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Western Australia

**Education and Care Services National
Amendment Regulations (No. 3) 2018**

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Education and Care Services National Law (WA) Act 2012

Education and Care Services National Amendment Regulations (No. 3) 2018

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Education and Care Services National Amendment Regulations (No. 3) 2018*.

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 — when the *Education and Care Services National Law (WA) Amendment Act 2018* Part 2 comes into operation.

3. Regulations amended

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

4. Regulation 4 amended

- (1) In regulation 4(1) delete the definitions of:
emergency
safety screening clearance

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

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.

5. Regulation 12 replaced

Delete regulation 12 and insert:

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;

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- (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

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

6. Chapter 2 heading amended

In the heading to Chapter 2 delete “**and certificates**”.

7. Regulation 14 amended

In regulation 14:

- (a) delete “An application for a provider approval made by an individual under section 10 of the Law must include the following information — ” and insert:

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

- (b) in paragraph (fc) delete “safety screening clearance or”.

Note:

At the end of regulation 14 the following note is to be inserted:

- 2. This regulation differs from regulation 14 of the national regulations made by the Ministerial Council.

8. Regulation 20 amended

In regulation 20:

- (a) delete “An application for a provider approval made under section 39(5) of the Law by an executor who is an individual must include the following information — ” and insert:

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

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- (b) in paragraph (gc) delete “safety screening clearance or”.

Note:

At the end of regulation 20 the following note is to be inserted:

Note for this regulation:

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

9. Regulation 22 amended

In regulation 22:

- (a) delete “An application for a provider approval made under section 40 of the Law by the legal personal representative or guardian of an approved provider must include the following information” and insert:

For section 40(3)(b) of the Law, the following information is prescribed information

- (b) in paragraph (gc) delete “safety screening clearance or”.

Note:

At the end of regulation 22 the following note is to be inserted:

Note for this regulation:

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

10. Regulation 23 amended

In regulation 23 delete “An application for a provider approval made under section 40 of the Law by the legal personal representative or guardian of an approved provider must include the following information” and insert:

For section 40(3)(b) of the Law, the following information is prescribed information if the application for a provider approval

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is made by the legal personal representative or guardian of an approved provider

Note:

At the end of regulation 23 the following note is to be inserted:

Note for this regulation:

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

11. Regulation 24 amended

In regulation 24:

- (a) delete “An application under section 43 of the Law for a service approval for a centre-based service must include the following information — ” and insert:

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 —

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

Note:

The note at the end of regulation 24 is to read:

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.

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12. Regulation 25 amended

- (1) In regulation 25(1) delete “Subject to subregulation (2), in addition to the information referred to in regulation 24, an application for a service approval for a centre-based service must include the following information about the proposed education and care service premises — ” and insert:

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

- (2) Delete regulation 25(2).

Note:

At the end of regulation 25 the following note is to be inserted:

Note for this regulation:

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

13. Regulation 25A inserted

After regulation 25 insert:

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.

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14. Regulation 26 amended

(1) In regulation 26:

(a) delete “An application under section 43 of the Law for a service approval for a family day care service must include the following information — ” and insert:

(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 —

(b) after paragraph (f) insert:

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

Example for this paragraph:
A lease of the premises.

(c) after paragraph (g) insert:

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

(d) in paragraph (h) delete “jurisdictions and”;

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(e) delete paragraph (m) and insert:

- (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.

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(2) At the end of regulation 26 insert:

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

Note:

At the end of regulation 26 the following note is to be inserted:

2. This regulation differs from regulation 26 of the national regulations made by the Ministerial Council.

15. Regulation 32A inserted

After regulation 32 insert:

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

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

Note for this regulation:

See section 51(5) of the Law.

16. Regulation 34 amended

- (1) In regulation 34:
- (a) delete “An application” and insert:
- (1) An application

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(b) in paragraph (e) delete “amendment.” and insert:

amendment;

(c) after paragraph (e) insert:

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

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

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

Example 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) At the end of regulation 34 insert:

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

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17. Regulation 35 amended

In regulation 35:

- (a) delete “change the person nominated as the” and insert:

add a new

- (b) delete paragraphs (e) to (g) and insert:

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

Note: The heading to amended regulation 35 is to read:

Notice of addition of new nominated supervisor

Note:

At the end of regulation 35 the following note is to be inserted:

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.

