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Education and Care Services National Law (Western Australia)

Education and Care Services National Amendment Regulations 2013

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Education and Care Services National Amendment Regulations 2013*.

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) the rest of the regulations — on 31 December 2013.

3. Regulations amended

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

4. Regulation 4 amended

- (1) In regulation 4(1) insert in alphabetical order:

safety screening clearance means a safety screening clearance issued by the Department of Education of Tasmania;

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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;

(2) After regulation 4(1) insert:

(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: 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.

5. Regulation 9 replaced

Delete regulation 9 and insert:

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.

6. Regulation 12 amended

Delete regulation 12(b) and insert:

- (b) any incident involving serious injury or trauma to, or illness of, a child while being educated

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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

Examples: Whooping cough, broken limb, anaphylaxis reaction.

- (ii) for which the child attended, or ought reasonably to have attended, a hospital;

7. Regulation 14 amended

In regulation 14:

- (a) in paragraph (f) before “if the participating jurisdiction” insert:

except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,

- (b) in paragraph (f)(ii) delete “law; or” and insert:

law;

- (c) delete paragraph (f)(iii);
- (d) after paragraph (f) insert:

- (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;

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- (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 safety screening clearance;
- (e) in paragraph (h) before "a criminal history statement" insert:

if a criminal history record check has been provided under paragraph (g)(ii),

8. Regulation 20 amended

In regulation 20:

- (a) in paragraph (g) before "if the participating jurisdiction" insert:

except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,
- (b) in paragraph (g)(ii) delete "law; or" and insert:

law;
- (c) delete paragraph (g)(iii);
- (d) after paragraph (g) insert:
 - (ga) in the case of an application to the New South Wales Regulatory Authority, the applicant's

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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 safety screening clearance;

(e) in paragraph (i) before "a criminal history statement" insert:

if a criminal history record check has been provided under paragraph (h)(ii),

9. Regulation 22 amended

In regulation 22:

(a) in paragraph (g) before "if the participating jurisdiction" insert:

except in the case of an application to the New South Wales Regulatory Authority or the Queensland Regulatory Authority,

(b) in paragraph (g)(ii) delete "law; or" and insert:

law;

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- (c) delete paragraph (g)(iii);
- (d) after paragraph (g) insert:
 - (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 safety screening clearance;
- (e) in paragraph (i) before "a criminal history statement" insert:

if a criminal history record check has been provided under paragraph (h)(ii),

10. Regulation 25 amended

- (1) In regulation 25 delete "In addition" and insert:
 - (1) Subject to subregulation (2), in addition
 - (2) At the end of regulation 25 insert:
 - (2) A regulatory authority may determine that the information set out in subregulation (1)(b) or (g) is not

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required to be provided if the approved provider is seeking —

- (a) to relocate the education and care service to alternative premises for not more than 12 months; or
- (b) to locate the education and care service on a school site.

11. Regulation 33 amended

In regulation 33 delete the passage that begins with “approval —” and continues to the end of the regulation and insert:

approval on or before 1 July each year.

Note: The note at the end of amended regulation 33 is deleted.

12. Regulation 46 amended

(1) In regulation 46(1):

- (a) in paragraph (f) before “the following” insert:

except in the case of an application to the New South Wales Regulatory Authority, the Queensland Regulatory Authority or the Tasmanian Regulatory Authority,

- (b) delete paragraph (f)(iii);
- (c) in paragraph (f)(iv)(D) delete “applicant.” and insert:

applicant;

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- (d) after paragraph (f) insert:
- (g) 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;
 - (h) 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;
 - (i) in the case of an application to the Tasmanian Regulatory Authority, a copy of the applicant's safety screening clearance.

- (2) In regulation 46(2) delete "management and control" and insert:

management or control

13. Regulation 97 amended

Delete regulation 97(3)(a) and insert:

- (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

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- (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

14. Regulation 107 amended

After regulation 107(5) insert:

- (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).

15. Regulation 108 amended

After regulation 108(5) insert:

- (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).

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16. Regulation 123 amended

(1) Before regulation 123(1) insert:

(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:

- 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.

(2) Delete regulation 123(5) and insert:

- (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.

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- (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.

17. Regulation 129 amended

After regulation 129(2) insert:

- (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).

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18. Regulation 131 amended

In regulation 131(1) after “the service is” insert:

educating or

19. Regulation 139 amended

In regulation 139(1)(a) delete “regulations 140 to 143; and” and insert:

regulations 140, 141(1), 142 and 143; and

20. Regulation 140 amended

In regulation 140(j)(i)(A) and (ii) delete “primary and”.

21. Regulation 141 amended

(1) In regulation 141 delete “The following documents” and insert:

(1) The following documents

(2) Delete regulation 141(c).

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- (3) At the end of regulation 141 insert:
- (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: At the end of amended regulation 141 the following note is inserted:

Note: This regulation differs from regulation 141 of the national regulations made by the Ministerial Council.

22. Regulation 143 amended

In regulation 143 after “the application” insert:

or otherwise to the National Authority

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23. Regulation 146 amended

Delete regulation 146(d) and insert:

- (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 has provided proof as permitted by regulation 46 of the supervisor'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 safety screening clearance and the expiry date of that clearance.

24. Regulation 147 amended

Delete regulation 147(d) and insert:

- (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;

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- (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 staff member's safety screening clearance and the expiry date of that clearance.

25. Regulation 163 amended

- (1) In regulation 163(4) delete "The approved provider" and insert:

Except in the case of New South Wales, Queensland, Tasmania or Victoria, the approved provider

- (2) After regulation 163(4) insert:

- (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 safety screening clearance.

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26. Regulation 175 amended

After regulation 175(2)(c) insert:

- (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;

27. Regulation 176 amended

After regulation 176(2)(b) insert:

- (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;

28. Regulation 177 amended

In regulation 177(1)(da) delete “regulation 123(5);” and insert:

regulation 123(7);

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Note: The note at the end of amended regulation 177 is to read:

Notes:

- 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.

29. Regulation 208 amended

In regulation 208(c) delete “principal executive” and insert:

principal officer

30. Regulation 227 amended

- (1) In regulation 227(1) delete “subregulation (2).” and insert:

subregulation (2) and any matter prescribed in subregulation (2A).

- (2) In regulation 227(2):

- (a) in paragraph (e) delete “enforcement;” and insert:

enforcement.

- (b) delete paragraph (f).

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- (3) After regulation 227(2) insert:
- (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.
- (4) In regulation 227(3):
- (a) delete paragraph (d)(vii);
 - (b) after paragraph (d) insert:
 - (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.

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r. 31**31. Regulation 241 amended**

In regulation 241(1)(g), (3) and (4) delete “*Education (Queensland College of Teaching) Act 2005*” and insert:

Education (Queensland College of Teachers) Act 2005

32. Regulation 242 amended

In regulation 242(2)(a) before “early” insert:

approved

33. Regulation 243A inserted

After regulation 243 insert:

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 coordinators.

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34. Regulation 379 amended

In regulation 379(2) delete “133(1)” and insert:

133(1)(b)

Note: At the end of amended regulation 379 the following note is inserted:

Note: This regulation differs from regulation 379 of the national regulations made by the Ministerial Council.

G. MOORE, Clerk of the Executive Council..