the Regulatory Authority must have regard to the following matters —

(a) any suspension of the applicant's provider approval;

(b) any conditions of the applicant's provider approval.

Note for this regulation:

See section 47(1)(g) of the Law.

28. Additional grounds for refusal to grant service approval

The Regulatory Authority may refuse to grant a service approval on the following grounds —

(a) the Regulatory Authority is not satisfied that the applicant is capable of operating the proposed service in a way that meets the requirements of the Law or these Regulations or the National Quality Standard;

Examples:

1 The Regulatory Authority is not satisfied that the applicant is capable of maintaining premises or equipment or providing staff as required under the Law, whether because of financial or management capacity or another reason.

2 The Regulatory Authority is not satisfied that the applicant is capable of assessing family day care venues or residences or monitoring family day care educators as required under the Law, whether because of financial or management capacity or another reason.

(b) in the case of a centre-based service, the Regulatory Authority is not satisfied that the applicant is entitled to occupy the education and care service premises.

Note for this regulation:

See section 49(2) of the Law.

29. Condition on service approval — insurance

A service approval is granted subject to a condition that the approved provider must hold the following insurance in respect of the education and care service —

(a) a current policy of insurance providing adequate cover for the education and care service against public liability with a minimum cover of $10 000 000; or

(b) a policy of insurance or an indemnity against public liability provided by the Government of a State or Territory in respect of the education and care service.

Notes for this regulation:

1. See section 51(4) of the Law.
2. See regulation 180 for the requirement to keep evidence of prescribed insurance.

30. Condition on service approval — family day care educator insurance

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 each family day care educator engaged by or registered with the service holds insurance against public liability with a minimum cover of $10 000 000.

Notes for this regulation:

1. See section 51(5) of the Law.
2. See regulation 180 for the requirement to keep evidence of prescribed insurance.

31. Condition on service approval — quality improvement plan

A service approval is granted subject to the condition that the approved provider of the education and care service must ensure that the current quality improvement plan for the service —

(a) is kept at the education and care service premises or, in the case of a family day care service, the principal office of the family day care service; and

(b) is made available for inspection by the Regulatory Authority or an authorised officer; and

(c) is made available on request to family members of a child who is enrolled at the service or who are seeking to enrol a child at the service.

Notes for this regulation:

1. See section 51(5) of the Law.
2. See regulations 55 and 56, which set out requirements for quality improvement plans.
3. This regulation differs from regulation 31 of the national regulations made by the Ministerial Council.

[Regulation 31 amended: Gazette 28 Nov 2014 p. 4403.]

32. Condition on service approval — entitlement to occupy premises

A service approval for a centre-based service is granted subject to the condition that the service continues to be entitled to occupy the education and care service premises.

Note for this regulation:

See section 51(5) of the Law.

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 for this regulation:

See section 51(5) of the Law.

[Regulation 32A inserted: Gazette 28 Sep 2018 p. 3614.]

33. Annual fees

The approved provider of an education and care service must pay the relevant annual fee set out in Schedule 2 for the service approval on or before 1 July each year.

[Regulation 33 amended: Gazette 13 Dec 2013 p. 6157.]

Division 2 — Amendment of service approval and notice of change to nominated supervisor

34. Prescribed information for application to amend service approval

(1) An application under section 54 of the Law for an amendment of a service approval must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the details of the amendment applied for;

(e) sufficient information or documentation to support the application for amendment;

(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 for this subparagraph:

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

[Regulation 34 amended: Gazette 28 Sep 2018 p. 3614-15.]

35. Notice of addition of new nominated supervisor

A notice under section 56 of the Law to add a new nominated supervisor of an education and care service must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the full name and contact details of the new nominated supervisor;

[(e), (f) deleted]

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

Note for this regulation:

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.

[Regulation 35 amended: Gazette 28 Sep 2018 p. 3616.]

Division 3 — Transfer of service approval

36. Notice of transfer of service approval — centre-based service

A notice under section 59 of the Law of a transfer of a service approval for a centre-based service must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the transferring approved provider's —

(i) name and contact details; and

(ii) provider approval number;

(d) the receiving approved provider's —

(i) name and contact details; and

(ii) provider approval number;

(e) the date on which the transfer is intended to take effect;

(f) the details of any proposed changes in relation to the information required to be provided under regulations 24 and 25.

37. Notice of transfer of service approval — family day care service

A notice under section 59 of the Law of a transfer of a service approval for a family day care service must include the following information —

(a) the name of the family day care service;

(b) the service approval number;

(c) the transferring approved provider's —
  (i) name and contact details; and
  (ii) provider approval number;
(d) the receiving approved provider's —
  (i) name and contact details; and
  (ii) provider approval number;
(e) the date on which the transfer is intended to take effect;
(f) the details of any proposed changes to the information required to be provided under regulation 26.

38. Notification of decision to intervene in transfer of service approval

A notification under section 62(2) of the Law of the decision to intervene in the transfer of a service approval may include the following information —

(a) the name of the education and care service;
(b) the service approval number;
(c) the name of the transferring approved provider;
(d) the name of the receiving approved provider;
(e) the matters about which the Regulatory Authority is concerned.

Note for this regulation:

This regulation differs from regulation 38 of the national regulations made by the Ministerial Council.

Division 4 — Suspension of service approval

39. Maximum period of suspension of service approval

The prescribed maximum period of suspension of a service approval under sections 72(b)(i) and 79(1)(a)(ii) of the Law is 12 months.

[Regulation 39 amended: Gazette 24 Dec 2019 p. 4423.]

40. Application for voluntary suspension of service approval

An application under section 85 of the Law for the suspension of a service approval must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the reasons for the suspension;

(e) the date on which the suspension is proposed to take effect and the duration of the suspension;

(f) a statement indicating that the approved provider has notified the parents of children enrolled at the education and care service and any associated children's service in accordance with section 85(4) of the Law.

Division 5 — Service waiver

41. Service waiver — prescribed elements

For the purposes of section 87(1) of the Law, the prescribed elements are —

(a) the standards and elements set out in Quality Areas 3 and 4 of the National Quality Standard; and

(b) the following provisions —

(i) regulations 104, 107, 108 and 110; and

(ii) in the case of a centre-based service, Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134; and

(iii) in the case of a family day care service, regulations 72A, 117, 124, 127 and 128; and

(iv) any provision in Chapter 7 that applies in place of a provision referred to in subparagraph (i), (ii) or (iii).

[Regulation 41 amended: Gazette 28 Sep 2018 p. 3616.]

42. Prescribed information — application for service waiver

For section 88(b) of the Law, the following information is prescribed information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) a statement that specifies —

(i) the elements of the National Quality Standard and the regulations in relation to which a service waiver is sought; and

(ii) the way in which the education and care service does not or will not comply with the specified elements or regulations;

(e) if the education and care service is unable to comply with the specified elements or regulations —

(i) the reasons that the education and care service is unable to comply; and

(ii) details and evidence of any attempts made to comply with the specified elements or regulations;

(f) in any other case, the reasons that the education and care service seeks the service waiver;

(g) the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the service waiver is in force.

Notes for this regulation:

1. See section 88 of the Law.
2. This regulation differs from regulation 42 of the national regulations made by the Ministerial Council.

[Regulation 42 amended: Gazette 28 Sep 2018 p. 3617.]

43. Prescribed period — revocation of service waiver

(1) For the purposes of section 92(3) of the Law, the prescribed period in relation to a revocation of a service waiver under section 92(1) of the Law is —

(a) 14 days after the Regulatory Authority notifies the approved provider of the decision to revoke; or

(b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.

(2) For the purposes of section 92(3) of the Law, the prescribed period in relation to a revocation of a service waiver under section 92(2) of the Law, is —

(a) 14 days after the Regulatory Authority notifies the approved provider of the approval of the application; or

(b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.

[Regulation 43 amended: Gazette 3 Nov 2017 p. 5481.]

Division 6 — Temporary waiver

44. Temporary waiver — prescribed elements

For the purposes of section 94 of the Law, the prescribed elements are —

(a) the standards and elements set out in Quality Areas 3 and 4 of the National Quality Standard; and

(b) the following provisions —

(i) regulations 104, 107, 108 and 110; and

(ii) in the case of a centre-based service, Division 2 of Part 4.3 and regulations 120, 123, 126, 130 to 134 and 136; and

(iii) in the case of a family day care service, regulations 72A, 117, 124, 127, 128 and 136; and

(iv) any provision in Chapter 7 that applies in place of a provision referred to in subparagraph (i), (ii) or (iii).

[Regulation 44 amended: Gazette 28 Sep 2018 p. 3617.]

45. Application for temporary waiver

An application under section 94 of the Law for a temporary waiver must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) a statement that specifies —

(i) the elements of the National Quality Standard and the regulations in relation to which a temporary waiver is sought; and

(ii) the way in which the education and care service does not or will not comply with the specified elements or regulations;

(e) the reasons that the education and care service is unable to comply with the specified elements or regulations;

(f) details and evidence of any attempts made to comply with the specified elements or regulations;

(g) the period for which a temporary waiver is sought and the reasons for seeking that period;

Note: This period cannot exceed 12 months.

(h) details of steps that are being or will be taken in order to comply with the specified elements or regulations;

(i) the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by

the education and care service while the temporary waiver is in force.

Note for this regulation:

See section 95 of the Law.

[Part 2.3 (r. 46-54) deleted: Gazette 28 Sep 2018 p. 3617.]

Chapter 3 — Assessments and ratings

This Chapter outlines the assessment and ratings process for an education and care service and applies to all education and care services.

Part 3.1 sets out the requirements for preparation and review of quality improvement plans.

Part 3.2 sets out the different rating levels that may be given to an education and care service and the method used to determine a rating.

Part 3.3 deals with assessments.

Division 1 sets out the process for making assessments of approved education and care services and determining ratings, including the matters that the Regulatory Authority must consider.

Division 2 sets out the process for applying for reassessment of an education and care service.

Part 3.4 deals with reviews of ratings.

Division 1 sets out the process for applying for a review of a rating of an education and care service by the Regulatory Authority.

Division 2 sets out the process for applying for a further review of a rating of an education and care service by a rating review panel.

Part 3.5 sets out the process by which the approved provider of an education and care service, if eligible, may apply for the highest rating.

Part 3.6 sets out offences relating to falsely representing ratings.

Part 3.1 — Quality improvement plans

55. Quality improvement plans

(1) The approved provider of an education and care service must ensure that, within 3 months of the grant of the service approval, a quality improvement plan is prepared for the service that —

(a) includes an assessment by the provider of the quality of the practices of the service against the National Quality Standard and these Regulations; and

(b) identifies any areas that the provider considers may require improvement; and

(c) contains a statement of the philosophy of the service.

(2) The approved provider must submit the quality improvement plan to the Regulatory Authority on request.

Note for this regulation:

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

[Regulation 55 amended: Gazette 28 Nov 2014 p. 4403.]

56. Review and revision of quality improvement plans

(1) The approved provider of an education and care service must review and revise the quality improvement plan for the service having regard to the National Quality Standard —

(a) at least annually; and

(b) at any time when directed by the Regulatory Authority.

(2) The approved provider must submit the current quality improvement plan to the Regulatory Authority on request.

Note for this regulation:

See regulation 31 for the conditions on the service approval requiring the current quality improvement plan to be kept available.

Part 3.2 — Prescribed rating levels

57. Rating levels

For the purposes of section 134(1) of the Law, the prescribed rating levels are —

(a) Significant Improvement Required;

(b) Working Towards National Quality Standard;

(c) Meeting National Quality Standard;

(d) Exceeding National Quality Standard (the second highest rating level);

Note: The second highest rating level is referred to in section 152(5) of the Law.

(e) Excellent rating (the highest rating level).

Note: The criteria for an excellent rating are determined by the National Authority. See section 153 of the Law.

58. Prescribed provisional rating

For the purposes of section 133(2) of the Law, the prescribed provisional rating is Provisional — Not Yet Assessed under the National Quality Framework.

59. Significant Improvement Required

(1) A Significant Improvement Required rating may be given for a quality area stated in the National Quality Standard if the education and care service does not meet that quality area or a relevant regulation for that quality area in a way that the Regulatory Authority is satisfied constitutes a significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service.

(2) If an education and care service has a Significant Improvement Required rating for any quality area stated in the National Quality Standard, the overall rating of the service is to be Significant Improvement Required.

[Regulation 59 amended: Gazette 23 Jan 2018 p. 247.]

60. Working Towards National Quality Standard

(1) A Working Towards National Quality Standard rating may be given for a quality area stated in the National Quality Standard if the education and care service does not meet a standard in that quality area or a relevant regulation for that quality area but is not rated as Significant Improvement Required.

(2) If an education and care service has a Working Towards National Quality Standard rating for any quality area stated in the National Quality Standard but does not have a Significant

Improvement Required rating for any quality area, the overall rating of the service is to be Working Towards National Quality Standard.

61. Meeting National Quality Standard

(1) A Meeting National Quality Standard rating may be given for a quality area stated in the National Quality Standard if the education and care service meets the standards and relevant regulations for that quality area.

(2) If an education and care service has a rating for each quality area stated in the National Quality Standard that is Meeting National Quality Standard or Exceeding National Quality Standard but does not satisfy the requirements of regulation 62 for an overall Exceeding National Quality Standard rating, the overall rating of the service is to be Meeting National Quality Standard.

62. Exceeding National Quality Standard

(1) Subject to subregulation (2), an Exceeding National Quality Standard rating may be given for a quality area stated in the National Quality Standard if the education and care service exceeds the standards for that quality area and complies with the relevant regulations for that quality area.

(2) An Exceeding National Quality Standard rating may only be given for the educational program and practice quality area of the National Quality Standard for an education and care service that educates and cares for children who are in the year that is 2 years before grade 1 of school if the service either —

(a) provides a preschool program; or

(b) has a documented arrangement with an approved provider of another education and care service to provide a preschool program and informs parents of this arrangement.

(3) The overall rating of an education and care service is to be Exceeding National Quality Standard if —

(a) the education and care service has an Exceeding National Quality Standard rating for all quality areas stated in the National Quality Standard; or

(b) the education and care service has —

(i) an Exceeding National Quality Standard rating for 4 or more quality areas stated in the National Quality Standard at least 2 of which are among the following quality areas —

(A) educational program and practice;

(B) relationships with children;

(C) collaborative partnerships with families and communities;

(D) leadership and service management;

and

(ii) a Meeting National Quality Standard rating for each other quality area stated in the National Quality Standard.

(4) An education and care service in a particular jurisdiction may also be given an Exceeding National Quality Standard rating for a quality area stated in the National Quality Standard if the service is entitled to that rating under a provision (if any) set out in Chapter 7 for that jurisdiction.

Notes for this regulation:

1. This regulation differs from regulation 62 of the national regulations made by the Ministerial Council.

2. For WA specific provisions, see regulation 368A.

[Regulation 62 amended: Gazette 6 Jun 2014 p. 1787.]

Part 3.3 — Assessment

Division 1 — Assessment

63. Assessing approved education and care services

(1) Subject to subregulation (3), for the purposes of assessing an approved education and care service under section 133(1) of the Law, the Regulatory Authority —

(a) must consider —

(i) the current quality improvement plan for the service; and

(ii) any rating assessment history of the service, including any records of previous rating assessments made under the Law; and

(iii) the service's history of compliance —

(A) with the Law as it applies in any participating jurisdiction in which the service operates; and

(B) in the period of 3 years preceding the scheme commencement day, with a former education and care services law of a participating jurisdiction in which the service operates or has operated; and

(C) with an education law of a participating jurisdiction in which the service operates or has operated; and

(D) with a children's services law of a participating jurisdiction in which the service operates or has operated;

and

(b) must arrange for a site visit by an authorised officer —

(i) in the case of a centre-based service, of the education and care service premises; and

(ii) in the case of a family day care service, of one or more approved family day care venues or family day care residences.

(2) In addition to subregulation (1), the Regulatory Authority may consider the following —

(a) any relevant information disclosed to the Regulatory Authority by —

(i) a government department, public authority or local authority under section 271 of the Law; or

(ii) the Regulatory Authority of another participating jurisdiction under section 271 of the Law as applying in that jurisdiction or a person acting for that Authority; or

(iii) the relevant Commonwealth Department or a person acting for the relevant Commonwealth Department;

(b) any information available to the Regulatory Authority about any steps taken by the approved education and care service to rectify any matters identified during the rating assessment;

(c) information relating to any other quality assurance or registration process under an education law applicable to the approved education and care service;

(d) in the case of an education and care service that provides education and care to children in the year that is 2 years before grade 1 of school, whether the service facilitates access to a preschool program as set out in regulation 62(2).

(3) This regulation does not apply to a reassessment of an education and care service or an aspect or element of an education and care service under section 138 or 139 of the Law.

Notes for this regulation:

1. See Division 2 of this Part.

2. This regulation differs from regulation 63 of the national regulations made by the Ministerial Council.

64. Matters for determination of rating

In determining a rating level under section 135 of the Law, the matters the Regulatory Authority may have regard to include the following —

(a) any matters that may be considered under regulation 63; and

(b) in the case of a reassessment and re-rating on application under section 139 of the Law, any information included in that application.

65. Assessment and rating of new education and care services

On being granted a service approval, an education and care service is rated as Provisional — Not Yet Assessed under the National Quality Framework.

Note for this regulation:

See section 133(2) of the Law.

Division 2 — Reassessment

66. Application for reassessment

An application under section 139 of the Law for a reassessment and re-rating of an approved education and care service must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) the nature of the reassessment sought, including whether —

(i) the application is for reassessment of the service; or

(ii) the application is for reassessment of one or more aspects or elements of the service;

(e) if the application is for reassessment of an aspect or element of the service, the particular aspects or elements and quality areas in the National Quality Standard for which reassessment is sought;

(f) a statement setting out the reasons why reassessment is sought.

67. Reassessment by Regulatory Authority

For the purposes of the reassessment and re-rating of an approved education and care service or an aspect or element of an approved education and care service under section 138 or 139 of the Law, the Regulatory Authority —

(a) may consider any information referred to in regulation 63 in relation to the service, including the current quality improvement plan for the service; and

(b) may inspect the education and care service premises; and

(c) may consider any changes to the education and care service since the last assessment.

Part 3.4 — Review of ratings

Division 1 — Review of ratings by Regulatory Authority

68. Prescribed information for request for review of rating

A request to the Regulatory Authority under section 141 of the Law for a review of rating levels must be accompanied by the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the request;

(d) the quality areas stated in the National Quality Standard to which the grounds for review relate.

Note for this regulation:

Section 141(4)(b) of the Law requires that the request must set out the grounds on which a review is sought.

Division 2 — Review of ratings by Ratings Review Panel

69. Application for further review by Ratings Review Panel

An application under section 144 of the Law for a further review by a Ratings Review Panel of rating levels must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) a statement setting out —

(i) the ground on which the provider seeks review of the decision of the Regulatory Authority; and

(ii) the quality areas stated in the National Quality Standard to which the ground for further review relates.

Note for this regulation:

See section 145(2)(b) of the Law.

70. Prescribed areas of expertise or expert knowledge of Ratings Review Panel pool

For the purposes of section 147(3)(c) of the Law, the prescribed areas of expertise or expert knowledge are —

(a) the assessment of quality in education and care services or other relevant services; and

(b) best practice regulation.

Note for this regulation:

These areas are in addition to the areas prescribed in section 147(3) of the Law.

Part 3.5 — Highest rating

70A. Prescribed rating levels for application for highest rating

For the purposes of section 152(5) of the Law, an application for the highest rating level may only be made if the approved education and care service is rated at the second highest rating level in each quality area.

[Regulation 70A inserted: Gazette 28 Sep 2018 p. 3617.]

71. Application or reapplication for the highest rating

An application under section 152 or a reapplication under section 159 of the Law for an approved education and care service to be assessed for the highest rating level must include the following information —

(a) the name of the education and care service;

(b) the service approval number;

(c) the name and contact details of the contact person for the purposes of the application;

(d) a statement and evidence demonstrating that the service meets the assessment criteria.

Part 3.6 — Offences

72. Offences in relation to giving false or misleading statements about ratings

(1) The approved provider of an education and care service must not falsely represent the overall rating or a rating in respect of a quality area stated in the National Quality Standard given to the service under the Law.

Penalty: $2000.

(2) The approved provider must take reasonable steps to ensure that any person employed or engaged by the approved provider does not falsely represent the overall rating or a rating in respect of a quality area stated in the National Quality Standard given to the service under the Law.

Penalty: $2000.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

Chapter 4 — Operational requirements

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.

Part 4.1AA — Location of principal office

[Heading inserted: Gazette 28 Sep 2018 p. 3618.]

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: $2 000.

[Regulation 72A inserted: Gazette 28 Sep 2018 p. 3618.]

Part 4.1 — Educational program and practice

73. Educational program

(1) This Part applies in relation to the program (the ***educational program***) that is required to be delivered under section 168 of the Law to a child being educated and cared for by an education and care service.

(2) An educational program is to contribute to the following outcomes for each child —

(a) the child will have a strong sense of identity;

(b) the child will be connected with and contribute to his or her world;

(c) the child will have a strong sense of wellbeing;

(d) the child will be a confident and involved learner;

(e) the child will be an effective communicator.

74. Documenting of child assessments or evaluations for delivery of educational program

(1) The approved provider of the education and care service must ensure that, for the purposes of the educational program, the following are documented —

(a) for a child preschool age or under —

(i) assessments of the child's developmental needs, interests, experiences and participation in the educational program; and

(ii) assessments of the child's progress against the outcomes of the educational program;

and

(b) for a child over preschool age, evaluations of the child's wellbeing, development and learning.

(2) In preparing the documentation, the approved provider must —

(a) consider —

(i) the period of time that the child is being educated and cared for by the service; and

(ii) how the documentation will be used by the educators at the service;

and

(b) prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

Note for this regulation:

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

75. Information about educational program to be kept available

The approved provider of an education and care service must ensure that —

(a) information about the contents and operation of the educational program for the service is displayed at the education and care service premises at a place accessible to family members of children being educated and cared for by the service; and

(b) a copy of the educational program is available at the following places for inspection on request —

(i) in the case of a centre-based service, at the education and care service premises;

(ii) in the case of a family day care service, at each family day care residence or family day care venue.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with this regulation.

2. This regulation differs from regulation 75 of the national regulations made by the Ministerial Council.

[Regulation 75 amended: Gazette 28 Nov 2014 p. 4404.]

76. Information about educational program to be given to parents

The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service is provided with the following information on request —

(a) information about the content and operation of the educational program so far as it relates to that child;

(b) information about the child's participation in the program;

(c) a copy of the documents kept under regulation 74 in respect of the child.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Part 4.2 — Children's health and safety

Division 1 — Health, safety and wellbeing of children

77. Health, hygiene and safe food practices

(1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement —

(a) adequate health and hygiene practices; and

(b) safe practices for handling, preparing and storing food —

to minimise risks to children being educated and cared for by the service.

Penalty: $2000.

(2) A nominated supervisor of an education and care service must implement, and ensure that all staff members of, and volunteers at, the service implement —

(a) adequate health and hygiene practices; and

(b) safe practices for handling, preparing and storing food —

to minimise risks to children being educated and cared for by the service.

Penalty: $2000.

(3) A family day care educator must implement —

(a) adequate health and hygiene practices; and

(b) safe practices for handling, preparing and storing food —

to minimise risks to children being educated and cared for by the educator as part of a family day care service.

Penalty: $2000.

Note for this regulation:

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

[Regulation 77 amended: Gazette 28 Sep 2018 p. 3618.]

78. Food and beverages

(1) The approved provider of an education and care service must ensure that children being educated and cared for by the service —

(a) have access to safe drinking water at all times; and

(b) are offered food and beverages appropriate to the needs of each child on a regular basis throughout the day.

Penalty: $2000.

(2) A nominated supervisor of an education and care service must ensure that children being educated and cared for by the service —

(a) have access to safe drinking water at all times; and

(b) are offered food and beverages on a regular basis throughout the day.

Penalty: $2000.

(3) A family day care educator must ensure that children being educated and cared for by the educator as part of a family day care service —

(a) have access to safe drinking water at all times; and

(b) are offered food and beverages on a regular basis throughout the day.

Penalty: $2000.

Note for this regulation:

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

[Regulation 78 amended: Gazette 28 Sep 2018 p. 3618.]