18. Regulation 41 amended

In regulation 41(b)(iii) after “regulations” insert:

72A,

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19. Regulation 42 amended

In regulation 42 delete “An application under section 87 of the Law for a service waiver must include the following information — ” and insert:

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

Note:

At the end of regulation 42 the following note is to be inserted:

2. This regulation differs from regulation 42 of the national regulations made by the Ministerial Council.

20. Regulation 44 amended

In regulation 44(b)(iii) after “regulations” insert:

72A,

21. Chapter 2 Part 2.3 deleted

Delete Chapter 2 Part 2.3.

22. Regulation 70A inserted

At the beginning of Chapter 3 Part 3.5 insert:

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.

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23. Chapter 4 Part 4.1AA inserted

Before Chapter 4 Part 4.1 insert:

Part 4.1AA — Location of principal office

72A. Location of principal office of family day care service

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

Penalty: \$2 000.

24. Regulation 77 amended

- (1) In regulation 77(1) delete “the nominated supervisor” and insert:

nominated supervisors

- (2) In regulation 77(2) delete “The nominated” and insert:

A nominated

25. Regulation 78 amended

In regulation 78(2) delete “The nominated” and insert:

A nominated

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26. Regulation 79 amended

In regulation 79(2) delete “The nominated” and insert:

A nominated

27. Regulation 80 amended

In regulation 80(2) delete “The nominated” and insert:

A nominated

28. Regulation 81 amended

In regulation 81(2) delete “The nominated” and insert:

A nominated

29. Regulation 83 amended

(1) In regulation 83(1):

(a) delete “the nominated” and insert:

a nominated

(b) delete “his or her” and insert:

the person’s

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(2) In regulation 83(2):

(a) delete “The nominated” and insert:

A nominated

(b) in paragraph (b) delete “his or her” and insert:

the supervisor’s

(3) In regulation 83(3)(b) delete “his or her” and insert:

the educator’s

30. Regulation 84 amended

In regulation 84 delete “the nominated supervisor” and insert:

nominated supervisors

31. Regulation 90 amended

In regulation 90(1)(b) delete “the nominated supervisor” and insert:

nominated supervisors

32. Regulation 93 amended

In regulation 93(3) delete “The nominated” and insert:

A nominated

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33. Regulation 94 amended

In regulation 94(2) delete “nominated supervisor” and insert:

a nominated supervisor

34. Regulation 98 amended

In regulation 98 delete “the nominated supervisor” and insert:

nominated supervisors

35. Regulation 100 amended

In regulation 100(2) delete “The nominated” and insert:

A nominated

36. Regulation 102 amended

In regulation 102(2) delete “The nominated” and insert:

A nominated

37. Regulation 116 amended

Delete regulation 116(1) and insert:

- (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

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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.

38. Chapter 4 Part 4.3A inserted

After regulation 117 insert:

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

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

For the purposes of the definition of a *person in day-to-day charge* in section 5(1) of the Law, a person

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is in day-to-day charge of an education and care service
if —

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

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

- (1) An approved provider or a nominated supervisor of an education and care service must not place a person in day-to-day charge unless —
 - (a) the person has attained the age of 18 years; and
 - (b) the approved provider or nominated supervisor (as the case requires) —
 - (i) has had regard to the matters set out in subregulation (2); and
 - (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.
- (2) For the purposes of subregulation (1)(b)(i), the matters are —
 - (a) the person's history of compliance with —
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and

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(iv) an education law of a participating jurisdiction;

and

(b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under —

(i) the Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction.

117C. Minimum requirements for a nominated supervisor

(1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must —

(a) have attained the age of 18 years; and

(b) have adequate knowledge and understanding of the provision of education and care to children; and

(c) have the ability to effectively supervise and manage an education and care service.

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- (2) In determining whether to nominate a person as a nominated supervisor, an approved provider of an education and care service must have regard to the following matters —
- (a) the history of the person's compliance with —
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction;
 - (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under —
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children's services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction.

