
EDUCATION

ED301

Education and Care Services National Law (WA) Act 2012

**Education and Care Services National
Amendment Regulations 2019**

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Education and Care Services National Amendment Regulations 2019*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulation 16(2), (3) and (4) — on 1 July 2020;
- (c) the rest of the regulations — on 31 December 2019.

3. Regulations amended

These regulations amend the *Education and Care Services National Regulations 2012*.

4. Regulation 4 amended

In regulation 4 in the definition of *in attendance* delete “teacher —” and insert:

teacher or a suitably qualified person —

5. Regulation 10 amended

In regulation 10(b):

- (a) in subparagraph (ii) before “is making” insert:

the educator
- (b) in subparagraph (iii) before “is meeting” insert:

the educator

6. Regulation 11 amended

In regulation 11:

- (a) after “early childhood teacher” insert:

or a suitably qualified person

- (b) delete “the teacher — ” and insert:

the early childhood teacher or the suitably qualified person —

7. Regulation 39 amended

In regulation 39 delete “sections 72(a)” and insert:

sections 72(b)(i)

8. Regulation 122 amended

- (1) In regulation 122 delete “An educator” and insert:

(1) An educator

- (2) At the end of regulation 122 insert:

(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).

9. Regulation 123 amended

In regulation 123(3):

- (a) after “early childhood teacher” insert:

or a suitably qualified person

- (b) delete “that teacher” and insert:

that early childhood teacher or suitably qualified person

10. Regulation 126 amended

- (1) In regulation 126(3) delete “regulation 135(1)(b),” and insert:

regulation 135(1),

- (2) After regulation 126(3) insert:

- (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).

Note:

The note at the end of regulation 126 is to be altered by inserting after “teacher” (each occurrence):
or suitably qualified person

11. Regulation 133 amended

In regulation 133(1)(b) delete “another suitably qualified person” and insert:

a suitably qualified person

12. Regulation 134 amended

In regulation 134(1)(b) delete “another suitably qualified person” and insert:

a suitably qualified person

13. Regulation 135 replaced

Delete regulation 135 and insert:

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.

14. Regulation 152 amended

- (1) In regulation 152(2) after “more” insert:

but not more than 59

- (2) After regulation 152(2) insert:
- (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.

15. Regulation 235 amended

- (1) Delete regulation 235(1).
- (2) In regulation 235(2) after “paid” insert:

under the Law or these regulations

16. Regulation 239A amended

- (1) In regulation 239A(1) delete “1 January 2020” and insert:

31 December 2023

- (2) Delete regulation 239A(2) and insert:

- (2) The centre-based service may meet the requirements of regulation 132(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% 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) In regulation 239A(3):
 - (a) delete “subregulation (2),” and insert:

subregulation (2) or (2A),
 - (b) after “early childhood teacher” insert:

or suitably qualified person
- (4) In regulation 239A(4) after “early childhood teacher” insert:

or suitably qualified person
- 17. Regulation 240 amended**
In regulation 240(1) delete “1 January 2020” and insert:

31 December 2023
- 18. Regulation 242 amended**
In regulation 242(1) delete “1 January 2020.” and insert:

31 December 2023.
- 19. Regulation 373 amended**
In regulation 373(4) delete “early childhood teacher” and insert:

early childhood teacher, or a suitably qualified person if regulation 133 or 134 would otherwise apply,
- 20. Part 7.10 Division 1 deleted**
Delete Part 7.10 Division 1.
- 21. Regulation 393 (2nd occurrence) renumbered**
Renumber regulation 393 (2nd occurrence) as regulation 394.

22. Part 7.12 inserted

- (1) After regulation 403 insert:

**Part 7.12 — Transitional and saving provisions
for *Education and Care Services National
Amendment Regulations 2019***

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.

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.

R. NEILSON, Clerk of the Executive Council.