79. Service providing food and beverages

(1) The approved provider of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that —

(a) the food or beverage provided is nutritious and adequate in quantity; and

(b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account —

(i) each child's growth and development needs; and

(ii) any specific cultural, religious or health requirements.

Penalty: $2000.

(2) A nominated supervisor of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that —

(a) the food or beverage provided is nutritious and adequate in quantity; and

(b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account —

(i) each child's growth and development needs; and

(ii) any specific cultural, religious or health requirements.

Penalty: $2000.

(3) A family day care educator who provides food or a beverage to children being educated and cared for by the educator as part of a family day care service must ensure that —

(a) the food or beverage provided is nutritious and adequate in quantity; and

(b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account —

(i) each child's growth and development needs; and

(ii) any specific cultural, religious or health requirements.

Penalty: $2000.

(4) To avoid doubt, this regulation does not apply to food or a beverage provided by a parent or family member for consumption by the child.

Note for this regulation:

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

[Regulation 79 amended: Gazette 28 Sep 2018 p. 3619.]

80. Weekly menu

(1) The approved provider of an education and care service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu —

(a) is displayed at a place at the education and care service premises accessible to family members of children being educated and cared for by the service; and

(b) accurately describes the food and beverages to be provided by the service each day.

Penalty: $1000.

(2) A nominated supervisor of an education and care service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu —

(a) is displayed at a place at the education and care service premises accessible to family members of children being educated and cared for by the service; and

(b) accurately describes the food and beverages to be provided by the service each day.

Penalty: $1000.

(3) A family day care educator who provides food and beverages (other than water) to children being educated and cared for by the educator as part of a family day care service must ensure that a weekly menu —

(a) is displayed at a place at the family day care residence or approved family day care venue accessible to family members of children being educated and cared for by the service; and

(b) accurately describes the food and beverages to be provided by the family day care educator each day.

Penalty: $1000.

(4) To avoid doubt, this regulation does not apply to food and beverages provided by a parent or family member for consumption by the child.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with subregulation (1).
2. This regulation differs from regulation 80 of the national regulations made by the Ministerial Council.

[Regulation 80 amended: Gazette 28 Nov 2014 p. 4404; 28 Sep 2018 p. 3619.]

81. Sleep and rest

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

Penalty: $1000.

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

Penalty: $1000.

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

Penalty: $1000.

Note for this regulation:

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

[Regulation 81 amended: Gazette 28 Sep 2018 p. 3619.]

82. Tobacco, drug and alcohol-free environment

(1) The approved provider of an education and care service must ensure that children being educated and cared for by the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol.

Penalty: $2000.

(2) A family day care educator must ensure that children being educated and cared for by the educator as part of a family day care service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol.

Penalty: $2000.

Note for this regulation:

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

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

(1) The approved provider of an education and care service must ensure that a nominated supervisor or a staff member of, or volunteer at, the service is not affected by alcohol or drugs (including prescription medication) so as to impair the person's capacity to supervise or provide education and care to children being educated and cared for by the service.

Penalty: $2000.

(2) A nominated supervisor of an education and care service must not, while educating and caring for children for the service —

(a) consume alcohol; or

(b) be affected by alcohol or drugs (including prescription medication) so as to impair the supervisor's capacity to supervise or provide education and care to the children.

Penalty: $2000.

(3) A family day care educator must not, while providing education and care for children as part of a family day care service —

(a) consume alcohol; or

(b) be affected by alcohol or drugs (including prescription medication) so as to impair the educator's capacity to provide education and care to the children.

Penalty: $2000.

Note for this regulation:

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

[Regulation 83 amended: Gazette 28 Sep 2018 p. 3619-20.]

84. Awareness of child protection law

The approved provider of an education and care service must ensure that nominated supervisors and staff members at the service who work with children are advised of —

(a) the existence and application of the current child protection law; and

(b) any obligations that they may have under that law.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

[Regulation 84 amended: Gazette 28 Sep 2018 p. 3620.]

Division 2 — Incidents, injury, trauma and illness

85. Incident, injury, trauma and illness policies and procedures

The incident, injury, trauma and illness policies and procedures of an education and care service required under regulation 168 must include procedures to be followed by nominated

supervisors and staff members of, and volunteers at, the service in the event that a child —

(a) is injured; or

(b) becomes ill; or

(c) suffers a trauma.

86. Notification to parents of incident, injury, trauma and illness

The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service, or if a parent cannot be immediately contacted, an authorised emergency contact for the child is notified as soon as practicable, but not later than 24 hours after the occurrence, if the child is involved in any incident, injury, trauma or illness while the child is being educated and cared for by the education and care service.

Penalty: $2000.

Note for this regulation:

This regulation differs from regulation 86 of the national regulations made by the Ministerial Council.

[Regulation 86 amended: Gazette 28 Nov 2014 p. 4404.]

87. Incident, injury, trauma and illness record

(1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.

(2) A family day care educator must keep an incident, injury, trauma and illness record in accordance with this regulation.

(3) The incident, injury, trauma and illness record must include —

(a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for by the

education and care service or the family day care educator, including —

(i) the name and age of the child; and

(ii) the circumstances leading to the incident, injury or trauma; and

(iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma;

(b) details of any illness which becomes apparent while the child is being educated and cared for by the education and care service or the family day care educator including —

(i) the name and age of the child; and

(ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and

(iii) the time and date of the apparent onset of the illness;

(c) details of the action taken by the education and care service or family day care educator in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator, including —

(i) any medication administered or first aid provided; and

(ii) any medical personnel contacted;

(d) details of any person who witnessed the incident, injury or trauma;

(e) the name of any person —

(i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while

being educated and cared for by the education and care service or family day care educator; and

(ii) the time and date of the notifications or attempted notifications;

(f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.

(4) The information referred to in subregulation (3) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

88. Infectious diseases

(1) If there is an occurrence of an infectious disease at an education and care service, the approved provider of the service must ensure that reasonable steps are taken to prevent the spread of the infectious disease at the service.

Penalty: $2000.

(2) If there is an occurrence of an infectious disease at a centre-based service, the approved provider of the service must ensure that a parent or an authorised emergency contact of each child being educated and cared for by the service is notified of the occurrence as soon as practicable.

Penalty: $2000.

(3) If there is an occurrence of an infectious disease at a family day care residence or approved family day care venue, the approved provider of the family day care service must ensure that a parent or an authorised emergency contact of each child being educated and cared for at the residence or venue as part of the service is notified of the occurrence as soon as practicable.

Penalty: $2000.

89. First aid kits

(1) The approved provider of an education and care service must ensure that first aid kits are kept in accordance with this subregulation, wherever the service is providing education and care to children —

(a) an appropriate number of first aid kits must be kept having regard to the number of children being educated and cared for by the service; and

(b) the first aid kits must be suitably equipped; and

(c) the first aid kits must be easily recognisable and readily accessible to adults, having regard to the design of the education and care service premises.

Penalty: $2000.

(2) A family day care educator must keep a first aid kit that is suitably equipped, easily recognisable and readily accessible to adults wherever the educator is educating and caring for children as part of a family day care service.

Penalty: $2000.

Note for this regulation:

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

Division 3 — Medical conditions policy

90. Medical conditions policy

(1) The medical conditions policy of the education and care service must set out practices in relation to the following —

(a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;

(b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;

(c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy or relevant medical condition, including —

(i) requiring a parent of the child to provide a medical management plan for the child; and

(ii) requiring the medical management plan to be followed in the event of an incident relating to the child's specific health care need, allergy or relevant medical condition; and

(iii) requiring the development of a risk-minimisation plan in consultation with the parents of a child —

(A) to ensure that the risks relating to the child's specific health care need, allergy or relevant medical condition are assessed and minimised; and

(B) if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented; and

(C) if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and

(D) to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child's medical management plan and the location of the child's medication are developed and implemented; and

(E) if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without

medication prescribed by the child's medical practitioner in relation to the child's specific health care need, allergy or relevant medical condition are developed and implemented;

and

(iv) requiring the development of a communications plan to ensure that —

(A) relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and

(B) a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.

(2) The medical conditions policy of the education and care service must set out practices in relation to self-administration of medication by children over preschool age if the service permits that self-administration.

(3) In subregulation (2), the practices must include any practices relating to recording in the medication record for a child of notifications from the child that medication has been self-administered.

[Regulation 90 amended: Gazette 28 Sep 2018 p. 3620.]

91. Medical conditions policy to be provided to parents

The approved provider of an education and care service must ensure that a copy of the medical conditions policy document is provided to the parent of a child enrolled at an education and care service if the provider is aware that the child has a specific health care need, allergy or other relevant medical condition.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Division 4 — Administration of medication

92. Medication record

(1) The approved provider of an education and care service must ensure that a medication record is kept that includes the details set out in subregulation (3) for each child to whom medication is or is to be administered by the service.

(2) A family day care educator must keep a medication record that includes the details set out in subregulation (3) for each child being educated and cared for by the educator as part of a family day care service to whom medication is or is to be administered.

(3) The details to be recorded are —

(a) the name of the child;

(b) the authorisation to administer medication (including, if applicable, self-administration), signed by a parent or a person named in the child's enrolment record as authorised to consent to administration of medication;

(c) the name of the medication to be administered and the medical condition the medication is being used to treat;

(d) the time and date the medication was last administered;

(e) the time and date, or the circumstances under which, the medication should be next administered;

(f) the dosage of the medication to be administered;

(g) the manner in which the medication is to be administered;

(h) if the medication is administered to the child —

(i) the dosage that was administered; and

(ii) the manner in which the medication was administered; and

(iii) the time and date the medication was administered; and

(iv) the name and signature of the person who administered the medication; and

(v) if another person is required under regulation 95 to check the dosage and administration, the name and signature of that person.

Note for this regulation:

This regulation differs from regulation 92 of the national regulations made by the Ministerial Council.

[Regulation 92 amended: Gazette 28 Nov 2014 p. 4404.]

93. Administration of medication

(1) The approved provider of an education and care service must ensure that medication is not administered to a child being educated and cared for by the service unless —

(a) that administration is authorised; and

(b) the medication is administered in accordance with regulation 95 or 96.

Penalty: $2000.

(2) The approved provider of an education and care service must ensure that written notice is given to a parent or other family member of a child as soon as practicable, if medication is administered to the child under an authorisation referred to in subregulation (5)(b).

Penalty: $1000.

(3) A nominated supervisor of an education and care service must ensure that medication is not administered to a child being educated and cared for by the service unless —

(a) that administration is authorised; and

(b) the medication is administered in accordance with regulation 95 or 96.

Penalty: $2000.

(4) A family day care educator must ensure that medication is not administered to a child being educated and cared for by the educator as part of a family day care service unless —

(a) that administration is authorised; and

(b) the medication is administered in accordance with regulation 95 or 96.

Penalty: $2000.

(5) In this regulation the administration of medication to a child is authorised if an authorisation to administer the medication —

(a) is recorded in the medication record for that child under regulation 92; or

(b) in the case of an emergency, is given verbally by —

(i) a parent or a person named in the child's enrolment record as authorised to consent to administration of medication; or

(ii) if a parent or person named in the enrolment record cannot reasonably be contacted in the circumstances, a registered medical practitioner or an emergency service.

[Regulation 93 amended: Gazette 28 Sep 2018 p. 3620.]

94. Exception to authorisation requirement — anaphylaxis or asthma emergency

(1) Despite regulation 93, medication may be administered to a child without an authorisation in case of an anaphylaxis or asthma emergency.

(2) If medication is administered under this regulation, the approved provider or a nominated supervisor of the education and care service or family day care educator must ensure that the following are notified as soon as practicable —

(a) a parent of the child, or if a parent of the child cannot be immediately contacted, an authorised emergency contact for the child;

(b) emergency services.

Note for this regulation:

This regulation differs from regulation 94 of the national regulations made by the Ministerial Council.

[Regulation 94 amended: Gazette 28 Nov 2014 p. 4405; 28 Sep 2018 p. 3621.]

95. Procedure for administration of medication

Subject to regulation 96, if medication is administered to a child being educated and cared for by an education and care service —

(a) the medication must be administered —

(i) if the medication has been prescribed by a registered medical practitioner, from its original container, bearing the original label with the name of the child to whom the medication is to be administered, and before the expiry or use by date; or

(ii) from its original container, bearing the original label and instructions and before the expiry or use by date;

and

(b) the medication must be administered in accordance with any instructions —

(i) attached to the medication; or

(ii) any written or verbal instructions provided by a registered medical practitioner;

and

(c) except in the case of a family day care service or an education and care service that is permitted to have only 1 educator to educate and care for children, the following must be checked by a person other than the person administering the medication —

(i) the dosage of the medication to be administered;

(ii) the identity of the child to whom the medication is to be administered.

96. Self-administration of medication

The approved provider of an education and care service may permit a child over preschool age to self-administer medication if —

(a) an authorisation for the child to self-administer medication is recorded in the medication record for the child under regulation 92; and

(b) the medical conditions policy of the service includes practices for self-administration of medication.

Division 5 — Emergencies and communication

97. Emergency and evacuation procedures

(1) The emergency and evacuation procedures required under regulation 168 must set out —

(a) instructions for what must be done in the event of an emergency; and

(b) an emergency and evacuation floor plan.

(2) For the purposes of preparing the emergency and evacuation procedures, the approved provider of an education and care service must ensure that a risk assessment is conducted to identify potential emergencies that are relevant to the service.

Penalty: $2000.

(3) The approved provider of an education and care service must ensure that —

(a) in the case of a centre-based service, the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present at the service on the day of the rehearsal and the responsible person in relation to the service who is present at the time of the rehearsal; and

(ab) in the case of a family day care service, the emergency and evacuation procedures are rehearsed every 3 months by each family day care educator and the children being educated and cared for by the family day care educator on that day; and

(b) the rehearsals of the emergency and evacuation procedures are documented.

Penalty: $2000.

(4) The approved provider of an education and care service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the education and care service premises, including a family day care residence and approved family day care venue.

Penalty: $2000.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (2), (3) or (4).

[Regulation 97 amended: Gazette 13 Dec 2013 p. 6158-9.]

98. Telephone or other communication equipment

The approved provider of an education and care service must ensure that, when educating or caring for children as part of the service, nominated supervisors and staff members of the service have ready access to an operating telephone or other similar means of communication to enable immediate communication to and from parents, family members and other adults who may need to be in contact about a child and emergency services.

Penalty: $1000.

Example for this regulation:

Fixed-line telephone, mobile phone, satellite phone, 2-way radio, video conferencing equipment.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with this regulation.

2. This regulation differs from regulation 98 of the national regulations made by the Ministerial Council.

[Regulation 98 amended: Gazette 28 Nov 2014 p. 4405; 28 Sep 2018 p. 3621.]

Division 6 — Collection of children from premises and excursions

99. Children leaving the education and care service premises

Notes for this regulation:

1. Regulation 99 of the national regulations made by the Ministerial Council does not apply as a law of WA.
2. For a provision reflecting regulation 99 of the national regulations made by the Ministerial Council see section 165A of the Law as applying in Western Australia.

100. Risk assessment must be conducted before excursion

(1) The approved provider of an education and care service must ensure a risk assessment is carried out in accordance with regulation 101 before an authorisation is sought under regulation 102 for an excursion.

Penalty: $2000.

(2) A nominated supervisor of an education and care service must ensure a risk assessment is carried out in accordance with regulation 101 before an authorisation is sought under regulation 102 for an excursion.

Penalty: $2000.

(3) A family day care educator must carry out a risk assessment in accordance with regulation 101 before an authorisation is sought under regulation 102 for an excursion.

Penalty: $2000.

(4) A risk assessment is not required under this regulation for an excursion if —

(a) the excursion is a regular outing; and

(b) a risk assessment has been conducted for the excursion; and

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

[Regulation 100 amended: Gazette 3 Nov 2017 p. 5482; 28 Sep 2018 p. 3621.]

101. Conduct of risk assessment for excursion

(1) A risk assessment for an excursion must —

(a) identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion; and

(b) specify how the identified risks will be managed and minimised.

(2) Without limiting subregulation (1), a risk assessment must consider —

(a) the proposed route and destination for the excursion; and

(b) any water hazards; and

(c) any risks associated with water-based activities; and

(d) the transport to and from the proposed destination for the excursion; and

(e) the number of adults and children involved in the excursion; and

(f) given the risks posed by the excursion, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and

Example: Specialised skills could include life-saving skills.

(g) the proposed activities; and

(h) the proposed duration of the excursion; and

(i) the items that should be taken on the excursion.

Example: A mobile phone and a list of emergency contact numbers for children on the excursion.

102. Authorisation for excursions

(1) The approved provider of an education and care service must ensure that a child being educated and cared for by the service is not taken outside the education and care service premises on an excursion unless written authorisation has been provided under subregulation (4).

Penalty: $1000.

(2) A nominated supervisor of an education and care service must ensure that a child being educated and cared for by the service is not taken outside the education and care service premises on an excursion unless written authorisation has been provided under subregulation (4).

Penalty: $1000.

(3) A family day care educator must ensure that a child who is being educated and cared for by the educator as part of a family day care service is not taken outside the residence or approved family day care venue on an excursion unless written authorisation has been provided under subregulation (4).

Penalty: $1000.

(4) The authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise the taking of the child outside the education and care service premises by an educator and must state —

(a) the child's name; and

(b) the reason the child is to be taken outside the premises; and

(c) the date the child is to be taken on the excursion (unless the authorisation is for a regular outing); and

(d) a description of the proposed destination for the excursion; and

(e) the method of transport to be used for the excursion; and

(f) the proposed activities to be undertaken by the child during the excursion; and

(g) the period the child will be away from the premises; and

(h) the anticipated number of children likely to be attending the excursion; and

(i) the anticipated ratio of educators attending the excursion to the anticipated number of children attending the excursion; and

(j) the anticipated number of staff members and any other adults who will accompany and supervise the children on the excursion; and

(k) that a risk assessment has been prepared and is available at the service.

(5) If the excursion is a regular outing, the authorisation is only required to be obtained once in a 12 month period.

[Regulation 102 amended: Gazette 28 Sep 2018 p. 3621.]

Part 4.3 — Physical environment

Division 1 — Centre-based services and family day care services

103. Premises, furniture and equipment to be safe, clean and in good repair

(1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: $2000.

(2) This regulation does not apply to a part of a family day care residence that is not used to provide a family day care service.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

104. Fencing

(1) The approved provider of an education and care service must ensure that any outdoor space used by children at the education and care service premises is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.

Penalty: $2000.

(2) This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age.

(3) This regulation does not apply in respect of a family day care residence or a family day care venue if all the children being educated and cared for at that residence or venue as part of a family day care service are over preschool age.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

[Regulation 104 amended: Gazette 28 Nov 2014 p. 4405.]

105. Furniture, materials and equipment

The approved provider of an education and care service must ensure that each child being educated and cared for by the education and care service has access to sufficient furniture, materials and developmentally appropriate equipment suitable for the education and care of that child.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

106. Laundry and hygiene facilities

(1) The approved provider of an education and care service must ensure that the service has —

(a) laundry facilities or access to laundry facilities; or

(b) other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering —

that are adequate and appropriate for the needs of the service.

(2) The approved provider of the service must ensure that laundry and hygienic facilities are located and maintained in a way that does not pose a risk to children.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

107. Space requirements — indoor space

(1) This regulation does not apply in respect of a family day care residence.

(2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 3·25 square metres of unencumbered indoor space.

Penalty: $2000.

(3) In calculating the area of unencumbered indoor space —

(a) the following areas are to be excluded —

(i) any passageway or thoroughfare (including door swings);

(ii) any toilet and hygiene facilities;

(iii) any nappy changing area or area for preparing bottles;

(iv) any area permanently set aside for the use or storage of cots;

(v) any area permanently set aside for storage;

(vi) any area or room for staff or administration;

(vii) any other space that is not suitable for children;

(b) the area of a kitchen is to be excluded, unless the kitchen is primarily to be used by children as part of an educational program provided by the service.

(4) The area of a verandah may be included in calculating the area of indoor space only with the written approval of the Regulatory Authority.

(5) A verandah that is included in calculating the area of outdoor space cannot be included in calculating the area of indoor space.

(6) In this regulation a reference to a child does not include —

(a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or

(b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6).

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (2).

[Regulation 107 amended: Gazette 13 Dec 2013 p. 6159.]

108. Space requirements — outdoor space

(1) This regulation does not apply in respect of a family day care residence.

(2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 7 square metres of unencumbered outdoor space.

Penalty: $2000.

(3) In calculating the area of unencumbered outdoor space required, the following areas are to be excluded —

(a) any pathway or thoroughfare, except where used by children as part of the education and care program;

(b) any car parking area;

(c) any storage shed or other storage area;

(d) any other space that is not suitable for children.

(4) A verandah that is included in calculating the area of indoor space cannot be included in calculating the area of outdoor space.

(5) An area of unencumbered indoor space may be included in calculating the outdoor space of a service that provides education and care to children over preschool age if —

(a) the Regulatory Authority has given written approval; and

(b) that indoor space has not been included in calculating the indoor space under regulation 107.

(6) In this regulation a reference to a child does not include —

(a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or

(b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6).

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (2).

[Regulation 108 amended: Gazette 13 Dec 2013 p. 6159.]

109. Toilet and hygiene facilities

The approved provider of an education and care service must ensure that —

(a) adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by

children being educated and cared for by the service; and

(b) the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

110. Ventilation and natural light

The approved provider of an education and care service must ensure that the indoor spaces used by children at the education and care service premises —

(a) are well ventilated; and

(b) have adequate natural light; and

(c) are maintained at a temperature that ensures the safety and wellbeing of children.

Penalty: $2000.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Division 2 — Additional requirements for centre-based services

111. Administrative space

The approved provider of a centre-based service must ensure that an adequate area or areas are available at the education and care service premises for the purposes of —

(a) conducting the administrative functions of the service; and

(b) consulting with family members of children; and

(c) conducting private conversations.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with this regulation.
2. This regulation differs from regulation 111 of the national regulations made by the Ministerial Council.

[Regulation 111 amended: Gazette 28 Nov 2014 p. 4405.]

112. Nappy change facilities

(1) This regulation applies if a centre-based service educates and cares for children who wear nappies.

(2) The approved provider of the service must ensure that adequate and appropriate hygienic facilities are provided for nappy changing.

(3) Without limiting subregulation (2), the approved provider of the service must ensure that the following are provided —

(a) if any of the children are under 3 years of age, at least 1 properly constructed nappy changing bench; and

(b) hand cleansing facilities for adults in the immediate vicinity of the nappy change area.

Penalty: $1000.

(4) The approved provider of the service must ensure that nappy change facilities are designed, located and maintained in a way that prevents unsupervised access by children.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (3).

113. Outdoor space — natural environment

The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.

Example for this regulation:

The use of natural features such as trees, sand and natural vegetation.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

114. Outdoor space — shade

The approved provider of a centre-based service must ensure that outdoor spaces provided at the education and care service premises include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

115. Premises designed to facilitate supervision

The approved provider of a centre-based service must ensure that the education and care service premises (including toilets and nappy change facilities) are designed and maintained in a way that facilitates supervision of children at all times that they are being educated and cared for by the service, having regard to the need to maintain the rights and dignity of the children.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Division 3 — Additional provisions for family day care services

116. Assessments of family day care residences and approved family day care venues

(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: $2 000.

(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: $2 000.

(2) The following matters must be considered as part of an assessment —

(a) the matters relating to family day care services in Division 1 and regulation 117;

(b) the suitability of the residence (and areas within the residence) or venue according to the number, ages and abilities of children attending, or likely to attend, the service at the residence or venue;

(c) the suitability of nappy change arrangements for children attending, or likely to attend, the service at the residence or venue, who wear nappies;

(d) the existence of any water hazards, water features or swimming pool at or near the residence or venue;

(e) the risk posed by any animals at the residence or venue.

(3) The approved provider of a family day care service must require each family day care educator educating and caring for children at a residence or approved family day care venue as part of the service to advise the provider of —

(a) any proposed renovations to the residence or venue; and

(b) any changes relating to the residence or venue affecting any of the matters set out in subregulation (2); and

(c) any other changes to the residence or venue that will affect the education and care provided to children at the service.

Note for this regulation:

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

[Regulation 116 amended: Gazette 28 Sep 2018 p. 3621-2.]

117. Glass

(1) The approved provider of a family day care service must ensure that any glazed area of a residence or approved family day care venue of the service complies with subregulation (2) if the area —

(a) is accessible to children; and

(b) either —

(i) is 1 metre or less above floor level; or

(ii) if the residence or family day care venue was approved before 1 December 2014, is 0·75 metres or less above floor level.