39. Chapter 4 Part 4.4 Division 3 heading amended

In the heading to Chapter 4 Part 4.4 Division 3 after
“educators” insert:

and family day care co-ordinators

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40. Regulation 123 amended

Delete regulation 123(1)(d) and insert:

- (d) for children over preschool age, the ratio set out in regulation 369.

Note:

Note 2 at the end of regulation 123 is to be altered by deleting “regulations 372 and 374.” and inserting:
regulation 372.

41. Regulation 123A inserted

After regulation 123 insert:

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

For the purposes of section 163(1) of the Law, the prescribed minimum number of qualified persons employed or engaged as family day care co-ordinators of the family day care service is to be calculated in accordance with the following ratios —

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

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42. Regulation 125 amended

In regulation 125(b) delete “section 163” and insert:

sections 55A and 163

43. Chapter 4 Part 4.4 Division 7A inserted

After Chapter 4 Part 4.4 Division 7 insert:

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

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

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

Penalty: \$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

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

143B. Ongoing management of family day care educators

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

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

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being educated and cared for by a family day care educator are adequately addressed.

Penalty: \$2 000.

44. Regulation 144 replaced

Delete regulation 144 and insert:

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

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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.

45. Regulation 146 amended

In regulation 146:

- (a) delete "in relation to the" and insert:

in relation to each

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- (b) in paragraph (b)(ii) delete “the supervisor” and insert:

the nominated supervisor
- (c) in paragraph (c) delete “the supervisor;” and insert:

the nominated supervisor;
- (d) delete paragraphs (e) and (f) and insert:
 - (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.

46. Regulation 147 amended

Delete regulation 147(f) and insert:

- (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.

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47. Chapter 4 Part 4.4 Division 10 heading amended

In the heading to Chapter 4 Part 4.4 Division 10 delete
“**educators**” and insert:

educators, co-ordinators and assistants

48. Regulation 153 amended

(1) In regulation 153:

(a) delete “For the purposes of section 269 of the Law, the
register of family day care educators” and insert:

(1) For the purposes of section 269(1)(a) of the Law, the
register

(b) delete paragraph (e) and insert:

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

(c) delete paragraph (h);

(d) delete paragraph (l) and insert:

(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

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- (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;
- (e) delete paragraph (o) and insert:
- (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

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- (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) At the end of regulation 153 insert:
- (2) For the purposes of section 269(1)(b) of the Law, the register must include the following information in relation to each family day care co-ordinator employed or engaged by the service —
- (a) the full name, address and date of birth of the co-ordinator;
 - (b) the contact details of the co-ordinator;

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- (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

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- 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);

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- (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

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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.

Note: The heading to amended regulation 153 is to read:

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

49. Regulation 154 amended

- (1) In regulation 154:
 - (a) delete “staff, of family day care co-ordinators engaged” and insert:

staff (other than family day care educators, family day care co-ordinators or family day care educator assistants) engaged or employed

- (b) in paragraph (b) delete “the nominated” and insert:

a nominated

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(c) in paragraph (d) delete “149; and” and insert:

149.

(d) delete paragraph (e).

Note: The heading to amended regulation 154 is to read:

Record of staff engaged or employed by family day care service

50. Regulation 157 amended

In regulation 157(2) delete “The nominated” and insert:

A nominated

51. Regulation 158 amended

In regulation 158(1)(c)(ii) delete “the nominated” and insert:

a nominated

52. Regulation 161 amended

In regulation 161(1)(a) delete “provider, nominated” and insert:

provider, a nominated

53. Regulation 162 amended

(1) In regulation 162(h) delete “Wales.” and insert:

Wales; and

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(2) After regulation 162(h) insert:

- (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.

54. Regulation 163 amended

In regulation 163(4C) delete “safety screening clearance or” and insert:

current

55. Regulation 164 amended

(1) In regulation 164 delete “The approved” and insert:

(1) The approved

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(2) At the end of regulation 164 insert:

- (2) The family day care educator must notify the approved provider of —
- (a) any new person aged 18 years or over who resides, or intends to reside, at the educator's family day care residence; and
 - (b) any circumstance relating to a person who has previously been considered under regulation 163 in relation to the family day care residence that may affect whether the person is a fit and proper person to be in the company of children.