(2) The glazed area must be —

(a) glazed with safety glass, if the Building Code of Australia requires this; or

(b) in any other case —

(i) treated with a product that prevents glass from shattering if broken; or

(ii) guarded by barriers that prevent a child from striking or falling against the glass.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with this regulation.

2. This regulation differs from regulation 117 of the national regulations made by the Ministerial Council.

[Regulation 117 amended: Gazette 28 Nov 2014 p. 4406.]

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

[Heading inserted: Gazette 28 Sep 2018 p. 3622.]

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.

[Regulation 117A inserted: Gazette 28 Sep 2018 p. 3622-3.]

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.

[Regulation 117B inserted: Gazette 28 Sep 2018 p. 3623-4.]

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.

[Regulation 117C inserted: Gazette 28 Sep 2018 p. 3624-5.]

Part 4.4 — Staffing arrangements

Division 1 — Educational leader

118. Educational leader

The approved provider of an education and care service must designate, in writing, a suitably qualified and experienced

educator, co-ordinator or other individual as educational leader at the service to lead the development and implementation of educational programs in the service.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Division 2 — Age and supervision requirements

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

The approved provider of a family day care service must ensure that any family day care educator and any family day care educator assistant engaged by or registered with the service has attained the age of 18 years.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

120. Educators who are under 18 to be supervised

The approved provider of a centre-based service must ensure that any educator at the service who is under 18 years of age —

(a) does not work alone at the service; and

(b) is adequately supervised at all times by an educator who has attained the age of 18 years.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

Division 3 — Minimum number of educators and family day care co-ordinators required

[Heading amended: Gazette 28 Sep 2018 p. 3625.]

121. Application of Division 3

(1) This Division prescribes the minimum number of educators required to educate and care for children at an education and care service for the purposes of section 169(1) and (3) of the Law.

(2) Division 4 sets out the minimum qualifications for educators and Division 5 sets out how many educators are to be early childhood teachers.

Note for this regulation:

Chapter 7 contains provisions that affect the operation of this Division in relation to particular jurisdictions.

122. Educators must be working directly with children to be included in ratios

(1) An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

(2) In this regulation, a reference to an educator includes an early childhood teacher or a suitably qualified person who is counted as an educator under regulation 123(3).

[Regulation 122 amended: Gazette 24 Dec 2019 p. 4423.]

123. Educator to child ratios — centre-based services

(1A) In this regulation —

emergency, in relation to a child, means a serious and unexpected short term care emergency that requires the child to be provided with immediate education and care.

Examples for this subregulation:

1. A child is determined to be in need of protection under a child protection order.
2. The parent of a child needs urgent health care that prevents them caring for the child.

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios —

(a) for children from birth to 24 months of age — 1 educator to 4 children;

(b) for children over 24 months and less than 36 months of age — 1 educator to 5 children;

(c) for children aged 36 months of age or over (not including children over preschool age) —

(i) for all participating jurisdictions other than Western Australia — 1 educator to 11 children;

(ii) for Western Australia — 1 educator to 10 children;

(d) for children over preschool age, the ratio set out in regulation 369.

(2A) Despite regulation 122, if an educator at a centre-based service is not working directly with children, that educator is counted as an educator at the service for the purposes of this regulation if —

(a) the educator is present on the premises of the service; and

(b) the educator is available immediately to provide education and care to the children at the service if required; and

(c) the period of time during which the educator is not working with children is not more than 30 minutes in a day.

(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

(3) If an early childhood teacher or a suitably qualified person is required under Division 5 to be in attendance at a centre-based

service, subject to regulation 122 that early childhood teacher or suitably qualified person is counted as an educator at the service for the purposes of this regulation.

(4) If a centre-based service is required under regulation 130 or 131 to have access to an early childhood teacher for a period, subject to regulation 122 that teacher is counted as an educator at the service for the purposes of this regulation.

(5) In subregulations (1) and (2) a reference to children does not include a child who is, or 2 or more children from the same family who are, educated and cared for at a centre-based service in an emergency for a period of not more than 2 consecutive days on which the service operates.

(6) An approved provider of a centre-based service must not permit an additional child or additional children to be educated and cared for at the service in an emergency in the circumstances set out in subregulation (5) unless the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of all the children attending the service.

(7) Despite subregulations (1) and (2), for the purposes of determining the minimum number of educators required under this regulation, a child of a certain age is to be treated as up to 6 months older or 6 months younger than the child's actual age if —

(a) the approved provider or, if the approved provider is not an individual, the nominated supervisor, of the service —

(i) is satisfied on reasonable grounds that it is developmentally appropriate for the child to be so treated; and

(ii) makes and keeps a record of that decision;

and

(b) a parent of the child has agreed with that decision and has signed the record of the decision to indicate that agreement.

Notes for this regulation:

1. This regulation differs from regulation 123 of the national regulations made by the Ministerial Council.
2. For other WA specific provisions, see regulation 372.

[Regulation 123 amended: Gazette 5 Mar 2013 p. 1108; 13 Dec 2013 p. 6160-1; 3 Jul 2015 p. 2667-8; 28 Sep 2018 p. 3626; 24 Dec 2019 p. 4423.]

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.

[Regulation 123A inserted: Gazette 28 Sep 2018 p. 3626.]

124. Number of children who can be educated and cared for — family day care educator

(1) A family day care educator must not educate and care for more than 7 children at a family day care residence or approved family day care venue at any one time.

(2) In determining the number of children who can be educated and cared for by a family day care educator for the purposes of subregulation (1) —

(a) no more than 4 can be preschool age or under; and

(b) if the children are being educated and cared for at a residence, the educator's own children and any other children at the residence are to be taken into account if —

(i) those children are under 13 years of age; and

(ii) there is no other adult present and caring for the children.

(3) No more than 7 children can be educated and cared for as part of a family day care service at a family day care residence or an approved family day care venue at any one time.

(4) Subregulation (3) does not apply to children visiting a family day care residence or an approved family day care venue as part of an excursion.

Note for this subregulation:

A visiting family day care educator must do a risk assessment for the excursion under regulation 100.

(5) Despite subregulations (1) to (4), the approved provider of a family day care service may approve, in writing, a family day care educator to educate and care for more than 7 children, or more than 4 children who are preschool age or under, at any one time, in exceptional circumstances.

(6) For the purposes of subregulation (5), exceptional circumstances exist if —

(a) all the children being educated and cared for by the family day care educator are siblings in the same family; or

(b) a child to be educated and cared for is determined to be in need of protection under a child protection law and the family day care educator is determined to be the best person to educate and care for the child; or

(c) the family day care residence or approved family day care venue is in a rural or remote area and no alternative education and care service is available.

Division 4 — Educational qualifications for educators

125. Application of Division 4

This Division prescribes the educational qualifications required for —

(a) educators educating and caring for children at education and care services for the purposes of section 169(2) and (4) of the Law; and

(b) family day care co-ordinators for the purposes of sections 55A and 163 of the Law.

Note for this regulation:

Chapter 7 contains provisions that affect the operation of this Division in relation to particular jurisdictions.

[Regulation 125 amended: Gazette 28 Sep 2018 p. 3627.]

126. Centre-based services — general educator qualifications

(1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows —

(a) at least 50% of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and

(b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.

(1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.

(1B) Subregulation (1A) does not apply in relation to New South Wales or South Australia.

(2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.

(3) If Division 5 requires an early childhood teacher to be in attendance at a centre-based service, that teacher, or a person taken to be an early childhood teacher under regulation 135(1), is to be counted as meeting the requirements of subregulation (1)(a).

(4) If Division 5 requires a second early childhood teacher or a suitably qualified person to be in attendance at a centre-based service, that person, or a person taken to be a second early childhood teacher or a suitably qualified person under regulation 135(2), is to be counted as meeting the requirements of subregulation (1)(a).

Notes for this regulation:

1. Meaning of ***actively working towards*** — see regulation 10.
2. An early childhood teacher or suitably qualified person can be included in determining the number of educators who have an approved diploma level education and care qualification if the teacher or suitably qualified person is working directly with children.

[Regulation 126 amended: Gazette 28 Nov 2014 p. 4406; 24 Dec 2019 p. 4424.]

127. Family day care educator qualifications

A family day care educator must have, or be actively working towards, at least an approved certificate III level education and care qualification.

128. Family day care co-ordinator qualifications

A family day care co-ordinator must have an approved diploma level education and care qualification.

Division 5 — Requirements for educators who are early childhood teachers

129. Application of Division 5

(1) This Division prescribes requirements for access to or attendance of educators who are early childhood teachers at a centre-based service for the purposes of section 169 of the Law.

Note for this subregulation:

Chapter 7 contains provisions that affect the operation of this Division in relation to particular jurisdictions.

(2) This Division does not apply to a centre-based service if the main purpose of that service is to provide education and care to children over preschool age.

(3) In this Division a reference to a number of children being educated or cared for by a centre-based service does not include a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5).

[Regulation 129 amended: Gazette 13 Dec 2013 p. 6161.]

130. Requirement for early childhood teacher — centre-based services — fewer than 25 approved places

(1) If the approved number of places for children preschool age or under at a centre-based service is fewer than 25, the service must have access to an early childhood teacher working with the service for at least 20% of the time that the service provides education and care.

(2) To comply with subregulation (1), the early childhood teacher may be working with the service by means of information communication technology.

(3) For the purposes of this regulation the period that an early childhood teacher works with a centre-based service may be calculated on a quarterly basis.

131. Requirement for early childhood teacher — centre-based services — 25 or more approved places but fewer than 25 children

(1) This regulation applies if the approved number of places for children preschool age or under at a centre-based service is 25 or more but the service is educating or caring for fewer than 25 children.

(2) The service must comply with regulation 130 during any period that it educates and cares for fewer than 25 children.

Note for this subregulation:

Regulation 132 applies if the centre-based service provides education and care to 25 or more but less than 60 children preschool age or under.

(3) Any period that an early childhood teacher is in attendance at the service in compliance with regulation 132 may be counted towards the period of access to an early childhood teacher required by subregulation (2).

[Regulation 131 amended: Gazette 13 Dec 2013 p. 6162.]

132. Requirement for early childhood teacher — centre-based services — 25 to 59 children

(1) If a centre-based service provides education and care to 25 or more but less than 60 children preschool age or under on a given day, an early childhood teacher must be in attendance at the service —

(a) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(b) for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week.

(2) A centre-based service is not required to comply with subregulation (1) if —

(a) the approved number of places for children preschool age or under at the service is 25 or more but less than 60; and

(b) the service employs or engages a full-time or full-time equivalent early childhood teacher at the service.

133. Requirement for early childhood teacher — centre-based services — 60 to 80 children

(1) If a centre-based service provides education and care to 60 or more but not more than 80 children preschool age or under on a given day —

(a) an early childhood teacher must be in attendance at the service —

(i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(ii) for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week;

and

(b) a second early childhood teacher or a suitably qualified person must be in attendance at the service —

(i) for at least 3 hours on that day, if the service operates for 50 or more hours a week; or

(ii) for 30% of the operating hours of the service on that day, if the service operates for less than 50 hours a week.

(2) A centre-based service is not required to comply with subregulation (1) if —

(a) the approved number of places for children preschool age or under at the service is 60 or more but not more than 80; and

(b) the service employs or engages —

(i) a full-time or full-time equivalent early childhood teacher at the service; and

(ii) a second early childhood teacher or a suitably qualified person for half of the full-time or full-time equivalent hours at the service.

[Regulation 133 amended: Gazette 24 Dec 2019 p. 4424.]

134. Requirement for early childhood teacher — centre-based services — more than 80 children

(1) If a centre-based service provides education and care to more than 80 children preschool age or under on a given day —

(a) an early childhood teacher must be in attendance at the service —

(i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(ii) for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week;

and

(b) a second early childhood teacher or a suitably qualified person must be in attendance at the service —

(i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(ii) for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week.

(2) A centre-based service is not required to comply with subregulation (1) if —

(a) the approved number of places for children preschool age or under at a centre-based service is more than 80; and

(b) the service employs or engages —

(i) a full-time or full-time equivalent early childhood teacher at the service; and

(ii) a second full-time or full-time equivalent early childhood teacher or suitably qualified person.

[Regulation 134 amended: Gazette 24 Dec 2019 p. 4424.]

135. Illness or absence of early childhood teacher or suitably qualified person

(1) If an early childhood teacher who is required under regulation 132(1), 133(1)(a) or 134(1)(a) to be in attendance at a centre-based service is absent from the centre-based service because of short-term illness or leave, the following persons may be taken to be an early childhood teacher during that absence —

(a) in any case —

(i) a person who holds an approved diploma level education and care qualification; or

(ii) a person who holds a qualification in primary teaching;

and

(b) in the case of an early childhood teacher who is required to be in attendance under regulation 133(1)(a) or 134(1)(a), a suitably qualified person.

(2) If a second early childhood teacher or a suitably qualified person who is required under regulation 133(1)(b) or 134(1)(b) to be in attendance at a centre-based service is absent from the centre-based service because of short-term illness or leave, the following persons may be taken for the purposes of regulation 133(1)(b) or 134(1)(b) to be a second early childhood teacher or suitably qualified person during that absence —

(a) a person who holds an approved diploma level education and care qualification;

(b) a person who holds a qualification in primary teaching.

(3) An early childhood teacher required to be in attendance under regulation 132(1), 133(1)(a) or 134(1)(a) may be replaced in accordance with subregulation (1) for a maximum of 60 days in any 12 month period.

(4) A second early childhood teacher or a suitably qualified person required to be in attendance under regulation 133(1)(b) or 134(1)(b) may be replaced in accordance with subregulation (2) for a maximum of 60 days in any 12 month period.

(5) For the purposes of subregulations (3) and (4), in relation to a part-time early childhood teacher, part-time second early childhood teacher or part-time suitably qualified person (as the case requires), 60 days is to be calculated on a pro rata basis.

[Regulation 135 inserted: Gazette 24 Dec 2019 p. 4424-5.]

Division 6 — First aid qualifications

136. First aid qualifications

(1) The approved provider of a centre-based service must ensure that each of the following persons are in attendance at any place where children are being educated and cared for by the service, and immediately available in an emergency, at all times that children are being educated and cared for by the service —

(a) at least one staff member or one nominated supervisor of the service who holds a current approved first aid qualification;

(b) at least one staff member or one nominated supervisor of the service who has undertaken current approved anaphylaxis management training;

(c) at least one staff member or one nominated supervisor of the service who has undertaken current approved emergency asthma management training.

Penalty: $2000.

(2) If children are being educated and cared for at service premises on the site of a school, it is sufficient for the purposes of subregulation (1) if the following are in attendance at the school site and immediately available in an emergency—

(a) for the purposes of subregulation (1)(a), at least one staff member of the school who holds a current approved first aid qualification;

(b) for the purposes of subregulation (1)(b), at least one staff member of the school who has undertaken current approved anaphylaxis management training;

(c) for the purposes of subregulation (1)(c), at least one staff member of the school who has undertaken current approved emergency asthma management training.

(3) The approved provider of a family day care service must ensure that each family day care educator and family day care educator assistant engaged by or registered with the service —

(a) holds a current approved first aid qualification; and

(b) has undertaken current approved anaphylaxis management training; and

(c) has undertaken current approved emergency asthma management training.

Penalty: $2000.

(4) The same person may hold one or more of the qualifications set out in subregulation (1).

(5) In this regulation —

approved anaphylaxis management training means anaphylaxis management training approved by the National Authority in accordance with Division 7;

approved emergency asthma management training means emergency asthma management training approved by the National Authority in accordance with Division 7;

approved first aid qualification means a qualification that —

(a) includes training in the following that relates to and is appropriate to children —

(i) emergency life support and cardio-pulmonary resuscitation;

(ii) convulsions;

(iii) poisoning;

(iv) respiratory difficulties;

(v) management of severe bleeding;

(vi) injury and basic wound care;

(vii) administration of an auto-immune adrenalin device;

and

(b) has been approved by the National Authority in accordance with Division 7.

Note for this regulation:

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

[Regulation 136 amended: Gazette 28 Nov 2014 p. 4406-7; 3 Nov 2017 p. 5483.]

Division 7 — Approval and determination of qualifications

137. Approval of qualifications

(1) The National Authority must publish on its website lists of qualifications it has approved for the purposes of the Law including —

(a) a list of approved early childhood teaching qualifications; and

(b) a list of approved diploma level education and care qualifications; and

(c) a list of approved certificate III level education and care qualifications; and

(d) a list of approved qualifications for suitably qualified persons; and

(e) a list of approved first aid qualifications and anaphylaxis management and emergency asthma management training.

(2) The National Authority must also publish on its website lists of qualifications it has approved for the purposes of Chapter 7 including —

(a) a list of former qualifications approved as any of the following —

(i) early childhood teaching qualifications;

(ii) diploma level education and care qualifications;

(iii) certificate III level education and care qualifications;

and

(b) for Queensland, a list of former qualifications approved as either of the following —

(i) diploma level education and care qualifications;

(ii) certificate III level education and care qualifications;

and

(c) a list of qualifications for working with children over preschool age for each participating jurisdiction; and

(d) a list of qualifications and former qualifications for family day care co-ordinators in Queensland.

(3) The National Authority may publish on its website qualifications and training that it has approved as equivalent to an approved qualification or training for the purposes of the Law.

(4) The National Authority may publish on its website the following for the purposes of the definition of ***actively working towards*** a qualification —

(a) units of approved certificate III level education and care qualifications;

(b) the percentage of total units required for completion of an approved early childhood teaching qualification.

[Regulation 137 amended: Gazette 28 Nov 2014 p. 4407.]

138. Application for qualification to be assessed for inclusion on the list of approved qualifications

(1) A person may apply to the National Authority to assess a qualification for the purpose of approving that qualification under the Law.

(2) The application must include —

(a) a detailed outline of the course of study for the qualification, including details of any supervised practicum placements and the length of the course; and

(b) the relevant fee set out in Schedule 2.

139. Application for determination of equivalent qualification

(1) An application for a determination of an equivalent qualification under section 169(7) of the Law must —

(a) include the information set out in regulations 140, 141(1), 142 and 143; and

(b) be accompanied by the relevant fee set out in Schedule 2.

(2) The application must also include —

(a) a statutory declaration by the applicant that the information provided in the application is true and correct; and

(b) the applicant's consent to verification by the National Authority of the information provided in the application; and

(c) any other information that the National Authority declares in guidelines is required with the application.

(3) The National Authority may accept other evidence (including by statutory declaration) of information required to be included in the application if the certified copies of that information required by regulations 142 and 143 cannot be provided.

(4) An applicant must provide any additional information about the application and documents that the National Authority reasonably requires.

[Regulation 139 amended: Gazette 13 Dec 2013 p. 6162.]

140. Application for determination of an equivalent qualification

The following information is required for an application for a determination of an equivalent qualification —

(a) the applicant's full name;

(b) the applicant's contact details;

(c) the applicant's gender;

(d) the applicant's date of birth;

(e) if the applicant is currently engaged with or employed by an education and care service, the following information —

(i) the name and address of the service;

(ii) the position the applicant is currently working in;

(iii) the length of time the applicant has been with the service;

(f) if the applicant is not an Australian citizen, the applicant's visa or residency status in Australia (or both);

(g) in relation to the qualification for which the applicant seeks a determination —

(i) the name of the qualification; and

(ii) the full name and location (city, state and country) of the educational institution that awarded the qualification; and

(iii) if the applicant studied for the qualification at an educational institution different to the institution that awarded the qualification, the full name and location (city, state and country) of that institution; and

(iv) the years the applicant commenced and completed study for the qualification; and

(v) whether the study for the qualification was completed on a full-time or part-time basis (or both); and

(vi) the length of study required to complete the qualification on a full-time basis; and

(vii) a summary of the major areas of study in the qualification, including the areas of study that relate to early childhood years and a description of how they are so related;

(h) details of any other course or study undertaken by the applicant that was a prerequisite for admission to study for the qualification or formed a credit towards the qualification (for example, a relevant course undertaken during secondary or vocational schooling);

(i) primary documentation (or a statutory declaration if primary documentation is not available) of any supervised practicum placements undertaken during study for the qualification, including the following details —

(i) the name and location of the practicum centre;

(ii) the duration of the placement;

(iii) the setting of the placement, including (where practicable) the ages of children worked with during the placement;

(iv) the ages of children at the placement;

(v) the year the placement was completed;

(vi) evidence of the successful completion of the placement;

(j) a summary of the applicant's education, other than the qualification that is to be determined, including —

(i) the age, grade levels and years the applicant started and completed —

(A) secondary schooling; and

(B) any relevant tertiary education; and

(C) any relevant vocational schooling;

and

(ii) the full name and location (city, state and country) of each educational institution attended by the applicant for secondary schooling and any relevant tertiary and vocational schooling.

[Regulation 140 amended: Gazette 13 Dec 2013 p. 6162.]

141. Additional information for application for determination of equivalent qualification

(1) The following documents must also be provided with an application for determination of an equivalent qualification —

(a) a certified copy of the applicant's qualifications, including —

(i) the qualification to be determined; and

(ii) any other qualifications that were a prerequisite for, or formed a credit towards completion of, the qualification that is to be determined;

(b) a certified copy of the transcript of academic record of the applicant for —

(i) the qualification that is to be determined; and

(ii) the applicant's primary and secondary schooling (where it is practicable to do so); and

(iii) any other relevant tertiary education; and

(iv) any other relevant vocational schooling; and

(v) any other course that was a prerequisite for, or formed a credit towards completion of, the qualification that is to be determined;

[(c) deleted]

(d) proof of the applicant's identity;

(e) a certified copy of evidence of any name change of the applicant since the qualification was obtained.

(2) If the qualification was awarded, or the educational institution was attended, in a country other than Australia, the applicant must, at the request of the National Authority, give the National Authority a certification of the Australian Qualification Framework level of the qualification from —

(a) the Australian Education International National Office of Overseas Skills Recognition, located in the Department of Industry of the Commonwealth; or

(b) Trades Recognition Australia, located in the Department of Industry of the Commonwealth; or

(c) an overseas qualification unit, or other unit responsible for recognising overseas qualifications, of the State or Territory where the applicant resides.

Note for this regulation:

This regulation differs from regulation 141 of the national regulations made by the Ministerial Council.

[Regulation 141 amended: Gazette 13 Dec 2013 p. 6162-3.]

142. Translations of documents

Certified copies of Australian Government or other official translations of the documents referred to in regulations 140 and 141 are required if the originals are in a language other than English (in addition to the copies of the originals).

143. Certification of documents

The documents set out in regulations 140 and 141 that are required to be provided with the application or otherwise to the

National Authority must be certified as a copy of the original by —

(a) the institution that originally issued the documents; or

(b) a justice of the peace; or

(c) a person authorised under the legislation of the participating jurisdiction to witness or take statutory declarations; or

(d) a person accredited as a translator who is employed by an Australian overseas diplomatic mission; or

(e) a person accredited as a translator and interpreter by the National Accreditation Authority for Translators and Interpreters Limited A.C.N. 008 596 996.

[Regulation 143 amended: Gazette 13 Dec 2013 p. 6163.]

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

[Heading inserted: Gazette 28 Sep 2018 p. 3627.]

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: $2 000.

(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.

[Regulation 143A inserted: Gazette 28 Sep 2018 p. 3627-8.]

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 the 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 are adequately addressed.

Penalty: $2 000.

[Regulation 143B inserted: Gazette 28 Sep 2018 p. 3628-9.]

Division 8 — Family day care educator assistant

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.

[Regulation 144 inserted: Gazette 28 Sep 2018 p. 3629-30.]

Division 9 — Staff and educator records — centre-based services

145. Staff record

(1) The approved provider of a centre-based service must ensure that a staff record is kept for that service in accordance with this Division.

(2) The staff record must include —

(a) the information about nominated supervisors set out in regulation 146; and

(b) the information about staff members set out in regulation 147; and

(c) the information about the educational leader set out in regulation 148; and

(d) the information about volunteers set out in regulation 149(1).

Note for this regulation:

Other records are also required to be kept by the approved provider under this Division.

146. Nominated supervisor

The staff record must include the following information in relation to each nominated supervisor —

(a) the full name, address and date of birth of the nominated supervisor;

(b) evidence —

(i) of any relevant qualifications held by the supervisor; or

(ii) if applicable, that the nominated supervisor is actively working towards that qualification as provided under regulation 10;

(c) evidence of any approved training (including first aid training) completed by the nominated supervisor;

(d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;

(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;

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

[Regulation 146 amended: Gazette 13 Dec 2013 p. 6164; 28 Nov 2014 p. 4407; 26 Jun 2018 p. 2359; 28 Sep 2018 p. 3630-1.]

147. Staff members

The staff record must include the following information in relation to staff members —

(a) the full name, address and date of birth of the staff member;

(b) evidence —

(i) of any relevant qualifications held by the staff member; or

(ii) if applicable, that the staff member is actively working towards that qualification as provided under regulation 10;

(c) evidence of any approved training (including first aid training) completed by the staff member;

(d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;

(e) except in the case of New South Wales, Queensland and Tasmania, if the staff member has provided proof of the staff member's current teacher registration under an education law of a participating jurisdiction, a record of the identifying number of the teacher registration and the expiry date of that registration;

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

[Regulation 147 amended: Gazette 13 Dec 2013 p. 6164-5; 28 Nov 2014 p. 4407; 26 Jun 2018 p. 2359; 28 Sep 2018 p. 3631.]

148. Educational leader

The staff record must include the name of the person designated as the educational leader in accordance with regulation 118.

149. Volunteers and students

(1) The staff record must include the full name, address and date of birth of each student or volunteer who participates in the centre-based service.

(2) The approved provider of a centre-based service must also keep a record for each day on which the student or volunteer participates in the service, the date and the hours of participation.

150. Responsible person

The staff record must include the name of the responsible person at the centre-based service for each time that children are being educated and cared for by the service.

151. Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information —

(a) the name of each educator who works directly with children being educated and cared for by the service;

(b) the hours that each educator works directly with children being educated and cared for by the service.

Example for this regulation:

The record could be a staff roster or staff time sheet.

152. Record of access to early childhood teachers

(1) The approved provider of a centre-based service that provides education and care to fewer than 25 children preschool age or under must ensure that a record is kept of the following —

(a) the period that an early childhood teacher is working with the service in accordance with regulation 130 or 131(2); and

(b) the periods that the early childhood teacher is working directly with children and is not working directly with children.

(2) The approved provider of a centre-based service that provides education and care to 25 or more but not more than 59 children preschool age or under must ensure that a record is kept of the period that an early childhood teacher is in attendance at the service.

(3) The approved provider of a centre-based service that provides education and care to 60 or more children preschool age or under must ensure that a record is kept of the period that each early childhood teacher and each suitably qualified person is in attendance at the service.

[Regulation 152 amended: Gazette 24 Dec 2019 p. 4425-6.]

Division 10 — Register of family day care educators, co-ordinators and assistants and records of family day care service

[Heading amended: Gazette 28 Sep 2018 p. 3632.]

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

(1) For the purposes of section 269(1)(a) of the Law, the register must include the following information in relation to each family day care educator engaged by or registered with the service —

(a) the full name, address and date of birth of the educator;

(b) the contact details of the educator;

(c) the address of the residence or approved family day care venue where the educator 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;

(d) the date that the educator was engaged by, or registered with, the service;

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

(f) the days and hours when the educator will usually be providing education and care to children as part of the service;

(g) if the educator is an approved provider, the number of the provider approval and the date the approval was granted;

[(h) deleted]

(i) evidence —

(i) of any relevant qualifications held by the educator; or

(ii) if applicable, that the educator is actively working towards that qualification as provided under regulation 10;

(j) evidence that the educator has completed —

(i) current approved first aid training; and

(ii) current approved anaphylaxis management training; and

(iii) current approved emergency asthma management training;

(k) evidence of any other training completed by the educator;

(l) a record of —

(i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or

(ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the educator has provided proof of the educator's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or

(iii) in the case of a service located in Tasmania, the identifying number of the educator's current working with vulnerable people registration and the expiry date of that registration (if applicable);

(la) in relation to a check or registration referred to in paragraph (l), the date that the check or registration was sighted by the approved provider or a nominated supervisor of the service;

(m) for each child educated and cared for by the educator as part of the family day care service —

(i) the child's name and date of birth; and

(ii) the days and hours that the educator usually provides education and care to that child;

(n) if the education and care is provided in a residence —

(i) the full names and dates of birth of all persons aged 18 years and over who normally reside at the family day care residence;

(ii) the full names and dates of birth of all children aged under 18 years who normally reside at the family day care residence;

(o) a record of —

(i) the identifying number of the current working with children check, current working with children card, current working with vulnerable people check or criminal history record check or current teacher registration of each person referred to in paragraph (n) who is required to provide the check, card, record or registration under regulation 163 and the date of expiry 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;

(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) 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) a record of —

(i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or

(ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the

co-ordinator has provided proof of the co-ordinator's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or

(iii) in the case of a service located in Tasmania, the identifying number of the co-ordinator's current working with vulnerable people registration and the expiry date of that registration (if applicable);

(j) in relation to a check or registration referred to in paragraph (i), the date that the check or registration was sighted by the approved provider or a 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) a record of —

(i) if the service is located in a jurisdiction with a working with children law or a working with vulnerable people law, the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless subparagraph (ii) applies; or

(ii) except in the case of a service located in New South Wales, Queensland or Tasmania, if the educator assistant has provided proof of the educator assistant's current teacher registration under an education law of a participating jurisdiction, the identifying number of the teacher registration and the expiry date of that registration; or

(iii) in the case of a service located in Tasmania, the identifying number of the educator assistant's current working with vulnerable people registration and the expiry date of that registration (if applicable);

(l) in relation to a check or registration referred to in paragraph (k), the date that the check 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.

[Regulation 153 amended: Gazette 28 Sep 2018 p. 3632-8.]

154. Record of staff engaged or employed by family day care service

The approved provider of a family day care service must keep a record of staff (other than family day care educators, family day care co-ordinators or family day care educator assistants) engaged or employed by the service and of family day care educator assistants approved by the service that includes —

(a) the name of the person currently designated as the educational leader in accordance with regulation 118; and

(b) in relation to a nominated supervisor, the information set out in regulation 146; and

(c) in relation to each other staff member of the family day care service, the information set out in regulation 147; and

(d) in relation to volunteers and students, the information set out in regulation 149.

[(e) deleted]

[Regulation 154 amended: Gazette 28 Sep 2018 p. 3638-9.]

Part 4.5 — Relationships with children

155. Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that —

(a) encourages the children to express themselves and their opinions; and

(b) allows the children to undertake experiences that develop self-reliance and self-esteem; and

(c) maintains at all times the dignity and rights of each child; and

(d) gives each child positive guidance and encouragement toward acceptable behaviour; and

(e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

156. Relationships in groups

(1) The approved provider of an education and care service must take reasonable steps to ensure that the service provides children being educated and cared for by the service with opportunities to interact and develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service.

(2) For the purposes of subregulation (1), the approved provider must have regard to the size and the composition of the groups in which children are being educated and cared for by the service.

Note for this regulation:

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

Part 4.6 — Collaborative partnerships with families and communities

157. Access for parents

(1) The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service may enter the education and care service premises at any time that the child is being educated and cared for by the service.

Penalty: $1000.

(2) A nominated supervisor of an education and care service must ensure that a parent of a child being educated and cared for by the service may enter the education and care service premises at any time that the child is being educated and cared for by the service.

Penalty: $1000.

(3) A family day care educator must not prevent a parent of a child being educated and cared for by the educator as part of a family day care service from entering the family day care residence or approved family day care venue at any time that the child is being educated and cared for by the educator.

Penalty: $1000.

(4) Despite subregulations (1) to (3), the approved provider, nominated supervisor or family day care educator is not required to allow a parent to enter the education and care service premises if —

(a) permitting the parent's entry would —

(i) pose a risk to the safety of the children and staff of the education and care service; or

(ii) conflict with any duty of the provider, supervisor or educator under the Law;

or

(b) the provider, supervisor or family day care educator reasonably believes that permitting the parent's entry would contravene a court order.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with subregulation (1).
2. Other regulations also relate to collaboration with families including requirements to give information about educational programs to parents, for parents to provide enrolment information, for information to be provided or displayed to parents and for administration areas to have adequate space for consulting with parents.

[Regulation 157 amended: Gazette 28 Nov 2014 p. 4407; 28 Sep 2018 p. 3639.]

Part 4.7 — Governance and leadership

[Heading inserted: Gazette 26 Jun 2018 p. 2359.]

Division 1 — Management of services

Subdivision 1 — Attendance and enrolment records

158. Children's attendance record to be kept by approved provider

(1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that —

(a) records the full name of each child attending the service; and

(b) records the date and time each child arrives and departs; and

(c) is signed by one of the following persons at the time that the child arrives and departs —

(i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;

(ii) a nominated supervisor or an educator.

(2) A preschool program provided by a school is not required to comply with subregulation (1) if it keeps attendance records in accordance with the education law, or Government education department policy, of the participating jurisdiction.

[Regulation 158 amended: Gazette 28 Sep 2018 p. 3639.]

159. Children's attendance record to be kept by family day care educator

A family day care educator must keep a record of attendance that —

(a) records the full name of each child being educated and cared for at the family day care residence or approved family day care venue; and

(b) records the date and time each child arrives and departs; and

(c) is signed by one of the following persons at the time that the child arrives and departs —

(i) the person who delivers the child to the family day care residence or venue or collects the child from the family day care residence or venue;

(ii) if the signature of the person who delivers the child cannot reasonably be obtained — the family day care educator.

160. Child enrolment records to be kept by approved provider and family day care educator

(1) The approved provider of an education and care service must ensure that an enrolment record is kept that includes the information set out in subregulation (3) for each child enrolled at the education and care service.

(2) A family day care educator must keep an enrolment record that includes the information set out in subregulation (3) for each child educated and cared for by the educator.

(3) An enrolment record must include the following information for each child —

(a) the full name, date of birth and address of the child;

(b) the name, address and contact details of —

(i) each known parent of the child; and

(ii) any person who is to be notified of an emergency involving the child if any parent of the child cannot be immediately contacted; and

(iii) any person who is an authorised nominee; and

Note: ***Authorised nominee*** means a person who has been given permission by a parent or family member to collect the child from the education and care service or the family day care educator. See section 170(5) of the Law.

(iv) any person who is authorised to consent to medical treatment of, or to authorise administration of medication to, the child; and

(v) any person who is authorised to authorise an educator to take the child outside the education and care service premises;

(c) details of any court orders, parenting orders or parenting plans provided to the approved provider relating to powers, duties, responsibilities or authorities of any person in relation to the child or access to the child;

(d) details of any other court orders provided to the approved provider relating to the child's residence or the child's contact with a parent or other person;

(e) the gender of the child;

(f) the language used in the child's home;

(g) the cultural background of the child and, if applicable, the child's parents or any other family members;

(h) any special considerations for the child, for example any cultural, religious or dietary requirements or additional needs;

(i) the relevant authorisations set out in regulation 161;

(j) the relevant health information set out in regulation 162.

(4) In this regulation —

parenting order means a parenting order within the meaning of section 64B(1) of the *Family Law Act 1975* of the Commonwealth;

parenting plan means a parenting plan within the meaning of section 63C(1) of the *Family Law Act 1975* of the Commonwealth, and includes a registered parenting plan within the meaning of section 63C(6) of that Act.

Note for this regulation:

This regulation differs from regulation 160 of the national regulations made by the Ministerial Council.

[Regulation 160 amended: Gazette 28 Nov 2014 p. 4408.]

161. Authorisations to be kept in enrolment record

(1) The authorisations to be kept in the enrolment record for each child enrolled at an education and care service are —

(a) an authorisation, signed by a parent or a person named in the enrolment record as authorised to consent to the medical treatment of the child, for the approved provider, a nominated supervisor or an educator to seek —

(i) medical treatment for the child from a registered medical practitioner, hospital or ambulance service; and

(ii) transportation of the child by an ambulance service;

and

(b) if relevant, an authorisation given under regulation 102 for the education and care service to take the child on regular outings.

(2) The authorisations to be kept in the enrolment record for each child educated and cared for by a family day care educator are —

(a) an authorisation, signed by a parent or a person named in the enrolment record as authorised to consent to the medical treatment of the child, for the family day care educator to seek —

(i) medical treatment for the child from a registered medical practitioner, hospital or ambulance service; and

(ii) transportation of the child by an ambulance service;

and

(b) if relevant, an authorisation given under regulation 102 for the family day care educator to take the child on regular outings.

[Regulation 161 amended: Gazette 28 Sep 2018 p. 3639.]

162. Health information to be kept in enrolment record

The health information to be kept in the enrolment record for each child enrolled at the education and care service is —

(a) the name, address and telephone number of the child's registered medical practitioner or medical service; and

(b) if available, the child's Medicare number; and

(c) details of any —

(i) specific healthcare needs of the child, including any medical condition; and

(ii) allergies, including whether the child has been diagnosed as at risk of anaphylaxis;

and

(d) any medical management plan, anaphylaxis medical management plan or risk minimisation plan to be followed with respect to a specific healthcare need,

medical condition or allergy referred to in paragraph (c); and

(e) details of any dietary restrictions for the child; and

(f) the immunisation status of the child; and

(g) if the approved provider or a staff member or family day care educator has sighted a child health record for the child, a notation to that effect; and

(h) in relation to New South Wales, certificates for immunisation or exemption for the child, as required under section 87(1), (2) and (3) of the *Public Health Act 2010* of New South Wales; and

(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 the *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.

[Regulation 162 amended: Gazette 28 Nov 2014 p. 4408; 28 Sep 2018 p. 3639-40.]

Subdivision 2 — Residents at family day care residences and family day care educator assistants

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

(1) The approved provider of a family day care service must take reasonable steps to ensure that a person aged 18 years or over

who resides at a family day care residence is a fit and proper person to be in the company of children.

Penalty: $2000.

(2) The approved provider of a family day care service must take reasonable steps to ensure that a person who is a family day care educator assistant at a family day care residence or approved family day care venue is a fit and proper person to be in the company of children.

Penalty: $2000.

(3) To comply with subregulation (1) or (2), the approved provider must assess each person in accordance with subregulation (4).

(4) Except in the case of New South Wales, Queensland, Tasmania or Victoria, the approved provider must consider one of the following in respect of the person —

(a) a criminal history record check issued not more than 6 months before it is considered;

(b) a current working with children check, working with children card or working with vulnerable people check issued on the basis of a criminal history record check;

(c) a current teacher registration.

(4A) In New South Wales or Queensland, the approved provider must consider the person's current working with children check or working with children card.

(4B) In Victoria, the approved provider must consider the person's current working with children check or current teacher registration.

(4C) In Tasmania, the approved provider must consider the person's current working with vulnerable people registration.

(5) For the purposes of subregulation (4)(b), if a person who does not hold a working with children check or working with children card —

(a) attains the age of 18 years; and

(b) has applied for a working with children check or working with children card —

the person is taken to hold the check or card until the application is determined.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

[Regulation 163 amended: Gazette 13 Dec 2013 p. 6165; 28 Nov 2014 p. 4408; 28 Sep 2018 p. 3640.]

164. Requirement for notice of new persons at residence

(1) The approved provider of a family day care service must require each family day care educator to notify the 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.

(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: $2 000.

Note for this regulation:

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

[Regulation 164 amended: Gazette 28 Sep 2018 p. 3640-1.]

165. Record of visitors

(1) An approved provider of a family day care service must take all reasonable steps to ensure that a record is kept of all visitors to a family day care residence or approved family day care venue while children are being educated and cared for at the residence or venue as part of that service.

(2) A family day care educator must keep a record of all visitors to a family day care residence or approved family day care venue while children are being educated and cared for by the educator at the residence or venue as part of a family day care service.

(3) The record of visitors must include the signature of the visitor and the time of the visitor's arrival and departure.

166. Children not to be alone with visitors

(1) An approved provider of a family day care service must take all reasonable steps to ensure that a child being educated and cared for at a family day care residence or approved family day care venue as part of the service is not left alone with a visitor to the residence or venue.

Penalty: $2000.

(2) A family day care educator must not leave a child being educated and cared for by the educator at a family day care residence or approved family day care venue as part of a family day care service with a visitor to the residence or venue.

Penalty: $2000.

Subdivision 3 — Record of service's compliance

167. Record of service's compliance

(1) Subject to subregulations (2) and (3), the record of the service's compliance must include the following information —

(a) details of any amendment of the service approval made by the Regulatory Authority under section 55 of the Law, including —

(i) the reason stated by the Regulatory Authority for the amendment;

(ii) the date on which the amendment took, or takes, effect;

(iii) the date (if any) that the amendment ceases to have effect;

(b) details of any suspension of the service approval (other than a voluntary suspension), including —

(i) the reason stated by the Regulatory Authority for the suspension;

(ii) the date on which the suspension took, or takes, effect;

(iii) the date that the suspension ends;

(c) details of any compliance direction or compliance notice issued to the approved provider in respect of the service, including —

(i) the reason stated by the Regulatory Authority for issuing the direction or notice;

(ii) the steps specified in the direction or notice;

(iii) the date by which the steps specified must be taken.

(2) The information set out in subregulation (1) must not include any information that identifies any person other than the approved provider.

(3) Subregulation (1) does not include an amendment, suspension, compliance notice or compliance direction if —

(a) the period for seeking internal or external review under section 191 or 193 of the Law has not yet expired; or

(b) an application for internal or external review under section 191 or 193 of the Law has been made but not yet determined; or

(c) an application for internal or external review under section 191 or 193 of the Law has been determined, and the amendment, suspension, compliance notice or compliance direction was not confirmed.

Division 2 — Policies and procedures

168. Education and care service must have policies and procedures

(1) The approved provider of an education and care service must ensure that the service has in place policies and procedures in relation to the matters set out in subregulation (2).

Penalty: $1000.

Note for this subregulation:

These may include policies and procedures prepared by the approved provider in accordance with an education law of the participating jurisdiction.

(2) Policies and procedures are required in relation to the following —

(a) health and safety, including matters relating to —

(i) nutrition, food and beverages, dietary requirements; and

(ii) sun protection; and

(iii) water safety, including safety during any water-based activities; and

(iv) the administration of first aid; and

(v) sleep and rest for children;

(b) incident, injury, trauma and illness procedures complying with regulation 85;

(c) dealing with infectious diseases, including procedures complying with regulation 88;

(d) dealing with medical conditions in children, including the matters set out in regulation 90;

(e) emergency and evacuation, including the matters set out in regulation 97;

(f) delivery of children to, and collection of children from, education and care service premises, including procedures complying with —

(i) for all participating jurisdictions other than Western Australia — regulation 99; and

(ii) for Western Australia —section 165A of the Law as applying in Western Australia;

(g) excursions, including procedures complying with regulations 100 to 102;

(h) providing a child safe environment;

(i) staffing, including —

(i) a code of conduct for staff members; and

(ii) determining the responsible person present at the service; and

(iii) the participation of volunteers and students on practicum placements;

(j) interactions with children, including the matters set out in regulations 155 and 156;

(k) enrolment and orientation;

(l) governance and management of the service, including confidentiality of records;

(m) the acceptance and refusal of authorisations;

(n) payment of fees and provision of a statement of fees charged by the education and care service;

(o) dealing with complaints.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with subregulation (1).
2. This regulation differs from regulation 168 of the national regulations made by the Ministerial Council.

[Regulation 168 amended: Gazette 28 Sep 2018 p. 3641.]

169. Additional policies and procedures — family day care service

(1) In addition to the policies and procedures set out in regulation 168, the approved provider of a family day care service must ensure that the family day care service has in place policies and procedures in relation to the matters set out in subregulation (2).

Penalty: $1000.

(2) Policies and procedures are required in relation to the following —

(a) assessment of proposed family day care venues and proposed family day care residences and reassessment of approved family day care venues and family day care residences, including matters to meet the requirements of regulation 116;

(b) engagement or registration of family day care educators;

(c) keeping of a register of family day care educators, family day care co-ordinators and family day care educator assistants under regulation 153;

(d) monitoring, support and supervision of family day care educators, including how the service will manage educators at remote locations;

(e) assessment of family day care educators, family day care educator assistants and persons residing at family day

care residences, including the matters required under regulation 163;

(f) visitors to family day care residences and venues while education and care is being provided to children as part of a family day care service;

(g) the provision of information, assistance and training to family day care educators;

(h) the engagement or registration of family day care educator assistants.

Note for this regulation:

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

[Regulation 169 amended: Gazette 28 Sep 2018 p. 3642.]

170. Policies and procedures to be followed

(1) The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: $1000.

(2) The approved provider of a family day care service must take reasonable steps to ensure that nominated supervisors and staff members of, and family day care educators engaged by or registered with, the service follow the policies and procedures required under regulations 168 and 169.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

[Regulation 170 amended: Gazette 28 Sep 2018 p. 3642.]

171. Policies and procedures to be kept available

(1) The approved provider of an education and care service must ensure that copies of the current policies and procedures required under regulation 168 and, in the case of a family day care service, regulation 169 are readily accessible to nominated supervisors and staff members of, volunteers at, and family day care educators engaged by or registered with, the service.

Penalty: $1000.

(2) The approved provider of an education and care service must ensure that copies of the current policies and procedures required under regulation 168 and, in the case of a family day care service, regulation 169 are available for inspection at the education and care service premises at all times that the service is educating and caring for children or otherwise on request.

Penalty: $1000.

Note for this regulation:

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

[Regulation 171 amended: Gazette 28 Sep 2018 p. 3642.]

172. Notification of change to policies or procedures

(1) Subject to subregulation (3), the approved provider of an education and care service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change to a policy or procedure referred to in regulation 168 or 169 that may have a significant impact on —

(a) the service's provision of education and care to any child enrolled at the service; or

(b) the family's ability to utilise the service.

(2) The approved provider of an education and care service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change that will affect the fees charged or the way in which fees are collected.

(3) If the approved provider considers that the notice period would pose a risk to the safety, health or wellbeing of any child enrolled at the service, the approved provider must ensure that parents of children enrolled at the service are notified as soon as practicable after making a change referred to in subregulation (1).

Note for this regulation:

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

Division 3 — Information and record-keeping requirements

Subdivision 1 — Display and reporting of prescribed information

173. Prescribed information to be displayed

(1) For the purposes of section 172 of the Law, the following information is prescribed in respect of the matters in paragraphs (a) to (e) of that section —

(a) in relation to the provider approval —

(i) the name of the approved provider;

(ii) the provider approval number;

(iii) any conditions on the provider approval;

(b) in relation to the service approval —

(i) the name of the education and care service;

(ii) the service approval number;

(iii) any conditions on the service approval;

(c) the name of each nominated supervisor;

(d) in relation to the rating of the service —

(i) the current rating levels for each quality area stated in the National Quality Standard; and

(ii) the overall rating of the service;

(e) in relation to any service waivers or temporary waivers held by the service, the details of the waivers including —

(i) the elements of the National Quality Standard and the regulations that have been waived; and

(ii) the duration of the waiver; and

(iii) whether the waiver is a service waiver or a temporary waiver.

(2) For the purposes of section 172(f) of the Law, the following matters and information are prescribed —

(a) the hours and days of operation of the education and care service;

(b) the name and telephone number of the person at the education and care service to whom complaints may be addressed;

(c) in the case of a centre-based service, the name and position of the responsible person in charge of the education and care service at any given time;

(d) the name of the educational leader at the service;

(e) the contact details of the Regulatory Authority;

(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.

[Regulation 173 amended: Gazette 3 Nov 2017 p. 5483-4; 28 Sep 2018 p. 3642.]

174. Time to notify certain circumstances to Regulatory Authority

(1) For the purposes of section 173(4) of the Law, a notice must be provided within 14 days of the relevant event or within 14 days of the approved provider becoming aware of the relevant event.

(2) For the purposes of section 173(5) of the Law, a notice must be provided —

(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

(a) in the case of a notice under section 173(2)(f), within the period referred to in section 59 of the Law;

(b) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant event.

[Regulation 174 amended: Gazette 28 Sep 2018 p. 3643.]

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 for this regulation:

A lease of the premises.

[Regulation 174A inserted: Gazette 28 Sep 2018 p. 3643.]

175. Prescribed information to be notified to Regulatory Authority

(1) For the purposes of section 174(1)(b) of the Law, the following matters are prescribed —

(a) any change to the address of the approved provider or the principal office of the approved provider, or the contact details of the approved provider;

(b) the appointment of receivers or liquidators or administrators to the approved provider or any other matters that affect the financial viability and ongoing operation of the education and care service.

(2) For the purposes of section 174(2)(c) of the Law, the following matters are prescribed —

(a) any change to the hours and days of operation of the education and care service;

(b) any incident that requires the approved provider to close, or reduce the number of children attending, the education and care service for a period;

Example: A flood or a fire that requires an approved provider to close the education and care service premises (or part of those premises) while repairs are undertaken.

(c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service;

(ca) the attendance at the approved education and care service of any additional child or children being educated and cared for in an emergency in the circumstances set out in regulation 123(5), including —

(i) a description of the emergency; and

(ii) a statement by the approved provider that the approved provider had taken into account the safety, health and wellbeing of all the children attending the education and care service when deciding to provide education and care to the additional child or children;

(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).

[Regulation 175 amended: Gazette 13 Dec 2013 p. 6166; 28 Sep 2018 p. 3644.]

176. Time to notify certain information to Regulatory Authority

(1) For the purposes of section 174(3) of the Law, a notice must be provided within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

(2) For the purposes of section 174(4) of the Law, a notice must be provided —

(a) in the case of a notice under section 174(2)(a) —

(i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or the time that the person becomes aware of the death; and

(ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident;

(b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;

(ba) in the case of a notice under regulation 175(2)(ca), within 24 hours of the commencement of the attendance of the child or children at the education and care service;

(c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

[Regulation 176 amended: Gazette 13 Dec 2013 p. 6166.]

Subdivision 2 — Prescribed records

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.

[Regulation 176A inserted: Gazette 28 Sep 2018 p. 3644-5.]

177. Prescribed enrolment and other documents to be kept by approved provider

(1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider —

(a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;

(b) an incident, injury, trauma and illness record as set out in regulation 87;

(c) a medication record as set out in regulation 92;

(d) a record of assessments of family day care residences and approved family day care venues conducted under regulation 116;

(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);

(e) in the case of a centre-based service, a staff record as set out in regulation 145;

(f) a record of volunteers and students as set out in regulation 149;

(g) the records of the responsible person at the service as set out in regulation 150;

(h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;

(i) a record of access to early childhood teachers as set out in regulation 152;

(j) in the case of a family day care service, a record of staff engaged or employed by the service kept under regulation 154;

(k) a children's attendance record as set out in regulation 158;

(l) child enrolment records as set out in regulation 160;

(m) a record of the service's compliance with the Law as set out in regulation 167;

(n) a record of each nominated supervisor and any person in day-to-day charge of the education and care service under section 162 of the Law.

(2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: $2000.

(3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that —

(a) subject to subregulation (4), the documents referred to in subregulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request;

(b) the record of compliance referred to in subregulation (1)(m) is able to be accessed on request by any person.

Penalty: $2000.

(4) If a parent's access to information of the kind in the documents referred to in subregulation (1) is limited by an order of a court, the approved provider must refer to the court order in relation to the release of information concerning the child to that parent.

(5) An approved provider of a family day care service is not required to keep a document set out in subregulation (1) if an equivalent record is kept by a family day care educator under regulation 178.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with subregulation (2) or (3).
2. This regulation differs from regulation 177 of the national regulations made by the Ministerial Council.
3. 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.

[Regulation 177 amended: Gazette 5 Mar 2013 p. 1108; 13 Dec 2013 p. 6166-7; 28 Sep 2018 p. 3645.]

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

(1) For the purposes of section 175(3) of the Law, the following documents are prescribed in relation to each child educated and cared for by the family day care educator as part of a family day care service —

(a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;

(b) an incident, injury, trauma and illness record as set out in regulation 87;

(c) a medication record as set out in regulation 92;

(d) a children's attendance record as set out in regulation 159;

(e) child enrolment records as set out in regulation 160;

(f) a record of visitors to the family day care residence or approved family day care venue as set out in regulation 165.

(2) The family day care educator must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: $2000.

(3) Subject to Subdivision 4 and subregulation (4), the family day care educator must ensure that the documents referred to in subregulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request.

Penalty: $2000.

(4) If a parent's access to information of the kind in the documents referred to in subregulation (1) is limited by an order of a court, the family day care educator must refer to the court order in relation to the release of information concerning the child to that parent.

179. Family day care educator to provide documents on leaving service

A family day care educator must provide all documents referred to in regulation 178(1) to the approved provider of the family day care service on ceasing to be engaged by or registered with the service.

Subdivision 3 — Insurance information

180. Evidence of prescribed insurance

(1) The approved provider of an education and care service must keep evidence of the current prescribed insurance at the education and care service premises, or in the case of a family day care service, at the principal office of the service, and must make the evidence available for inspection by the Regulatory Authority or an authorised officer under the Law.

(2) A family day care educator must keep evidence of the educator's current public liability insurance at the family day care residence or family day care venue and must make the evidence available for inspection by the Regulatory Authority or an authorised officer under the Law.

(3) Subregulation (1) does not apply if the prescribed insurance for the education and care service is a policy of insurance or an indemnity provided by the Government of a State or Territory.

Subdivision 4 — Confidentiality and storage of records

181. Confidentiality of records kept by approved provider

The approved provider of an education and care service must ensure that information kept in a record under these Regulations is not divulged or communicated, directly or indirectly, to another person other than —

(a) to the extent necessary for the education and care or medical treatment of the child to whom the information relates; or

(b) a parent of the child to whom the information relates, except in the case of information kept in a staff record; or

(c) the Regulatory Authority or an authorised officer; or

(d) as expressly authorised, permitted or required to be given by or under any Act or law; or

(e) with the written consent of the person who provided the information.

Penalty: $2000.

182. Confidentiality of records kept by family day care educator

A family day care educator must ensure that information kept in a record under these Regulations is not divulged or communicated, directly or indirectly, to another person other than —

(a) to the extent necessary for the education and care or medical treatment of the child to whom the information relates; or

(b) a parent of the child to whom the information relates; or

(c) the approved provider or a nominated supervisor of the family day care service; or

(d) the Regulatory Authority or an authorised officer; or

(e) as expressly authorised, permitted or required to be given by or under any Act or law; or

(f) with the written consent of the person who provided the information.

Penalty: $2000.

[Regulation 182 amended: Gazette 28 Sep 2018 p. 3645.]

183. Storage of records and other documents

(1) The approved provider of an education and care service must ensure that records and documents set out in regulation 177 are stored —

(a) in a safe and secure place; and

(b) for the relevant period set out in subregulation (2).

(2) The records must be kept —

(a) if the record relates to an incident, illness, injury or trauma suffered by a child while being educated and cared for by the education and care service, until the child is aged 25 years;

(b) if the record relates to an incident, illness, injury or trauma suffered by a child that may have occurred following an incident while being educated and cared for by the education and care service, until the child is aged 25 years;

(c) if the record relates to the death of a child while being educated and cared for by the education and care service or that may have occurred as a result of an incident while being educated and cared for, until the end of 7 years after the death;

(d) in the case of any other record relating to a child enrolled at the education and care service, until the end of 3 years after the last date on which the child was educated and cared for by the service;

(e) if the record relates to the approved provider, until the end of 3 years after the last date on which the approved provider operated the education and care service;

(f) if the record relates to a nominated supervisor or staff member of an education and care service, until the end of 3 years after the last date on which the nominated supervisor or staff member provided education and care on behalf of the service;

(g) in case of any other record, until the end of 3 years after the date on which the record was made.

Note for this regulation:

A compliance direction may be issued for failure to comply with this regulation.

[Regulation 183 amended: Gazette 28 Sep 2018 p. 3646.]

184. Storage of records after service approval transferred

(1) Subject to subregulation (2), if a service approval is transferred under the Law, the transferring approved provider must transfer the documents referred to in regulation 177 relating to children currently enrolled with the service to the receiving approved provider on the date that the transfer takes effect.

(2) The transferring approved provider must not transfer the documents relating to a child under subregulation (1) unless a parent of the child has first consented to that transfer.

Subdivision 5 — Law and regulations to be available

185. Law and regulations to be available

The approved provider of an education and care service must ensure that a copy of the Law and these Regulations is accessible at the education and care service premises at all times for use by nominated supervisors, staff members, volunteers, family members of children enrolled at the service and any person seeking to make use of the service.

Notes for this regulation:

1. A compliance direction may be issued for failure to comply with this regulation.
2. This regulation differs from regulation 185 of the national regulations made by the Ministerial Council.

[Regulation 185 amended: Gazette 28 Nov 2014 p. 4408; 28 Sep 2018 p. 3646.]

Chapter 5 — Review, enforcement and compliance

This Chapter contains provisions relating to review, enforcement and compliance.

Part 5.1 provides for the process of applying for internal review of decisions of the Regulatory Authority.

Part 5.2 contains provisions relating to enforcement and compliance, including the form of identity cards, compliance directions, cancellation of prohibition notices, infringement offences and false or misleading information or documents.

Part 5.1 — Internal review

186. Application for internal review of reviewable decision

An application for internal review under section 191 of the Law must include the following information —

(a) the name of the applicant;

(b) contact details for the applicant, including an address for service of the decision;

(c) the provider approval number or service approval number to which the reviewable decision relates;

(d) the full name of the person to whom the provider approval or service approval was granted;

(e) a statement setting out —

(i) the details of the decision or the part of the decision with respect to which review is sought;

(ii) how the decision affects the applicant;

(iii) the grounds for seeking a review of the decision;

(f) any information that the applicant considers relevant to the review.

[Regulation 186 amended: Gazette 28 Sep 2018 p. 3646.]

Part 5.2 — Enforcement and compliance

187. Prescribed form of identity card

(1) For the purposes of section 196(1) of the Law, an identity card is in the prescribed form if it —

(a) states the full name of the authorised officer; and

(b) states that the officer is authorised under section 195 of the Law; and

(c) is issued by the Regulatory Authority which authorised the officer; and

(d) states the date of the officer's authorisation.

(2) An identity card may contain a photograph of the authorised officer.

(3) If an identity card does not contain a photograph of the authorised officer, the authorised officer must carry the following and produce it when showing the identity card under the Law or these Regulations —

(a) another form of photographic identification of the authorised officer; and

(b) a letter from the Regulatory Authority authorising the use of that form of photographic identification.

Penalty: $1000.

188. Compliance directions

The provisions of the regulations set out in Schedule 3 are prescribed for the purposes of section 176 of the Law.

189. Application to cancel prohibition notice

For the purposes of section 186(3)(b) of the Law, the following information is prescribed —

(a) the applicant's name;

(b) contact details for the applicant, including an address for service of the decision;

(c) a statement setting out the grounds for the application to cancel the prohibition notice.

Note for this regulation:

Section 186(4) and (5) of the Law set out additional statements that may be included in the application.

190. Infringement offences

(1) The following offences against the regulations are prescribed for the purposes of section 291 of the Law —

(a) regulation 77(1), (2) and (3) (health, hygiene and safe food practices);

(b) regulation 80(1) (weekly menu);

(c) regulation 83(1), (2) and (3) (use of alcohol or drugs);

(d) regulation 86 (notification of incidents);

(e) regulation 88(1) (infectious diseases);

(f) regulation 89(1) and (2) (first aid kits);

(g) regulation 97(4) (display of emergency and evacuation plan);

(h) regulation 98 (telephone or communication equipment);

(i) regulation 104(1) (fencing);

(j) regulation 112(3) (nappy change facilities);

(k) regulation 177(2) and (3) (enrolment and other documents to be kept by approved provider);

(l) regulation 178(2) and (3) (enrolment and other documents to be kept by family day care educator).

(2) For the purposes of section 291(4)(d) of the Law as applying in Western Australia —

(a) the persons referred to in section 291(1) of the Law who may serve an infringement notice are taken to be

appointed as authorised officers for the purposes of the infringements law; and

(b) the Regulatory Authority may, in writing, appoint persons or classes of persons to be approved officers for the purposes of the infringements law; and

(c) unless a person who is taken under paragraph (a) to be appointed as an authorised officer is issued with an identity card under section 196(1) of the Law, the Regulatory Authority must issue to the person a certificate, badge or identity card identifying the person as a person authorised to issue infringement notices; and

(d) the forms set out in Schedule 4 are prescribed in relation to the matters specified in those forms.

Notes for this regulation:

1. This regulation differs from regulation 190 of the national regulations made by the Ministerial Council.
2. The infringements law for Western Australia is Part 2 of the *Criminal Procedure Act 2004* of Western Australia.

191. False or misleading information or documents

(1) A person must not give the National Authority under the Law any information or document that the person knows is false or misleading in a material particular.

Penalty: $2000.

(2) Subregulation (1) does not apply in respect of the giving of a document, if the person when giving the document —

(a) informs the National Authority, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the National Authority if the person has, or can reasonably obtain, the correct information.

Chapter 6 — Administration

This Chapter contains provisions relating to administrative matters and applies in relation to all education and care services.

Part 6.1 sets out provisions relating to the National Authority.

Part 6.2 sets out matters relating to information, records and privacy affecting the National Authority and Regulatory Authorities.

Division 1 contains provisions relating to the application of the Commonwealth *Privacy Act 1988*.

Division 2 contains provisions relating to the application of the Commonwealth *Freedom of Information Act 1982*.

Division 3 contains provisions relating to the application of the New South Wales *State Records Act 1998*.

Division 4 contains records relating to the application of the Commonwealth *Ombudsman Act 1976*.

Division 5 contains provisions relating to the publication of information by the National Authority and Regulatory Authority.

Division 6 contains provisions relating to registers of approved providers, approved education and care services and certified supervisors.

Part 6.3 contains provisions relating to fees.

Part 6.4 sets out classes of persons to whom delegations can be made.

Part 6.1 — Australian Children's Education and Care Quality Authority

192. Co-operation with prescribed classes of body

For the purposes of section 228(1)(c) of the Law, the following classes of bodies are prescribed —

(a) bodies involved in the development of approved education and care qualifications;

(b) bodies involved in the training of educators or of persons wishing to qualify as educators;

(c) bodies involved in setting standards for the education and care of children;

(d) bodies involved in the assessment of equivalence of overseas qualifications.

193. Allocating, transferring or reimbursing money to a participating jurisdiction

For the purposes of section 276(c) of the Law, money that is to be allocated, transferred or reimbursed from the Authority Fund to a participating jurisdiction is to be credited to a fund specified by the Regulatory Authority of the participating jurisdiction.

194. Investment of Authority Fund

For the purposes of section 277 of the Law, the National Authority may invest the Authority Fund —

(a) on deposit with any bank; and

(b) in securities of the Commonwealth or of a State or Territory; and

(c) in securities guaranteed by the Commonwealth or a State or Territory; and

(d) in any other manner that —

(i) is consistent with sound commercial practice; and

(ii) minimises the probability of capital losses over a 12 month period of investment —

to enhance the capacity of the National Authority to discharge its liabilities, costs, expenses and obligations.

Part 6.2 — Information, records and privacy — National Authority and Regulatory Authorities

Division 1 — Application of Commonwealth *Privacy Act 1988*

195. Application of Commonwealth *Privacy Act 1988*

For the purposes of section 263 of the Law, this Division sets out the modifications of the Privacy Act as it applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

196. Modifications relating to National Education and Care Services Privacy Commissioner and staff

The Privacy Act applies as if it were modified —

(a) to provide that a reference to the Information Commissioner is taken to be a reference to the National Education and Care Services Privacy Commissioner; and

(b) to provide that a reference to the National Education and Care Services Privacy Commissioner is taken to be a reference to the person appointed to that office by the Ministerial Council with the remuneration, and on the terms and conditions, decided by the Council; and

(c) to provide that the National Education and Care Services Privacy Commissioner may only be removed from office by the Ministerial Council on the grounds of —

(i) misconduct; or

(ii) physical or mental incapacity that significantly impacts on the ability of the Commissioner to perform his or her functions; or

(iii) a finding of guilt for an offence committed in a participating jurisdiction or elsewhere that the Ministerial Council considers makes the Commissioner unfit to continue to hold office as Commissioner; or

(iv) a failure by the Commissioner to carry out his or her functions under the Law;

and

(d) so that the functions of the National Education and Care Services Privacy Commissioner did not include matters relating to the issuing of guidelines under Commonwealth legislation or matters relating to tax file numbers or credit reporting; and

(e) to provide that the National Education and Care Services Privacy Commissioner may, for the purposes of performing the Commissioner's functions —

(i) employ staff; and

(ii) engage contractors or consultants; and

(iii) enter into arrangements with another entity relating to the provision of staff or other resources by that entity to the Commissioner;

and

(f) to provide that the National Education and Care Services Privacy Commissioner may, in writing, delegate to any member of the staff of the Office of the National Education and Care Services Privacy Commissioner or to any person employed under, and subject to the obligations in, a public sector law of a participating jurisdiction all or any of the Commissioner's powers under the Privacy Act other than —

(i) the making of determinations for the purposes of section 52 of that Act; and

(ii) the submission of an annual report under section 95D of that Act as modified under regulation 198.

197. Modifications about financial matters

The Privacy Act applies as if it were modified to provide that the National Education and Care Services Privacy Commissioner is required to —

(a) ensure the Commissioner's operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the funds held by the Commissioner; and

(c) ensure expenditure is made from the funds held by the Commissioner only for lawful purposes and, as far as possible, reasonable value is obtained for moneys expended from the funds; and

(d) ensure the Commissioner's procedures, including internal control procedures, afford adequate safeguards with respect to —

(i) the correctness, regularity and propriety of payments made from the funds held by the Commissioner; and

(ii) receiving and accounting for payments made to the Commissioner; and

(iii) prevention of fraud or mistake;

and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in the Commissioner's annual report; and

(f) take any action necessary to facilitate the audit of the financial statements; and

(g) arrange for any further audit by a qualified person of records kept by the Commissioner in relation to the funds held by the Commissioner, if directed to do so by the Ministerial Council.

198. Modifications about annual report

The Privacy Act applies as if after section 95C there were inserted —

"**95D Annual report**

(1) The National Education and Care Services Privacy Commissioner must submit, within 4 months after the end of each financial year, an annual report for the financial year to the Ministerial Council.

(2) The National Education and Care Services Privacy Commissioner is required to include in the annual report a financial statement for the period to which the report relates that —

(a) has been prepared in accordance with Australian Accounting Standards; and

(b) has been audited by a public sector auditor (within the meaning of section 279(6) of the Law).

(3) The National Education and Care Services Privacy Commissioner is required to include in the annual report a report about the performance of the Commissioner's functions under the Privacy Act during the period to which the report relates.

(4) The Ministerial Council is to make arrangements for the tabling of the annual report in the Parliament of each participating jurisdiction and the Commonwealth.".

199. Modifications relating to National Authority and Regulatory Authorities

The Privacy Act applies as if it were modified so that —

(a) it applies only to agencies; and

(b) the agencies it applies to are —

(i) the National Authority; and

(ii) each Regulatory Authority of a participating jurisdiction;

and

(c) a reference in the Act to the principal executive of an agency is taken to be a reference to —

(i) for the National Authority, the Chairperson of the Board of the National Authority; and

(ii) for a Regulatory Authority, the person nominated by the Regulatory Authority as the chief executive of the Regulatory Authority.

200. Modifications relating to determinations

The Privacy Act applies as if it were modified so that —

(a) the provisions of the Act providing for the disallowance of determinations made by the Commissioner do not apply; and

(b) sections 303 and 304 of the Law apply to a determination as if it is a regulation.

201. Miscellaneous modifications

The Privacy Act applies —

(a) as if a reference to the Minister were a reference to a member of the Ministerial Council nominated by that Council; and

(b) as if a reference to the Governor-General were a reference to the Ministerial Council; and

(c) as if a reference to the Parliament were a reference to the Parliaments of the Commonwealth and each participating jurisdiction; and

(d) as if a reference to the Commonwealth or the Government of the Commonwealth were a reference to a

participating jurisdiction or the Government of a participating jurisdiction; and

(e) as if a reference to the Administrative Appeals Tribunal were a reference to a relevant administrative tribunal; and

(f) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and

(g) as if a reference to the Federal Magistrates Court were a reference to the Magistrates Court or Local Court of a participating jurisdiction; and

(h) as if a reference to the Ombudsman were a reference to the Education and Care Services Ombudsman; and

(i) as if a reference to a contracted service provider were a reference to a person who provides goods or services under a contract with the National Authority or a Regulatory Authority, or a subcontract for that contract; and

(j) as if a reference to a Commonwealth contract, a government contract or a State contract were a reference to a contract under which goods or services are to be, or were to be, provided to the National Authority or a Regulatory Authority; and

(k) as if references to arrangements or communications between a Minister of the Commonwealth and a Minister of a State included references to arrangements or communications between Ministers of States; and

(l) as if a requirement for a payment to be made by the Commonwealth were a requirement for a payment to be made by the National Authority from the Authority Fund; and

(m) as if it were modified so that the Commissioner's power to authorise persons to enter premises occupied by an agency and inspect documents extends to a power to

authorise any person the Commissioner considered appropriate; and

(n) as if it were modified so that the provisions providing for the establishment of a Privacy Advisory Committee do not apply; and

(o) as if it were modified so that the provisions relating to emergencies and disasters do not apply; and

(p) as if it were modified so that the provisions relating to transferring complaints to the Ombudsman do not apply to complaints made about a Regulatory Authority; and

(q) as if it were modified so that the provisions relating to the making of guidelines about medical research, health information and genetic information do not apply; and

(r) as if a reference to any other Commonwealth office holder or body were a reference to the equivalent office holder or body of a participating jurisdiction; and

(s) with any other modifications that are necessary for the effective administration of the Privacy Act for the purposes of the National Quality Framework.

202. Relevant administrative tribunal

For the purposes of regulation 201(e), a reference in the Privacy Act to a ***relevant administrative tribunal*** is taken to be a reference to any of the following —

(a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;

(b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* [1] of New South Wales;

(c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;

(d) the Local Court established under the *Local Court Act* of the Northern Territory;

(e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;

(f) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;

(g) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

203. Regulations

The regulations made under the Privacy Act do not apply.

Division 2 — Application of Commonwealth *Freedom of Information Act 1982*

204. Application of Commonwealth *Freedom of Information Act 1982*

For the purposes of section 264 of the Law, this Division sets out the modifications of the FOI Act as it applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

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

The FOI Act applies as if it were modified —

(a) to provide that a reference to the Office of the Australian Information Commissioner is taken to be a reference to the Office of the National Education and Care Services Freedom of Information Commissioner established by the Ministerial Council and consisting of —

(i) the National Education and Care Services Freedom of Information Commissioner; and

(ii) the staff employed by the National Education and Care Services Freedom of Information Commissioner;

and

(b) to provide that a reference to the Information Commissioner is taken to be a reference to the National Education and Care Services Freedom of Information Commissioner; and

(c) to provide that a reference to the National Education and Care Services Freedom of Information Commissioner is taken to be a reference to the person appointed to that office by the Ministerial Council with the remuneration, and on the terms and conditions, decided by the Council; and

(d) to provide that the National Education and Care Services Freedom of Information Commissioner may only be removed from office by the Ministerial Council on the grounds of —

(i) misconduct; or

(ii) physical or mental incapacity that significantly impacts on the ability of the Commissioner to perform his or her functions; or

(iii) a finding of guilt for an offence committed in a participating jurisdiction or elsewhere that the Ministerial Council considers makes the Commissioner unfit to continue to hold office as Commissioner; or

(iv) a failure by the Commissioner to carry out his or her functions under the Law;

and

(e) to provide that the National Education and Care Services Freedom of Information Commissioner may, for the purposes of performing the Commissioner's functions —

(i) employ staff; and

(ii) engage contractors or consultants; and

(iii) enter into arrangements with another entity relating to the provision of staff or other resources by that entity to the Commissioner;

and

(f) to provide that the National Education and Care Services Freedom of Information Commissioner may, in writing, delegate to any member of the staff of the Office of the National Education and Care Services Freedom of Information Commissioner or to any person employed under, and subject to the obligations in, a public sector law of a participating jurisdiction all or any of the Commissioner's powers under the FOI Act other than the following —

(i) the function conferred under section 55H of that Act;

(ii) the function conferred under section 55K of that Act;

(iii) the function conferred under section 55Q of that Act;

(iv) the function conferred under section 73 of that Act;

(v) the function conferred under section 86 of that Act;

(vi) the functions conferred under sections 89 and 89A of that Act;

(vii) the function conferred under section 89K of that Act;

(viii) issuing guidelines under section 93A of that Act;

(ix) the submission of an annual report under section 93C of that Act as modified under regulation 207.

206. Modifications about financial matters

The FOI Act applies as if it were modified to provide that the National Education and Care Services Freedom of Information Commissioner is required to —

(a) ensure the Commissioner's operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the funds held by the Commissioner; and

(c) ensure expenditure is made from the funds held by the Commissioner only for lawful purposes and, as far as possible, reasonable value is obtained for moneys expended from the funds; and

(d) ensure the Commissioner's procedures, including internal control procedures, afford adequate safeguards with respect to —

(i) the correctness, regularity and propriety of payments made from the funds held by the Commissioner; and

(ii) receiving and accounting for payments made to the Commissioner; and

(iii) prevention of fraud or mistake;

and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in the Commissioner's annual report; and

(f) take any action necessary to facilitate the audit of the financial statements; and

(g) arrange for any further audit by a qualified person of records kept by the Commissioner in relation to the funds held by the Commissioner, if directed to do so by the Ministerial Council.

207. Modifications about annual report

The FOI Act applies as if after section 93B there were inserted —

"**93C Annual report**

(1) The National Education and Care Services Freedom of Information Commissioner must submit, within 4 months after the end of each financial year, an annual report for the financial year to the Ministerial Council.

(2) The National Education and Care Services Freedom of Information Commissioner is required to include in the annual report a financial statement for the period to which the report relates that —

(a) has been prepared in accordance with Australian Accounting Standards; and

(b) has been audited by a public sector auditor (within the meaning of section 279(6) of the Law).

(3) The National Education and Care Services Freedom of Information Commissioner is required to include in the annual report a report about the performance of the Commissioner's functions under the FOI Act during the period to which the report relates.

(4) The Ministerial Council is to make arrangements for the tabling of the annual report in the Parliament of each participating jurisdiction and the Commonwealth.".

208. Modifications relating to National Authority and Regulatory Authorities

The FOI Act applies as if it were modified so that —

(a) it applies only to agencies; and

(b) the agencies it applies to are —

(i) the National Authority; and

(ii) each Regulatory Authority of each participating jurisdiction;

and

(c) a reference in the Act to the principal officer of an agency is a reference to —

(i) for the National Authority, the Chairperson of the Board of the National Authority; and

(ii) for a Regulatory Authority, the person nominated by the Regulatory Authority as the chief executive of the Regulatory Authority;

and

(d) a reference in the Act to the responsible Minister of an agency or the Minister is a reference to a member of the Ministerial Council nominated by the Ministerial Council.

[(e), (f) deleted]

[Regulation 208 amended: Gazette 13 Dec 2013 p. 6167; 3 Nov 2017 p. 5484.]

209. Miscellaneous modifications

The FOI Act applies —

(a) as if a reference to the Commonwealth or the Government of the Commonwealth (other than a reference in relation to a matter affecting national security, defence, international relations or the national economy) were a reference to a participating jurisdiction or the Government of a participating jurisdiction; and

(b) as if a reference to the Parliament were a reference to the Parliaments of the Commonwealth and the participating jurisdictions; and

(c) as if a reference to relations, arrangements or communications between the Commonwealth and a State included a reference to relations, arrangements or communications between States; and

(d) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and

(e) as if —

(i) a reference to the Administrative Appeals Tribunal were a reference to a relevant administrative tribunal; and

(ii) a provision of the *Administrative Appeals Tribunal Act 1975* did not apply;

and

(f) as if a reference to the Ombudsman were a reference to the Education and Care Services Ombudsman; and

(g) as if a reference to any other Commonwealth office holder or body (other than a reference to the Inspector-General of Intelligence and Security) were a reference to the equivalent office holder or body of a participating jurisdiction; and

(h) as if a requirement for a Minister to prepare a report on the operation of the Act were a requirement for the National Authority to include a report on the operation of the Act, so far as it relates to the National Authority, in its annual report; and

(i) as if a reference to the payment of costs by the Commonwealth were a reference to the payment of costs by the National Authority from the Authority Fund; and

(j) as if it were modified so that the provisions relating to transferring complaints to the Ombudsman do not apply to complaints made about a Regulatory Authority; and

(k) with any other modifications that are necessary for the effective administration of the FOI Act for the purposes of the National Quality Framework.

210. Relevant administrative tribunal

For the purposes of regulation 209(e), a reference in the FOI Act to a ***relevant administrative tribunal*** is taken to be a reference to any of the following —

(a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;

(b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* [1] of New South Wales;

(c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;

(d) the Local Court established under the *Local Court Act* of the Northern Territory;

(e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;

(f) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;

(g) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

211. Regulations

The regulations made under the FOI Act, other than the provisions providing for fees and charges, do not apply.

Division 3 — Application of New South Wales *State Records Act 1998*

212. Application of State Records Act

For the purposes of section 265 of the Law, this Division sets out the modifications of the State Records Act as it applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

213. Modifications relating to State Records Authority and its Board and Director

The State Records Act applies as if it were modified —

(a) to provide that a reference to the Authority is taken to be a reference to the State Records Authority constituted under the *State Records Act 1998* of New South Wales; and

(b) to provide that a reference to the Board is taken to be a reference to the Board of the State Records Authority constituted under the *State Records Act 1998* of New South Wales; and

(c) to provide that a reference to the Director is taken to be a reference to the Director within the meaning of the *State Records Act 1998* of New South Wales; and

(d) so that sections 63 and 69 and Schedule 2 did not apply.

214. Modifications relating to National Authority

The State Records Act applies as if it were modified so that —

(a) in section 3(1), the definition of ***public office*** referred only to the National Authority; and

(b) any reference to an agency of the State included a reference to a public office; and

(c) sections 40(4), 42 and 43 did not refer to the State; and

(d) sections 45(3), 47(1) and 60(3)(e) also applied to the National Authority.

215. Modifications relating to Ministerial Council

The State Records Act applies as if it was modified so that —

(a) any reference to a Minister, the Premier, the Attorney General or the responsible Minister were a reference to the Ministerial Council; and

(b) any reference to the Minister responsible for a public office were a reference to the Ministerial Council; and

(c) in section 17 —

(i) subsection (1) provided for the review to be conducted by the Ministerial Council in place of the responsible Ministers; and

(ii) subsections (2) and (4) did not apply.

216. Miscellaneous modifications

The State Records Act applies —

(a) as if the definition of ***State collecting institution*** in section 3 and section 5 did not apply; and

(b) as if sections 4, 9, 16, 21(2)(e), 25, 26 and 49 did not apply; and

(c) as if section 48(1), (2), (3) and (4) and the definition of ***recognised estray provisions*** in section 48(6) did not apply; and

(d) as if in section 58(2) —

(i) a reference to the appropriate Minister were a reference to the Ministerial Council; and

(ii) the last sentence were omitted;

and

(e) as if section 64 applied only to the State Record Authority's functions in relation to the National Quality Framework; and

(f) as if sections 79 and 82 and Schedule 3 did not apply; and

(g) as if any reference to the Gazette were a reference to the New South Wales Government Gazette; and

(h) as if any reference to the Supreme Court or a Local Court were a reference to a court of competent jurisdiction; and

(i) as if a reference in section 19 to the State were a reference to New South Wales; and

(j) as if any reference in sections 21, 40 and 46 to New South Wales were a reference to Australia; and

(k) as if any reference in section 22 to the regulations were a reference to guidelines issued by the Ministerial Council; and

(l) as if section 36A provided that the Authority may enter into access arrangements under that section with an authority of any participating jurisdiction; and

(m) as if any reference to the *Government Information (Public Access) Act 2009* were a reference to the FOI Act; and

(n) as if section 73(5) also referred to the following persons and bodies —

(i) the Crime and Misconduct Commission established under the *Crime and Misconduct Act 2001* of Queensland;

(ii) the Anti-Corruption Branch of the South Australia Police;

(iii) the Integrity Commission of Tasmania established under the *Integrity Commission Act 2009* of Tasmania;

(iv) the Ombudsman appointed under section 3 of the *Ombudsman Act 1973* of Victoria;

(v) the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003* of Western Australia;

(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;

(vi) if a person or body or an office referred to in subparagraphs (i) to (v) (the ***initial entity***), whether by or under an Act of the relevant participating jurisdiction or otherwise, is abolished and another person, body or office is conferred or given functions and powers that substantially correspond to the functions and powers of the initial entity, that person, body or office;

(vii) if the functions and powers of a person or body or an office referred to in subparagraphs (i) to (v), whether by or under an Act of the relevant participating jurisdiction or otherwise, are transferred to another person, body or office, that person, body or office;

and

(o) as if in section 76 any reference to the Crown were a reference to a public office; and

(p) as if in section 78(2) the reference to the *Criminal Procedure Act 1986* were a reference to any other law and the notes were omitted; and

(q) with any other modifications that are necessary for the effective administration of the State Records Act for the purposes of the National Quality Framework.

[Regulation 216 amended: Gazette 26 Jun 2015 p. 2272; 28 Sep 2018 p. 3646-7.]

217. Regulations

The regulations made under the State Records Act do not apply.

Division 4 — Application of Commonwealth *Ombudsman Act 1976*

218. Application of Commonwealth Ombudsman Act

For the purposes of section 282(2) of the Law, this Division sets out modifications of the Ombudsman Act as it applies as a law of a participating jurisdiction for the purposes of the Law.

219. Modifications relating to Education and Care Services Ombudsman and staff

The Ombudsman Act applies as if it were modified —

(a) so that the provisions of the Act providing for the appointment of the Ombudsman and the conditions of service of the Ombudsman (other than the provisions providing for the resignation, retirement, suspension or removal of the Ombudsman) do not apply; and

(b) to provide that a reference to the Education and Care Services Ombudsman is taken to be a reference to the person appointed to that office by the Ministerial Council with the remuneration, and on the terms and conditions, decided by the Council; and

(c) so that the Education and Care Services Ombudsman may be —

(i) suspended from office by the Ministerial Council without the need for a statement of the grounds of the suspension to be laid before a House of Parliament; and

(ii) removed from office by the Ministerial Council on the ground of misconduct or physical or mental incapacity without the need for an address being presented to a House of Parliament;

and

(d) so that the provisions of the Act providing for the Deputy Ombudsman and other staff of the Ombudsman do not apply; and

(e) to provide that the Education and Care Services Ombudsman may, for the purposes of performing the Ombudsman's functions —

(i) employ staff; and

(ii) engage contractors or consultants; and

(iii) enter into arrangements with another entity relating to the provision of staff or other resources by that entity to the Ombudsman.

[Regulation 219 amended: Gazette 3 Nov 2017 p. 5484.]

220. Modifications about financial matters

The Ombudsman Act applies as if it were modified to provide that the Education and Care Services Ombudsman is required to —

(a) ensure the Ombudsman's operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the funds held by the Ombudsman; and

(c) ensure expenditure is made from the funds held by the Ombudsman only for lawful purposes and, as far as possible, reasonable value is obtained for moneys expended from the funds; and

(d) ensure the Ombudsman's procedures, including internal control procedures, afford adequate safeguards with respect to —

(i) the correctness, regularity and propriety of payments made from the funds held by the Ombudsman; and

(ii) receiving and accounting for payments made to the Ombudsman; and

(iii) prevention of fraud or mistake;

and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in the Ombudsman's annual report; and

(f) take any action necessary to facilitate the audit of the financial statements; and

(g) arrange for any further audit by a qualified person of records kept by the Ombudsman in relation to the funds held by the Ombudsman, if directed to do so by the Ministerial Council.

221. Modifications about annual report

The Ombudsman Act applies as if it were modified to provide that —

(a) the Education and Care Services Ombudsman is required to submit, within 4 months after the end of each financial year, an annual report for the financial year to the Ministerial Council; and

(b) the Education and Care Services Ombudsman is required to include in the annual report a financial statement for the period to which the report relates that —

(i) has been prepared in accordance with Australian Accounting Standards; and

(ii) has been audited by a public sector auditor (within the meaning of section 279(6) of the Law);

and

(c) the Education and Care Services Ombudsman is required to include in the annual report a report about the performance of the Ombudsman's functions under the Ombudsman Act during the period to which the report relates; and

(d) the requirement to lay a copy of the report before each House of the Parliament is a requirement for each member of the Ministerial Council to cause a copy of the report to be laid before each House of the Parliament of the jurisdiction the member represents.

222. Modifications relating to National Authority and Regulatory Authorities

The Ombudsman Act applies as if it were modified so that —

(a) it applies only in relation to prescribed authorities; and

(b) the prescribed authorities are the National Authority; and

(c) a reference in the Act to the principal executive of an agency is a reference to the Chairperson of the Board of the National Authority.

223. Miscellaneous modifications

The Ombudsman Act applies —

(a) as if a reference to the Minister or the responsible Minister were a reference to a member of the Ministerial Council nominated by that Council; and

(b) as if a reference to the Governor-General were a reference to the Ministerial Council; and

(c) as if a reference to the Parliament were a reference to the Parliaments of the Commonwealth and the participating jurisdictions; and

(d) as if a reference to the Commonwealth or the Government of the Commonwealth were a reference to a participating jurisdiction or the Government of a participating jurisdiction; and

(e) as if a reference to the Prime Minister were a reference to a member of the Ministerial Council nominated by that Council; and

(f) as if a reference to the Federal Court were a reference to the Supreme Court, or another court of competent jurisdiction, of a participating jurisdiction; and

(g) as if —

(i) a reference to the Administrative Appeals Tribunal were a reference to a relevant administrative tribunal; and

(ii) a provision of the *Administrative Appeals Tribunal Act 1975* did not apply;

and

(h) as if section 6C applied so that a reference to the Information Commissioner were a reference to the National Education and Care Services Privacy Commissioner or the National Education and Care Services Freedom of Information Commissioner; and

(i) as if it were modified so that provisions relating to the Integrity Commissioner did not apply; and

(j) as if a reference to a Commonwealth service provider were a reference to a person who provides goods or services under a contract with the National Authority; and

(k) as if a reference to any other Commonwealth office holder or body were a reference to the equivalent office holder or body of a participating jurisdiction; and

(l) as if a reference to an arrangement or communication between a Commonwealth Minister and a Minister of a State included a reference to an arrangement or communication between Ministers of States; and

(m) as if the requirement to observe confidentiality under the Act —

(i) applies to any person performing functions under the Act; but

(ii) does not prevent a member of the Ministerial Council making a record of, or divulging or communicating to another member of the

Ministerial Council, information acquired by the member in performing functions under the Act;

and

(n) with any other modifications that are necessary for the effective administration of the Ombudsman Act for the purposes of the National Quality Framework.

224. Relevant administrative tribunal

For the purposes of regulation 223(g), a reference in the Ombudsman Act to a ***relevant administrative tribunal*** is taken to be a reference to any of the following —

(a) the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008* of the ACT;

(b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997* [1] of New South Wales;

(c) the Administrative and Disciplinary Division of the District Court of South Australia established under the *District Court Act 1991* of South Australia;

(d) the Local Court established under the *Local Court Act* of the Northern Territory;

(e) the Magistrates Court (Administrative Appeals Division) established under the *Magistrates Court (Administrative Appeals Division) Act 2001* of Tasmania;

(f) the State Administrative Tribunal established under the *State Administrative Tribunal Act 2004* of Western Australia;

(g) the Victorian Civil and Administrative Tribunal established under the *Victorian Civil and Administrative Tribunal Act 1998* of Victoria.

225. Regulations

The regulations made under the Ombudsman Act, other than provisions providing for witness expenses, do not apply.

Division 5 — Publication of information

226. Publication of information

For the purposes of section 270(1)(e) of the Law, the information that may be published in respect of an approved education and care service includes the following —

(a) the contact details for the service;

(b) the hours and days of operation of the service;

(c) the conditions to which the service approval is subject;

(d) in relation to a centre-based service, the approved number of places.

227. Compliance and enforcement information

(1) For the purposes of section 270(5)(a) of the Law, the Regulatory Authority may publish the information set out in subregulation (3) in relation to any enforcement action set out in subregulation (2) and any matter prescribed in subregulation (2A).

(2) The enforcement actions are —

(a) a prosecution for an offence against the Law or these Regulations leading to a conviction or finding of guilt or a plea of guilt;

(b) the acceptance by the Regulatory Authority of an enforceable undertaking;

(c) the giving of a compliance notice;

(d) the suspension or cancellation (other than a voluntary suspension or surrender) of a provider approval or service approval;

(e) an amendment made to a provider approval or service approval for purposes of enforcement;

(f) the giving of an emergency action notice under section 179 of the Law.

(2A) For the purposes of section 270(5)(b), the following matters are prescribed —

(a) proceedings commenced by an allegation made under section 188B of the Law that grounds for disciplinary action exist;

(b) any order made in such proceedings.

(3) The following information may be published —

(a) the nature of the enforcement action;

(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) the details of the person in relation to whom the enforcement action was taken, including —

(i) the name and provider approval number of the approved provider;

(ii) for a centre-based service —

(A) the address of the service; and

(AB) the service approval number; and

(B) the name by which the service is known;

(iii) for a family day care service —

(A) the address of the service, unless the address is also the home address of a family day care educator; and

(B) the name by which the service is known;

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

(c) the reason for taking the enforcement action, including details of the breach or alleged breach by the person of the Law or these Regulations and the provision that was breached or alleged to be breached;

(d) details of the enforcement action taken, including —

(i) for a prosecution leading to a conviction or finding of guilt or a plea of guilt —

(A) the provision of the Law or these Regulations that the person was convicted or found guilty of, or pleaded guilty to, breaching; and

(B) the date of the conviction, finding of guilt or the making of the plea of guilt for the offence; and

(C) any penalty imposed for the offence; and

(D) information about any steps taken to remedy the subject of the prosecution and the date the steps were taken;

(ii) for an enforceable undertaking —

(A) the terms of the enforceable undertaking; and

(B) the date of the enforceable undertaking; and

(C) information about any steps taken to remedy the subject of the enforceable undertaking and the date the steps were taken;

(iii) for a compliance notice —

(A) the steps specified in the compliance notice that the person must take to comply with the provision of the Law or these Regulations; and

(B) the date specified in the notice by which the steps must be taken; and

(C) information about any steps taken to remedy the subject of the compliance notice and the date the steps were taken;

(iv) for the amendment of a provider approval or service approval —

(A) the details of the amendment; and

(B) the date on which the amendment took effect;

(v) for a suspension of a provider approval or service approval —

(A) the date on which the suspension took effect; and

(B) the date on which the suspension ends;

(vi) for a cancellation of a provider approval or service approval, the date on which the cancellation took effect;

(e) for the matters prescribed in subregulation (2A) —

(i) any allegation made under section 188B of the Law that grounds for disciplinary action exist; and

(ii) the provision of the Law that there has been a failure, or alleged failure, to comply with, and the circumstances of that failure, or alleged failure; and

(iii) any relevant dates regarding the proceedings or any order made; and

(iv) information about the content of any order made, and the reasons given for the making of the order.

(4) In this regulation, a reference to information does not include information that could identify or lead to the identification of a child.

Note for this regulation:

1. This regulation differs from regulation 227 of the national regulations made by the Ministerial Council.

2. Section 270(6) of the Law further restricts the publication of identifying information.

[Regulation 227 amended: Gazette 5 Mar 2013 p. 1108-9; 13 Dec 2013 p. 6167-8; 28 Sep 2018 p. 3647-8.]

228. Timing of publication where internal or external review of enforcement action is available

(1) If the Regulatory Authority publishes information about an enforcement action for which an application for internal review or external review can be made under section 191 or 193 of the Law, it must publish the information in accordance with this regulation.

(2) If an application for internal review can be made under section 191 of the Law, the Regulatory Authority may publish the information after the end of the period for requesting the review under section 191, if no request for internal review is received in that period.

(3) If an application for external review can be made under section 193 of the Law, the Regulatory Authority may publish the information at the end of the period for requesting an external review under section 193, if no request for external review is received in that period.

(4) If an application for internal or external review is made and withdrawn before a decision is made on the review, the Regulatory Authority may publish the information on or after the day on which the application is withdrawn.

(5) If an application is made for an external review, the Regulatory Authority may publish the information on or after the day on which the decision with respect to the review is made if the enforcement action is confirmed or amended on review, or if another enforcement action is substituted on review.

Division 6 — Registers

229. Register of approved providers

For the purposes of section 266 of the Law, the following information must be included in the register of approved providers in respect of each approved provider —

(a) the postal address of the approved provider;

(b) any conditions to which the provider approval is subject;

(c) the date the provider approval was granted;

(d) the provider approval number;

(e) the service approval numbers of all education and care services provided by the approved provider.

230. Register of approved education and care services

For the purposes of section 267 of the Law, the following information must be included in the register of approved education and care services in respect of each service —

(a) the contact details for the service;

(b) in relation to a centre-based service, the hours of operation of the service;

(c) any conditions to which the service approval is subject;

(d) in relation to a centre-based service, the approved number of places;

(e) the date the approved provider was granted a service approval;

(f) the service approval number;

(g) the provider approval number.

*[**231.** Deleted: Gazette 28 Sep 2018 p. 3648.]*

Part 6.3 — Fees

232. Prescribed fees

The prescribed fee payable under a provision of the Law is the relevant fee in Schedule 2 in relation to that provision of the Law.

Note for this regulation:

See also regulations 138 and 139, which also provide for the payment of fees.

233. Late payment fees (annual fees)

(1) If the annual fee for a service approval is not paid on or before 1 July, the Regulatory Authority may charge the approved provider a late payment fee, in addition to the annual fee, for every 30 days (or part of every 30 days) that the annual fee is overdue.

(2) The late payment fee is 15% of the relevant annual fee prescribed for the purposes of regulation 33.

234. Waiver, reduction, deferral and refund of fees

The National Authority may waive, reduce, defer or refund any fee payable or paid to it under the Law if there are exceptional circumstances.

235. Indexation of fees

[(1) deleted]

(2) If a fee is required to be paid under the Law or these regulations in a financial year starting on 1 July 2013, or 1 July in a later year (the ***relevant year***), the amount of the fee is to be worked out as follows —

(a) identify the amount of the fee payable for the relevant matter in the previous year;

(b) multiply the amount by the indexation factor for the relevant year;

(c) round the result down to the nearest whole dollar.

Example: An indexed fee for an application for a provider approval for the year starting 1 July 2013 would be worked out by multiplying $200 (the fee payable in the previous year) by the indexation factor for 2013-2014 worked out under subregulation (3), and then rounding the result down.

(3) The indexation factor is worked out using the following formula —

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

$$\frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}$$

Where —

index number, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter;

most recent March year means the period of 12 months ending on 31 March in the financial year that occurred immediately before the application year;

previous March year means the period of 12 months immediately preceding the most recent March year;

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

(4) The result worked out under subregulation (3) must be rounded up or down to 3 decimal places, rounding up if the result ends in 0·0005.

(5) A calculation under subregulation (3) is to be made —

(a) using the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and

(b) disregarding index numbers that are published in substitution for previously published index numbers

(unless the substituted numbers are published to take account of changes in the reference base).

[Regulation 235 amended: Gazette 24 Dec 2019 p. 4426.]

236. Publication of indexed fees

(1) The National Authority must, before the financial year commencing 1 July in each year after 2012, publish the fees applicable for that financial year determined in accordance with regulation 235.

(2) The Regulatory Authority may also publish the fees referred to in subregulation (1).

Part 6.4 — Delegations

237. Delegation

For the purposes of section 262(1)(b) of the Law, the following classes of person are prescribed —

(a) any person employed under a public sector law of another participating jurisdiction;

(b) the Regulatory Authority of another participating jurisdiction or any member of staff of the Regulatory Authority of another participating jurisdiction;

(c) the chief executive officer or any member of staff of any entity that is established under a law of a participating jurisdiction for a public purpose;

(d) the chief executive officer or another member of staff of the National Authority;

(e) a responsible authority under the *Education and Early Childhood Services (Registration and Standards) Act 2011* of South Australia;

(f) the Catholic Education Commission of Western Australia.

Chapter 7 — Jurisdiction-specific and transitional and saving provisions

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 (No. 3) 2018*.

Part 7.1 — General transitional and saving provisions

[Divisions 1 and 1A deleted: Gazette 28 Sep 2018 p. 3648.]

Division 2 — Staffing arrangements

239. Centre-based service offering a preschool program in a composite class in a school

(1) This regulation applies to a centre-based service that delivers a preschool program in a school in a class or classes where a full-time education program is also being delivered to school children.

(2) Regulations 123 and 126, and any provision of this Chapter that applies in place of those regulations, do not apply to the centre-based service.

(3) For the purpose of a rating assessment under Part 5 of the Law the centre-based service is taken to comply with regulations 123 and 126.

Note for this regulation:

See also Division 7.

239A. Centre-based services in remote and very remote areas — attendance of early childhood teachers

(1) This regulation applies until 31 December 2023 to a centre-based service that is located in a remote area or a very remote area.

Note for this subregulation:

This subregulation differs from regulation 239A(1) of the national regulations made by the Ministerial Council.

(2) The centre-based service may meet the requirements of regulation 132~~, 133 or 134~~(1) for attendance of an early childhood teacher if the service has access to an early childhood teacher working with the service at least 20~~ per cent~~% of the time that the service provides education and care.

Note for this subregulation:

This subregulation differs from regulation 239A(2) of the national regulations made by the Ministerial Council.

(2A) The centre-based service may meet the requirements of regulation 133(1) or 134(1) for attendance of an early childhood teacher if —

(a) the service has access to an early childhood teacher working with the service at least 40% of the time that the service provides education and care; or

(b) the service has access to —

(i) an early childhood teacher working with the service at least 20% of the time that the service provides education and care; and

(ii) a second early childhood teacher or a suitably qualified person working with the service at least

20% of the time that the service provides education and care.

(3) To comply with subregulation (2) or (2A), the early childhood teacher or suitably qualified person may be working with the service by means of information communication technology.

(4) For the purposes of this regulation, the period that an early childhood teacher or suitably qualified person works with the centre-based service may be calculated on a quarterly basis.

(5) In this regulation and regulation 240 —

ARIA+ score means the score calculated in accordance with the ARIA+ Index, produced by the University of Adelaide;

remote area, in relation to the location of a centre-based service, means a geographic area that is Remote Australia (average ARIA+ score greater than 5.92 but less than or equal to 10.53) in the *Australian Statistical Geography Standard: Volume 5 - Remoteness Structure*. Canberra, Australian Capital Territory: Australian Bureau of Statistics. Cat No. 1270.0.55.005;

very remote area, in relation to the location of a centre-based service, means a geographic area that is Very Remote Australia (ARIA+ score greater than 10.53) in the *Australian Statistical Geography Standard: Volume 5 - Remoteness Structure*. Canberra, Australian Capital Territory: Australian Bureau of Statistics. Cat No. 1270.0.55.005.

[Regulation 239A inserted: Gazette 28 Nov 2014 p. 4409-10; amended: Gazette 3 Nov 2017 p. 5484; 24 Dec 2019 p. 4426-7.]

240. Qualifications for educators — centre-based service

(1) This regulation applies until 31 December 2023 to a centre-based service located in a remote area or a very remote area.

Note for this subregulation:

This subregulation differs from regulation 240(1) of the national regulations made by the Ministerial Council.

(2) Despite regulation 126(1)(b), an educator at a centre-based service can be included to meet a relevant educator to child ratio for the service without having, or actively working towards, a certificate III level education and care qualification if —

(a) the educator has been continuously employed as an educator in an education and care service or a children's service for a period of at least 15 years up to immediately before the scheme commencement day; and

(b) the educator is employed by the same approved provider as the educator was employed by immediately before the scheme commencement day.

[Regulation 240 amended: Gazette 28 Nov 2014 p. 4410; 3 Nov 2017 p. 5485; 26 Jun 2018 p. 2359; 24 Dec 2019 p. 4427.]

241. Persons taken to hold an approved early childhood teaching qualification

(1) A person is taken to hold an approved early childhood teaching qualification for the purposes of these Regulations if, immediately before the scheme commencement day, the person —

(a) was —

(i) recognised under the former education and care services law, or for the purposes of a preschool funding program, of any participating jurisdiction as an early childhood teacher; and

(ii) employed or engaged in a declared approved service as an early childhood teacher;

or

(b) held a qualification that is published under regulation 137(2) in the list of former qualifications approved as early childhood teacher qualifications; or

(c) was registered or accredited as an early childhood teacher in accordance with the requirements of any participating jurisdiction; or

(d) was employed to deliver a pre-preparatory learning program (within the meaning of the *Education (General Provisions) Act 2006* of Queensland); or

(e) was registered as a teacher under the *Teachers Registration and Standards Act 2004* of South Australia and was employed to deliver a preschool program; or

(f) was registered as a teacher under the *Teachers Registration Act 2000* of Tasmania and was employed to deliver a preschool program at a school established or registered under the *Education Act 1994* of Tasmania; or

(g) was registered as a teacher under the *Education (Queensland College of Teachers) Act 2005* of Queensland and held a qualification that is published under regulation 137(2) in the list of former qualifications approved as diploma level qualifications.

(2) If, immediately before the scheme commencement day, a person was enrolled in a course for a qualification that is published under regulation 137(2) in the list of former qualifications approved as early childhood teacher qualifications, the person is taken to hold an approved early childhood teaching qualification for the purposes of these Regulations on the completion of the course.

(3) If, immediately before the scheme commencement day, a person who was registered as a teacher under the *Education (Queensland College of Teachers) Act 2005* of Queensland was enrolled in a course for a qualification that is published under regulation 137(2) in the list of former qualifications approved as diploma level qualifications, the person is taken to hold an approved early childhood teaching qualification for the purposes of these Regulations —

(a) while the person is actively working towards the approved diploma level qualification; and

(b) if the person completes the approved diploma level qualification, on completion of that qualification.

(4) If a person who, immediately before the scheme commencement day, was registered as a teacher under the *Education (Queensland College of Teachers) Act 2005* of Queensland commences actively working towards an approved diploma level qualification on or before 31 December 2013, the person is taken to hold an approved early childhood teaching qualification for the purposes of these Regulations —

(a) while the person is actively working towards the approved diploma level qualification; and

(b) if the person completes the approved diploma level qualification, on completion of that qualification.

(5) If, immediately before the scheme commencement day, the recognition, registration, accreditation or qualification as an early childhood teacher of a person referred to in subregulation (1) was subject to restrictions imposed by or under an education law of a participating jurisdiction, the person is taken to be an early childhood teacher under that subregulation subject to the same restrictions.

(6) Subregulation (1)(c) does not apply if immediately before the scheme commencement day the person was registered or accredited as an early childhood teacher or equivalent on the basis that the person was working towards an early childhood teacher qualification or equivalent.

(7) For the purposes of subregulations (3) and (4), the person is ***actively working towards*** an approved diploma level qualification if the person —

(a) is enrolled in the course for the qualification; and

(b) provides the approved provider with documentary evidence from the provider of the course that —

(i) the person has commenced the course; and

(ii) is making satisfactory progress towards completion of the course; and

(iii) is meeting the requirements for maintaining the enrolment.

[Regulation 241 amended: Gazette 13 Dec 2013 p. 6169; 28 Nov 2014 p. 4410.]

242. Persons taken to be early childhood teachers

(1) This regulation applies on and after 1 January 2014 and before 31 December 2023.

(2) A relevant regulation applies to an education and care service as if a reference in regulations 130 to 134 to an early childhood teacher included a reference to a person who —

(a) is actively working towards an approved early childhood teaching qualification; and

(b) provides the approved provider with documentary evidence that —

(i) the person has completed at least 50% of the course; or

(ii) holds an approved diploma level education and care qualification.

(3) In this regulation —

relevant regulation means regulation 130, 131, 132, 133, 134 or 379.

Note for this regulation:

This regulation differs from regulation 242 of the national regulations made by the Ministerial Council.

[Regulation 242 amended: Gazette 13 Dec 2013 p. 6169; 28 Nov 2014 p. 4410; 3 Nov 2017 p. 5485; 24 Dec 2019 p. 4427.]

243. Persons taken to hold an approved diploma level education and care qualification

A person is taken to hold an approved diploma level education and care qualification if, immediately before the scheme commencement day, the person —

(a) was —

(i) recognised under the former education and care services law of any participating jurisdiction as a diploma level educator; and

(ii) employed or engaged in a declared approved service;

or

(b) held a qualification that is published under regulation 137(2)(a) in the list of former qualifications approved as diploma level education and care qualifications; or

(c) in Queensland, held a qualification that is published under regulation 137(2)(b) in the list of former qualifications approved as diploma level education and care qualifications.

[Regulation 243 amended: Gazette 28 Nov 2014 p. 4410-11.]

243A. Persons taken to hold an approved diploma level education and care qualification for regulation 128 in Queensland

Without limiting regulation 243, a person is taken to hold an approved diploma level education and care qualification for the purposes of regulation 128 if, immediately before the scheme commencement day, the person, in Queensland, held a qualification that is published under regulation 137(2)(d) in the list of qualifications and former qualifications for family day care co-ordinators.

[Regulation 243A inserted: Gazette 13 Dec 2013 p. 6169.]

244. Persons taken to hold an approved certificate III level education and care qualification

A person is taken to hold an approved certificate III level education and care qualification if, immediately before the scheme commencement day, the person —

(a) was —

(i) recognised under the former education and care services law of any participating jurisdiction as a certificate III level educator; and

(ii) employed or engaged in a declared approved service;

or

(b) held a qualification that is published under regulation 137(2)(a) in the list of former qualifications approved as certificate III level education and care qualifications; or

(c) in Queensland, held a qualification that is published under regulation 137(2)(b) in the list of former qualifications approved as certificate III level education and care qualifications.

[Regulation 244 amended: Gazette 28 Nov 2014 p. 4411.]

*[**245-247.** Deleted: Gazette 28 Sep 2018 p. 3648.]*

Division 3 — Physical environment

248. Centre-based service offering a preschool program in a composite class in a school

(1) This regulation applies to a centre-based service that delivers a preschool program in a school in a class or classes where a full-time education program is also being delivered to school children.

(2) Regulations 104, 114 and 115 do not apply to the centre-based service.

(3) For the purpose of a rating assessment under Part 5 of the Law the centre-based service is taken to comply with regulations 104, 114 and 115.

Note for this regulation:

See also Division 7.

249. Declared approved services (other than declared approved family day care services)

(1) This regulation applies to a declared approved service (other than a declared approved family day care service) that is taken to be an approved education and care service under section 307(4) of the Law.

(2) If, on the scheme commencement day, the premises of the declared approved service do not comply with a provision of regulation 104, 114 or 115 and, immediately before that day, were not required to comply with a similar requirement under the former education and care services law or education law of the relevant participating jurisdiction that regulation does not apply to the declared approved service until —

(a) the premises of the declared approved service are renovated; or

(b) the service approval for the declared approved service is transferred under section 58 of the Law.

(3) For the purpose of subregulation (2), renovation of the premises of the declared approved service does not include a renovation of a building or structure on those premises that is not used for the education and care of children, whether or not it is used to operate the service.

Notes for this regulation:

1. See also Division 7.
2. This regulation differs from regulation 249 of the national regulations made by the Ministerial Council.

[Regulation 249 amended: Gazette 28 Sep 2018 p. 3649.]

250. Declared approved family day care services

(1) This regulation applies to a declared approved family day care service that is taken to be an approved education and care service under section 307(4) of the Law.

(2) If, on the scheme commencement day, a declared approved family day care venue or family day care residence used by a family day care educator engaged by or registered with the service does not comply with regulation 104 and, immediately before that day, was not required to comply with a similar requirement under the former education and care services law or education law of the relevant participating jurisdiction —

(a) regulation 104 does not apply to the declared approved family day care service in respect of that venue or residence until —

(i) the venue or residence is renovated; or

(ii) the family day care educator is no longer registered or engaged by the service;

and

(b) for the purpose of a rating assessment under Part 5 of the Law the declared approved service is taken to comply with that regulation until the first of the following to occur —

(i) the venue or residence is renovated; or

(ii) the family day care educator is no longer registered or engaged by the service; or

(iii) 31 December 2015.

Note for this regulation:

See also Division 7.

251. Declared out of scope services

(1) This regulation applies to a declared out of scope service for which a person is taken to hold a service approval under section 309 of the Law.

(2) If, immediately before the scheme commencement day, the premises of the declared out of scope service did not comply with a provision of regulation 104, 114 or 115 —

(a) that regulation does not apply to the declared out of scope service until —

(i) the premises of the declared out of scope service are renovated; or

(ii) the service approval for the declared out of scope service is transferred under section 58 of the Law;

and

(b) for the purpose of a rating assessment under Part 5 of the Law the declared out of scope service is taken to comply with that regulation until the first of the following to occur —

(i) the premises of the declared out of scope service are renovated; or

(ii) the service approval for the declared out of scope service is transferred under section 58 of the Law; or

(iii) 31 December 2015.

Note for this regulation:

See also Division 7.

Division 4 — Information retention and sharing

252. Information held by Regulatory Authority or regulatory body

For the purpose of section 322(1) of the Law, the prescribed information is all information held by the Regulatory Authority (or any regulatory body under the former education and care services law) in relation to the matters set out in section 322(1)(a) and (b) of the Law.

253. Information kept by approved provider

For the purposes of section 322(3) of the Law, the documents must be kept in accordance with regulation 183.

Division 5 — Declared approved learning frameworks

254. Declared approved learning frameworks

(1) For the purpose of section 323 of the Law, the following, as in force on the scheme commencement day, are declared approved learning frameworks —

(a) Belonging, Being and Becoming: The Early Years Learning Framework for Australia, produced by the Department of Education, Employment and Workplace Relations of the Commonwealth for the Council of Australian Governments, 2009;

(b) My Time, Our Place: Framework for School Age Care in Australia produced by the Commonwealth Government Department of Education, Employment and Workplace Relations for the Council of Australian Governments, 2011.

(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.

[(3) deleted]

[Regulation 254 amended: Gazette 3 Nov 2017 p. 5485.]

Division 6 — Fees

255. Fees for application for provider approval for declared out of scope service

Despite anything to the contrary in these Regulations, the fee for an application for a provider approval for a declared out of

scope service made in accordance with section 309 of the Law is nil.

Division 7 — General provisions relating to exemptions

256. Publication where service taken to comply with regulations

(1) This regulation applies if an education and care service is taken under a prescribed regulation to comply with a provision of these Regulations for the purposes of a rating assessment.

(2) For the purposes of section 172 of the Law —

(a) the application of the prescribed regulation to the service is a prescribed matter; and

(b) the following statement is the prescribed information in relation to that matter —

"This service is taken to comply with regulations [*insert regulations that service is taken to comply with for the purpose of rating assessment*] of the Education and Care Services National Regulations.".

(3) In this regulation —

prescribed regulation means regulation 239, 248, 249, 250, 251 or 383.

Note for this regulation:

This regulation differs from regulation 256 of the national regulations made by the Ministerial Council.

257. Application for removal of exemption

(1) This regulation applies if an education and care service is taken under a prescribed regulation to comply with a provision of these Regulations for the purpose of a rating assessment.

(2) The approved provider of the education and care service may apply to the relevant Regulatory Authority for the prescribed regulation to cease to apply in relation to the service.

(3) The Regulatory Authority may approve the application.

(4) The relevant prescribed regulation ceases to apply to the education and care service on the approval of the application.

(5) In this regulation —

prescribed regulation means regulation 239, 248, 249, 250, 251 or 383.

Note for this regulation:

This regulation differs from regulation 257 of the national regulations made by the Ministerial Council.

Part 7.2 — Australian Capital Territory — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.2.

Part 7.3 — New South Wales — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.3.

Part 7.4 — Northern Territory — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.4.

Part 7.5 — Queensland — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.5.

Part 7.6 — South Australia — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.6.

Part 7.7 — Tasmania — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.7.

Part 7.8 — Victoria — specific provisions

Note for this Part:

The national regulations made by the Ministerial Council include provisions as Part 7.8.

Part 7.9 — Western Australia — specific provisions

Division 1 — Application of Part 7.9

367. Application of Part 7.9

This Part applies to Western Australia.

368. Definitions

In this Part —

kindergarten programme has the same meaning as it has in the *School Education Regulations 2000* of Western Australia;

pre-kindergarten programme means an educational programme provided by a school for children aged 36 months and over before the pre-compulsory education period within the meaning of the *School Education Act 1999* of Western Australia;

pre-primary programme has the same meaning as it has in the *School Education Regulations 2000* of Western Australia;

preschool means an education and care service that is a preschool program provided by a school or a community kindergarten;

provided by a school includes provided by a recognised school system or the Chief Executive Officer of the department referred to in section 228 of the *School Education Act 1999* of Western Australia or the Minister administering that Act;

school means a school or community kindergarten established or registered pursuant to the *School Education Act 1999* of Western Australia;

secondary programme has the same meaning as it has in the *School Education Regulations 2000* of Western Australia.

Division 1A — Exceeding National Quality Standard

[Heading inserted: Gazette 28 Nov 2014 p. 4411.]

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).

Note for this regulation:

The national regulations made by the Ministerial Council does not include provisions as Part 7.9 Division 1A.

[Regulation 368A inserted: Gazette 6 Jun 2014 p. 1788; amended: Gazette 28 Nov 2014 p. 4411.]

Division 2 — Minimum number of educators and qualifications required — children over preschool age

369. Educator to child ratios — children over preschool age

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.

Age group	*Number of children*	*Number of educators*	*Number of qualified educators*
Over preschool age (no preschool child attending session)	1-10 children	1	1
	11-26 children	2	1
	27-39 children	3	1
	40-52 children	4	2
	53-65 children	5	2
	66-78 children	6	2
	79-91 children	7	3
	92-104 children	8	3
	105-117 children	9	3
	118-130 children	10	4
	131-143 children	11	4
Over preschool age (at least one preschool child attending session)	1-10 children	1	1
	11-20 children	2	1
	21-30 children	3	1
	31-40 children	4	2
	41-50 children	5	2
	51-60 children	6	2
	61-70 children	7	3

Age group	*Number of children*	*Number of educators*	*Number of qualified educators*
	71-80 children	8	3
	81-90 children	9	3
	91-100 children	10	4
	101-110 children	11	4

Note for this regulation:

This regulation differs from regulation 369 of the national regulations made by the Ministerial Council.

370. General qualification requirements for educators — children over preschool age

(1) This regulation sets out the qualification requirement for educators at a centre-based service educating and caring for children over preschool age for the purposes of regulation 126(2).

(2) The number of educators at the service who are required to be qualified educators is the relevant number set out in column 4 of the Table to regulation 369 in relation to the service.

(3) In subregulation (2) —

qualified educator means a person who holds a qualification published under regulation 137(2) in the list of approved qualifications for educators working with children over preschool age for Western Australia.

Division 3 — Minimum number of educators and qualifications required — centre-based services — children preschool age or under

*[**371.** Deleted: Gazette 28 Sep 2018 p. 3649.]*

372. Educator to child ratio — pre-kindergarten programme or kindergarten programme provided by a school

(1) This regulation applies in place of regulation 123(1)(c) on and after 1 January 2016 to a pre-kindergarten programme or kindergarten programme provided by a school.

(2) The educator to child ratio is 1 educator to 10 children.

(3) Despite subregulation (2), the educator to child ratio may be increased to 1 educator to 11 children —

(a) in exceptional circumstances; or

(b) for a period not exceeding one year.

373. Early childhood teachers — pre-kindergarten programme or kindergarten programme provided by a school

(1) This regulation applies in place of regulations 130 to 134 in relation to a pre-kindergarten programme or kindergarten programme provided by a school.

(2) One early childhood teacher is required for every 30 children being educated and cared for by the programme.

(3) Despite subregulation (2), the requirement for an early childhood teacher may be 1 early childhood teacher to a maximum of 33 children —

(a) in exceptional circumstances; or

(b) for a period not exceeding one year.

(4) An early childhood teacher, or a suitably qualified person if regulation 133 or 134 would otherwise apply, must be in attendance at all times that children are being educated and cared for by the programme.

[Regulation 373 amended: Gazette 24 Dec 2019 p. 4427.]

Division 4 — Transitional provisions — staffing arrangements

Subdivision 1 — Centre-based services

*[**374.** Deleted: Gazette 28 Sep 2018 p. 3649.]*

*[**374A.** Deleted: Gazette 3 Jul 2015 p. 2668.]*

*[**375-378.** Deleted: Gazette 28 Sep 2018 p. 3649.]*

379. Educators required to be early childhood teachers

[(1) deleted]

(2) Regulations 133(1)(b) and 134(1)(b) do not apply to a centre-based service until 1 January 2020.

(3) This regulation does not apply to a pre-kindergarten programme or kindergarten programme provided by a school.

Note for this regulation:

This regulation differs from regulation 379 of the national regulations made by the Ministerial Council.

[Regulation 379 amended: Gazette 13 Dec 2013 p. 6170; 28 Sep 2018 p. 3649.]

[Subdivision 2 deleted: Gazette 28 Sep 2018 p. 3649.]

Division 5 — Saving provision — physical environment

383. Saving provision — education and care services provided by a school

(1) Subject to subregulation (4), this regulation applies to a declared approved service or a declared out of scope service that is a pre-kindergarten programme or kindergarten programme that was operating immediately before the scheme commencement day.

(2) Regulations 107, 108 and 115 do not apply to the service.

(3) For the purpose of a rating assessment under Part 5 of the Law, the service is taken to comply with regulations 107, 108 and 115.

(4) This regulation ceases to apply if —

(a) the service approval is transferred to an approved provider that is not a school; or

(b) the service ceases to be provided by a school on a school site.

Note for this regulation:

See also Division 7 of Part 7.1.

Division 6 — Other transitional matters

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).

Note for this regulation:

Regulation 384 does not form part of the national regulations made by the Ministerial Council.

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 for this regulation:

Regulation 385 does not form part of the national regulations made by the Ministerial Council.

[Regulation 385 amended: Gazette 5 Mar 2013 p. 1109.]

Part 7.10 — Transitional and savings provisions — *Education and Care Services National Amendment Regulations (No. 3) 2018*

[Heading inserted: Gazette 28 Sep 2018 p. 3650.]

[Division 1 deleted: Gazette 24 Dec 2019 p. 4427.]

Division 2 — Australian Capital Territory

[Heading inserted: Gazette 28 Sep 2018 p. 3650.]

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 2 which are not relevant to Western Australia.

Division 3 — New South Wales

[Heading inserted: Gazette 28 Sep 2018 p. 3651.]

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 3 which are not relevant to Western Australia.

Division 4 — Queensland

[Heading inserted: Gazette 28 Sep 2018 p. 3651.]

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 4 which are not relevant to Western Australia.

Division 5 — Tasmania

[Heading inserted: Gazette 28 Sep 2018 p. 3651.]

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 5 which are not relevant to Western Australia.

Division 6 — Western Australia

[Heading inserted: Gazette 28 Sep 2018 p. 3651.]

393. Application of Division

This Division applies to Western Australia.

[Regulation 393 inserted: Gazette 28 Sep 2018 p. 3651.]

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.

[Regulation 394 inserted as regulation 393: Gazette 28 Sep 2018 p. 3651; renumbered as regulation 394: Gazette 24 Dec 2019 p. 4427.]

Part 7.11 — Transitional and savings provisions for *Education and Care Services National Amendment Regulations 2018*

[Heading inserted: Gazette 23 Jan 2018 p. 248.]

395. Definition

(1) In this Part —

commencement day means 1 February 2018.

(2) For the purposes of this Part, an assessment or a reassessment and re-rating is finalised when the National Authority publishes the rating level for the service under section 160 of the Law.

[Regulation 395 inserted: Gazette 23 Jan 2018 p. 248.]

396. Quality improvement plan held prior to commencement day

A quality improvement plan that, immediately before the commencement day, was a current quality improvement plan for an approved education and care service continues, on and after the commencement day, to be a current quality improvement plan for the service for the purposes of these Regulations until the earlier of the following —

(a) the approved provider for the service next reviews and revises the plan under regulation 56(1)(a);

(b) the approved provider for the service reviews and revises the plan at the direction of the Regulatory Authority under regulation 56(1)(b).

[Regulation 396 inserted: Gazette 23 Jan 2018 p. 248.]

397. Assessments commenced prior to commencement day

If, immediately before the commencement day, the Regulatory Authority had commenced but not finalised an assessment of an education and care service under section 133(1) of the Law, the Regulatory Authority must, on and after the commencement day, continue to conduct the assessment against the National

Quality Standard as in force immediately before the commencement day.

[Regulation 397 inserted: Gazette 23 Jan 2018 p. 248.]

398. Reassessment or partial reassessment commenced prior to commencement day

(1) This regulation applies to an approved education and care service if, immediately before the commencement day —

(a) the Regulatory Authority had commenced but not finalised a reassessment and re-rating of the education and care service or a reassessment and re-rating of an aspect or element of the education and care service under section 138 of the Law; or

(b) the Regulatory Authority had decided to commence but had not commenced a reassessment and re-rating of the education and care service or a reassessment and re-rating of an aspect or element of the education and care service on an application under section 139 of the Law.

(2) Any reassessment and re-rating of the service must, on and after the commencement day, be conducted against the National Quality Standard as in force immediately before the commencement day.

[Regulation 398 inserted: Gazette 23 Jan 2018 p. 249.]

399. Partial reassessment between the commencement day and the relevant day

(1) This regulation applies to an approved education and care service that has not been assessed and rated, or reassessed and re-rated, against the National Quality Standard as in force on and after the commencement day.

(2) Any reassessment and re-rating of an aspect or element of the education and care service conducted by the Regulatory Authority under section 138 of the Law or on an application

under section 139 of the Law on or after the commencement day but before the relevant day must be conducted against the National Quality Standard as in force immediately before the commencement day, whether the reassessment was commenced or the application made before, on or after the commencement day.

(3) In this regulation —

relevant day means —

(a) in relation to an approved education and care service that was assessed and rated before the commencement day, the day that is 6 months after the commencement day; or

(b) in relation to an approved education and care service that was assessed and rated after the commencement day, the day that is 6 months after the day on which the rating for the service is published under section 160 of the Law.

[Regulation 399 inserted: Gazette 23 Jan 2018 p. 249-50.]

400. Suspension of initial assessment or reassessment commenced prior to commencement day

(1) This regulation applies to an approved education and care service if —

(a) before the commencement day, the Regulatory Authority had commenced —

(i) an assessment of the service under section 133(1) of the Law; or

(ii) a reassessment and re-rating of the service under section 138 or on an application under section 139 of the Law;

and

(b) the assessment or reassessment and re-rating was suspended under section 137(1) of the Law, whether that

suspension occurred before, on or after the commencement day; and

(c) the suspension is lifted on or after the commencement day.

(2) The Regulatory Authority must, on and after the commencement day, assess or reassess the approved education and care service against the National Quality Standard as in force on and after the commencement day.

[Regulation 400 inserted: Gazette 23 Jan 2018 p. 250.]

401. Suspension of partial reassessment commenced prior to commencement day

(1) This regulation applies to an approved education and care service if —

(a) the Regulatory Authority had commenced conducting a reassessment and re-rating of an aspect or element of the service before the commencement day; and

(b) the reassessment and re-rating was suspended under section 137(1) of the Law, whether that suspension occurred before, on or after the commencement day; and

(c) the suspension is lifted on or after the commencement day.

(2) The Regulatory Authority must, on and after the commencement day, continue to conduct a reassessment against the National Quality Standard as in force immediately before the commencement day.

[Regulation 401 inserted: Gazette 23 Jan 2018 p. 250.]

402. Prescribed provisional rating level held prior to commencement day

If, immediately before the commencement day, an approved education and care service held a prescribed provisional rating level, the service continues, on and after the commencement

day, to hold that rating level for the purposes of the Law unless or until the service is assessed under section 133(1) of the Law and rated under section 135 of the Law.

[Regulation 402 inserted: Gazette 23 Jan 2018 p. 251.]

403. Prescribed rating level held prior to commencement day

If immediately before the commencement day, an approved education and care service held a prescribed rating level, the service continues, on and after the commencement day, to hold that rating level for the purposes of the Law unless or until the service —

(a) is assessed under section 133(1) of the Law and rated under section 135 of the Law; or

(b) is reassessed and re-rated under section 138 of the Law or on an application under section 139 of the Law; or

(c) is awarded the highest rating level under section 155 of the Law.

[Regulation 403 inserted: Gazette 23 Jan 2018 p. 251.]

Part 7.12 — Transitional and saving provisions for *Education and Care Services National Amendment Regulations 2019*

[Heading inserted: Gazette 24 Dec 2019 p. 4428.]

Division 1 — Australian Capital Territory

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 1 which are not relevant to Western Australia.

Division 2 — Queensland

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 2 which are not relevant to Western Australia.

Division 3 — Tasmania

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 3 which are not relevant to Western Australia.

Division 4 — Western Australia

410. Application of Division

This Division applies to Western Australia.

[Regulation 410 inserted: Gazette 24 Dec 2019 p. 4428.]

411. Resignation of suitably qualified person

(1) Regulation 135 applies as if the reasons for the suitably qualified person to be absent included resignation.

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

[Regulation 411 inserted: Gazette 24 Dec 2019 p. 4428.]

Schedule 1 — National Quality Standard

[Heading inserted: Gazette 23 Jan 2018 p. 251.]

Notes for this Schedule:

1. The National Quality Standard is used to assess education and care services to determine rating levels under Part 5 of the Law.
2. The Regulatory Authority may suspend a service approval if an education and care service has operated at a rating level as not meeting the National Quality Standard and there has been no improvement in that rating level and a service waiver or temporary waiver does not apply to the service in relation to the non-compliance — see section 70(1)(d) of the Law.
3. To determine whether and at what rating level an education and care service meets the National Quality Standard and the requirements of these regulations, Part 5 of the Law provides that the Regulatory Authority that granted the service approval for the service may assess the service in accordance with these Regulations.

Quality area 1 — Educational program and practice

The educational program and practice is stimulating, engaging and enhances children's learning and development. In services for children over preschool age the program nurtures the development of life skills and complements children's experiences, opportunities and relationships at school, at home and in the community.

Standard 1.1 — Program

The educational program enhances each child's learning and development.

Element 1.1.1 — Approved learning framework

Curriculum decision-making contributes to each child's learning and development outcomes in relation to that child's identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.

Element 1.1.2 — Child-centred

Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.

Element 1.1.3 — Program learning opportunities

All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.

Standard 1.2 — Practice

Educators facilitate and extend each child's learning and development.

Element 1.2.1 — Intentional teaching

Educators are deliberate, purposeful, and thoughtful in their decisions and actions.

Element 1.2.2 — Responsive teaching and scaffolding

Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.

Element 1.2.3 — Child-directed learning

Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world.

Standard 1.3 — Assessment and planning

Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.

Element 1.3.1 — Assessment and planning cycle

Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing, learning, documentation, planning, implementation and reflection.

Element 1.3.2 — Critical reflection

Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.

Element 1.3.3 — Information for families

Families are informed about the program and their child's progress.

Quality area 2 — Children's health and safety

Every child's health and wellbeing is safeguarded and promoted.

Standard 2.1 — Health

Each child's health and physical activity is supported and promoted.

Element 2.1.1 — Wellbeing and comfort

Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.

Element 2.1.2 — Health practices and procedures

Effective illness and injury management and hygiene practices are promoted and implemented.

Element 2.1.3 — Healthy lifestyle

Healthy eating and physical activity are promoted and appropriate for each child.

Standard 2.2 — Safety

Each child is protected.

Element 2.2.1 — Supervision

At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.

Element 2.2.2 — Incident and emergency management

Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.

Element 2.2.3 — Child protection

Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.

Quality area 3 — Physical environment

The physical environment is safe, suitable and provides a rich and diverse range of experiences which promote children's learning and development.

Standard 3.1 — Design

The design and location of the premises is appropriate for the operation of a service.

Element 3.1.1 — Fit for purpose

Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.

Element 3.1.2 — Upkeep

Premises, furniture and equipment are safe, clean and well maintained.

Standard 3.2 — Use

The service environment is inclusive, promotes competence and supports exploration and play-based learning.

Element 3.2.1 — Inclusive environment

Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.

Element 3.2.2 — Resources support play-based learning

Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play-based learning.

Element 3.2.3 — Environmentally responsible

The service cares for the environment and supports children to become environmentally responsible.

Quality area 4 — Staffing arrangements

Staffing arrangements create a safe and predictable environment for children and support warm, respectful relationships. Qualified and experienced educators and co-ordinators encourage children's active engagement in the learning program. Positive relationships among educators, co-ordinators and staff members contribute to an environment where children feel emotionally safe, secure and happy.

Standard 4.1 — Staffing arrangements

Staffing arrangements enhance children's learning and development.

Element 4.1.1 — Organisation of educators

The organisation of educators across the service supports children's learning and development.

Element 4.1.2 — Continuity of staff

Every effort is made for children to experience continuity of educators at the service.

Standard 4.2 — Professionalism

Management, educators and staff are collaborative, respectful and ethical.

Element 4.2.1 — Professional collaboration

Management, educators and staff work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.

Element 4.2.2 — Professional standards

Professional standards guide practice, interactions and relationships.

Quality area 5 — Relationships with children

Relationships that are responsive, respectful and promote children's sense of security and belonging free them to explore the environment and engage in learning.

Standard 5.1 — Relationships between educators and children

Respectful and equitable relationships are maintained with each child.

Element 5.1.1 — Positive educator to child interactions

Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.

Element 5.1.2 — Dignity and rights of the child

The dignity and rights of every child are maintained.

Standard 5.2 — Relationships between children

Each child is supported to build and maintain sensitive and responsive relationships.

Element 5.2.1 — Collaborative learning

Children are supported to collaborate, learn from and help each other.

Element 5.2.2 — Self-regulation

Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.

Quality area 6 — Collaborative partnerships with families and communities

Collaborative relationships with families are fundamental to achieve quality outcomes for children. Community partnerships that focus on active communication, consultation and collaboration also contribute to children's learning and wellbeing.

Standard 6.1 — Supportive relationships with families

Respectful relationships with families are developed and maintained and families are supported in their parenting role.

Element 6.1.1 — Engagement with the service

Families are supported from enrolment to be involved in the service and contribute to service decisions.

Element 6.1.2 — Parent views are respected

The expertise, culture, values and beliefs of families are respected and families share in decision-making about their child's learning and wellbeing.

Element 6.1.3 — Families are supported

Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.

Standard 6.2 — Collaborative partnerships

Collaborative partnerships enhance children's inclusion, learning and wellbeing.

Element 6.2.1 — Transitions

Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.

Element 6.2.2 — Access and participation

Effective partnerships support children's access, inclusion and participation in the program.

Element 6.2.3 — Community engagement

The service builds relationships and engages with its community.

Quality area 7 — Governance and leadership

Effective leadership contributes to sustained quality relationships and environments that facilitate children's learning and development. Well documented policies and practices that are developed and regularly evaluated in partnership with educators, co-ordinators, staff members and families contribute to the ethical management of the service. There is a focus on continuous improvement.

Standard 7.1 — Governance

Governance supports the operation of a quality service.

Element 7.1.1 — Service philosophy and purpose

A statement of philosophy guides all aspects of the service's operations.

Element 7.1.2 — Management systems

Systems are in place to manage risk and enable the effective management and operation of a quality service.

Element 7.1.3 — Roles and responsibilities

Roles and responsibilities are clearly defined and understood, and support effective decision-making and operation of the service.

Standard 7.2 — Leadership

Effective leadership builds and promotes a positive organisational culture and professional learning community.

Element 7.2.1 — Continuous improvement

There is an effective self-assessment and quality improvement process in place.

Element 7.2.2 — Educational leadership

The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.

Element 7.2.3 — Development of professionals

Educators', co-ordinators' and staff members' performance is regularly evaluated and individual plans are in place to support learning and development.

[Schedule 1 inserted: Gazette 23 Jan 2018 p. 251-7.]

Schedule 2 — Prescribed fees

[Heading inserted: Gazette 28 Sep 2018 p. 3652.]

Part 1 — Fees relating to provider approvals, service approvals and ratings

[Heading inserted: Gazette 28 Sep 2018 p. 3652.]

		Fee	
Section of the Law	*Description*	*Centre-based service (No. of approved places or places to be offered)*	*Family day care service (No. of family day care educators engaged by or registered with service)*
Section 11(d)	Application for provider approval	$219	$219
Section 22(2)(c)	Application to amend provider approval	Nil	Nil
Section 37(2)(c)	Application to voluntarily suspend provider approval	Nil	Nil
Section 39(6)(c)	Application by executor for provider approval	Nil	Nil
Section 40(3)(c)	Application by legal personal representative or guardian for provider approval	Nil	Nil
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

		Fee	
Section of the Law	*Description*	*Centre-based service (No. of approved places or places to be offered)*	*Family day care service (No. of family day care educators engaged by or registered with service)*
Section 53	Annual fee — approved service	24 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
Section 54(2)(c)	Application to amend service approval	Nil	Nil
Section 59(2)(c)	Notification of intended transfer of service approval	$108	$108
Section 85(2)(c)	Application to voluntarily suspend service approval	Nil	Nil
Section 88(c)	Application for service waiver	$108	$108
Section 95(c)	Application for temporary waiver	$108	$108
Section 98(4)	Application to extend temporary waiver	$108	$108

		Fee	
Section of the Law	*Description*	*Centre-based service (No. of approved places or places to be offered)*	*Family day care service (No. of family day care educators engaged by or registered with service)*
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
Section 141(4)(d)	Request for review by Regulatory Authority	Nil	Nil
Section 145(2)(c)	Application for 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
Section 152(3)(c)	Application for highest rating	24 or fewer approved places Nil	5 or fewer family day care educators Nil
		25 to 80 approved places Nil	6 to 20 family day care educators Nil
		81 or more approved places Nil	21 or more family day care educators Nil

		Fee	
Section of the Law	*Description*	*Centre-based service (No. of approved places or places to be offered)*	*Family day care service (No. of family day care educators engaged by or registered with service)*
Section 159(3)(c)	Re-application for highest rating	24 or fewer approved places Nil	5 or fewer family day care educators Nil
		25 to 80 approved places Nil	6 to 20 family day care educators Nil
		81 or more approved places Nil	21 or more family day care educators Nil

Part 2 — Other fees

[Heading inserted: Gazette 28 Sep 2018 p. 3655.]

Provision of the Law or regulation	*Description*	*Fee*
Section 266(4)	Copy or extract from register of approved providers	$5 per page or $70 for an electronic copy
Section 267(4)	Copy or extract from register of approved education and care services	$5 per page or $70 for an electronic copy
Regulation 138	Application for qualification to be assessed for inclusion on lists of approved qualifications	$2 200
Regulation 139	Application for determination of equivalent qualification	$108

[Schedule 2 inserted: Gazette 28 Sep 2018 p. 3652-5.]

Schedule 3 — Compliance directions — prescribed provisions

Regulation 188

Regulation	*Description*
Regulation 55(1)	Quality improvement plans
Regulation 72(1), (2)	Offences in relation to giving false or misleading statements about ratings
Regulation 74(1)	Documenting of child assessments or evaluations for delivery of educational program
Regulation 75	Information about educational program to be kept available
Regulation 76	Information about educational program to be given to parents
Regulation 77(1)	Health, hygiene and safe food practices
Regulation 78(1)	Food and beverages
Regulation 79(1)	Service providing food and beverages
Regulation 80(1)	Weekly menu
Regulation 81(1)	Sleep and rest
Regulation 82(1)	Tobacco, drug and alcohol-free environment
Regulation 83(1)	Nominated supervisors, staff members and volunteers not to be affected by alcohol or drugs
Regulation 84	Awareness of child protection law
Regulation 89(1)	First aid kits
Regulation 91	Medical conditions policy to be provided to parents
Regulation 97(2), (3), (4)	Emergency and evacuation procedures
Regulation 98	Telephone or other communication equipment
Regulation 103(1)	Premises, furniture and equipment to be safe, clean and in good repair
Regulation 104(1)	Fencing
Regulation 105	Furniture, materials and equipment

Regulation	*Description*
Regulation 106(1), (2)	Laundry and hygiene facilities
Regulation 107(2)	Space requirements — indoor
Regulation 108(2)	Space requirements — outdoor
Regulation 110	Ventilation and natural light
Regulation 111	Administrative space
Regulation 112(3)	Nappy change facilities
Regulation 113	Outdoor space — natural environment
Regulation 114	Outdoor space — shade
Regulation 115	Premises designed to facilitate supervision
Regulation 116(1)	Assessments of family day care residences and approved family day care venues
Regulation 117(1)	Glass
Regulation 118	Educational leader
Regulation 119	Family day care educator and educator assistant to be at least 18 years old
Regulation 120	Educators who are under 18 to be supervised
Regulation 136(1)	First aid qualifications
Regulation 156(1)	Relationships in groups
Regulation 157(1)	Access for parents
Regulation 163(1), (2)	Residents at family day care residence and family day care educator assistants to be fit and proper persons
Regulation 164	Requirement for notice of new persons at residence
Regulation 168(1)	Education and care service must have policies and procedures
Regulation 169(1)	Additional policies and procedures — family day care service
Regulation 170(1), (2)	Policies and procedures to be followed
Regulation 171(1), (2)	Policies and procedures to be kept available

Regulation	*Description*
Regulation 172(1)(b)	Notification of change to policies or procedures affecting ability of family to utilise service
Regulation 177(2), (3)	Prescribed enrolment and other documents to be kept by approved provider
Regulation 183	Storage of records and other documents
Regulation 185	Law and regulations to be available

Schedule 4 — Prescribed forms

Regulation 190(2)(d)

[Heading amended: Gazette 5 Mar 2013 p. 1109.]

Form 1 — Infringement notice relating to offence under the *Education and Care Services National Law (Western Australia)*

<table>
<tr><td colspan="2">*Education and Care Services National Law (Western Australia)*

INFRINGEMENT NOTICE</td><td>Infringement notice no.</td></tr>
<tr><td rowspan="4">Alleged offender</td><td rowspan="2">Name</td><td></td></tr>
<tr><td></td></tr>
<tr><td rowspan="2">Address</td><td></td></tr>
<tr><td></td></tr>
<tr><td rowspan="5">Details of alleged offence</td><td>Date or period</td><td></td></tr>
<tr><td>Place</td><td></td></tr>
<tr><td>Written law contravened</td><td>Section of the Education and Care Services National Law (Western Australia)
or
Regulation of the Education and Care Services National Regulations 2012</td></tr>
<tr><td rowspan="2">Details of offence</td><td></td></tr>
<tr><td></td></tr>
<tr><td>Date</td><td>Date of notice</td><td></td></tr>
<tr><td rowspan="3">Issuing officer</td><td>Name</td><td></td></tr>
<tr><td>Office</td><td></td></tr>
<tr><td>Signature</td><td></td></tr>
</table>

<table>
<tr><td>Modified penalty</td><td colspan="3">$_____</td></tr>
<tr><td rowspan="2">Penalty</td><td>Individual</td><td>$_____</td><td rowspan="2">You do not have to pay this amount. This is the maximum fine that can be imposed if you are prosecuted in a court and convicted of this offence.</td></tr>
<tr><td>Body corporate</td><td>$_____</td></tr>
<tr><td>TAKE NOTICE</td><td colspan="3">It is alleged that you have committed the above offence.
If you do not want to be prosecuted in court for the offence, pay the modified penalty to the Approved Officer within 28 days after the date of this notice.
If you do not pay the modified penalty within 28 days, you may be prosecuted.
If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.
Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.
If you want this matter to be dealt with by prosecution in court, sign and date here:

_____ / /20
and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.
If you consider that you have good reason to have this notice withdrawn, you can write to the Approved Officer at the address below requesting that this notice be withdrawn and setting out the reasons why you consider that this notice should be withdrawn. Your letter must be received not later than 28 days after the date of this notice.</td></tr>
</table>

Form 1

<table>
<tr><td>How to pay</td><td>By post</td><td colspan="2">Tick the relevant box below and post this notice to:

Approved Officer —Education and Care Services National Law (Western Australia)
Department for Communities

[Address]

☐ I want to pay the modified penalty by cheque or money order. A cheque or money order (payable to Approved Officer — Education and Care Services National Law (Western Australia)) for the modified penalty is enclosed.

☐ I want to pay the modified penalty by credit card. Please debit my credit card account.

Card type _____

Cardholder name _____

Card number

[ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]

Expiry date of card _____/_____

Amount $_____

Signature _____

Complete all details</td></tr>
<tr><td>Method of service</td><td></td><td>Date of service</td><td></td></tr>
</table>

Form 2 — Withdrawal of infringement notice relating to offence under the *Education and Care Services National Law (Western Australia)*

Education and Care Services National Law (Western Australia) **WITHDRAWAL OF INFRINGEMENT NOTICE**		Withdrawal no.
Alleged offender	Name	
	Address	
Details of infringement notice	Infringement notice no.	
	Date of issue	
Details of alleged offence	Date or period	
	Place	
	Written law contravened	Section of the *Education and Care Services National Law (Western Australia)* or Regulation of the *Education and Care Services National Regulations 2012*
	Details of offence	
Approved Officer withdrawing notice	Name	
	Office	
	Signature	
Date	Date of withdrawal	

Form 2

<table>
<tr><td>Withdrawal of infringement notice
[*Delete whichever is not applicable]</td><td colspan="3">The above infringement notice issued against you for the above alleged offence has been withdrawn.
If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.
* Your refund is enclosed.
or
* If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to:
Approved Officer — Education and Care Services National Law (Western Australia)
Department for Communities
[Address]</td></tr>
<tr><td>Your signature</td><td></td><td>Date</td><td></td></tr>
</table>

Notes

This is a compilation of the *Education and Care Services National Regulations 2012* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Citation	Published	Commencement
Education and Care Services National Regulations 2012	25 Jul 2012 p. 3417-660	r. 1 and 3: 25 Jul 2012 (see r. 3(a)); Regulations other than r. 1 and 3: 1 Aug 2012 (see r. 3(b) and *Gazette* 25 Jul 2012 p. 3411)
Education and Care Services National Amendment Regulations 2012	5 Mar 2013 p. 1107-9	r. 1 and 2: 5 Mar 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Mar 2013 (see r. 2(b))
Education and Care Services National Amendment Regulations 2013	13 Dec 2013 p. 6151-70	r. 1 and 2: 13 Dec 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 31 Dec 2013 (see r. 2(b))
Education and Care Services National Amendment Regulations 2014	6 Jun 2014 p. 1787-8	r. 1 and 2: 6 Jun 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Jun 2014 (see r. 2(b))
Reprint 1: The *Education and Care Services National Regulations 2012* as at 19 Sep 2014 (includes amendments listed above)		
Education and Care Services National Amendment Regulations (No. 2) 2014	28 Nov 2014 p. 4401-11	r. 1 and 2: 28 Nov 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Dec 2014 (see r. 2(b))
Education and Care Services National Amendment Regulations 2015	26 Jun 2015 p. 2272	r. 1 and 2: 26 Jun 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2015 (see r. 2(b)(ii) and *Gazette* 26 Jun 2015 p. 2235)
Education and Care Services National Amendment Regulations (No. 2) 2015	3 Jul 2015 p. 2667-8	r. 1 and 2: 3 Jul 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Aug 2015 (see r. 2(b))

Citation	Published	Commencement
Education and Care Services National Amendment Regulations 2017	3 Nov 2017 p. 5481-5	r. 1 and 2: 3 Nov 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 4 Nov 2017 (see r. 2(b))
Education and Care Services National Amendment Regulations 2018	23 Jan 2018 p. 247-58	1 Feb 2018 (see r. 2(b)(i))
Education and Care Services National Amendment Regulations (No. 2) 2018	26 Jun 2018 p. 2358-9	r. 1 and 2: 26 Jun 2018 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2018 (see r. 2(b))
Education and Care Services National Amendment Regulations (No. 3) 2018	28 Sep 2018 p. 3601-58	r. 1 and 2: 28 Sep 2018 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Oct 2018 (see r. 2(b))
Education and Care Services National Amendment Regulations 2019	24 Dec 2019 p. 4422-8	r. 1 and 2: 24 Dec 2019 (see r. 2(a)); Regulations other than r. 1 and 2 and 16(2), (3) and (4): 31 Dec 2019 (see r. 2(c~~))~~); r. 16(2), (3) and (4): 1 Jul 2020 (see r. 2(b))

~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made* on the WA Legislation website.~~

~~Citation~~	~~Published~~	~~Commencement~~
~~*Education and Care Services National Amendment Regulations 2019* r. 16(2), (3) and (4)~~	~~24 Dec 2019 p. 4422-8~~	~~1 Jul 2020 (see r. 2(b))~~

Other notes

[1] The short title of this Act was changed to the *Administrative Decisions Review Act 1997* by the *Civil and Administrative Tribunal Amendment Act 2013* (NSW) Sch. 2.