Penalty: \$2 000.

Note for this regulation:

The note at the end of regulation 164 is to be altered by deleting "this regulation." and inserting:
subregulation (1).

56. Regulation 168 amended

In regulation 168(2):

- (a) in paragraph (a)(iv) delete "aid;" and insert:

aid; and

- (b) after paragraph (a)(iv) insert:

(v) sleep and rest for children;

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57. Regulation 169 amended

In regulation 169(2):

- (a) in paragraph (a) delete “assessment and approval” and insert:

assessment of proposed family day care venues and
proposed family day care residences

- (b) in paragraph (c) delete “educators” and insert:

educators, family day care co-ordinators and family day
care educator assistants

58. Regulation 170 amended

In regulation 170 delete “the nominated supervisor” (each occurrence) and insert:

nominated supervisors

59. Regulation 171 amended

In regulation 171(1) delete “the nominated supervisor,” and insert:

nominated supervisors and

60. Regulation 173 amended

Delete regulation 173(1)(c) and insert:

- (c) the name of each nominated supervisor;

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61. Regulation 174 amended

- (1) In regulation 174(1) delete “section 173(3)” and insert:

section 173(4)

- (2) In regulation 174(2):

- (a) delete “section 173(4)” and insert:

section 173(5)

- (b) before paragraph (a) insert:

- (aa) in the case of a notice under section 173(2)(e),
at least 14 days before the change in the
location of the principal office takes place; or

62. Regulation 174A inserted

After regulation 174 insert:

174A. Prescribed information to accompany notice

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

Example for this regulation:

A lease of the premises.

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63. Regulation 175 amended

Delete regulation 175(2)(d) and (e) and insert:

- (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).

64. Regulation 176A inserted

After regulation 176 insert:

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

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

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

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of children attending or likely to attend the
approved family day care venue.

65. Regulation 177 amended

In regulation 177(1):

- (a) in paragraph (j) delete “staff, family day care co-ordinators engaged by the service and family day care educator assistants approved by the service,” and insert:

staff engaged or employed by the service

- (b) in paragraph (n) delete “certified supervisors placed in day to day” and insert:

each nominated supervisor and any person in day-to-day

Note:

At the end of regulation 177 the following note is to be inserted:

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.

66. Regulation 182 amended

In regulation 182(c) delete “or nominated” and insert:

or a nominated

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67. Regulation 183 amended

In regulation 183(2)(f) delete “to the nominated” and insert:

to a nominated

68. Regulation 185 amended

In regulation 185 delete “by the nominated supervisor,” and insert:

by nominated supervisors,

69. Regulation 186 amended

In regulation 186:

- (a) in paragraph (c) delete “number, service approval number or supervisor certificate number” and insert:

number or service approval number

- (b) in paragraph (d) delete “approval, service approval or supervisor certificate” and insert:

approval or service approval

70. Regulation 216 amended

In regulation 216(n) delete paragraph (via) and insert:

- (va) the Public Sector Commissioner, where information is divulged or any document or other thing is produced to

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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;

71. Regulation 227 amended

(1) In regulation 227(2):

- (a) in paragraph (d) delete “approval, service approval or supervisor certificate;” and insert:

approval or service approval;

(b) delete paragraph (e) and insert:

- (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.

(2) In regulation 227(3):

(a) after paragraph (a) insert:

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

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(b) after paragraph (b)(iii)(A) insert:

(AB) the service approval number;
and

(c) delete paragraph (b)(iv) and insert:

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

(d) in paragraph (d)(iv) and (v) delete “approval, service
approval or supervisor certificate — ” and insert:

approval or service approval —

(e) in paragraph (d)(vi) delete “approval, service approval
or supervisor certificate,” and insert:

approval or service approval,

72. Regulation 231 deleted

Delete regulation 231.

73. Chapter 7 Part 7.1 Divisions 1 and 1A deleted

Delete Chapter 7 Part 7.1 Divisions 1 and 1A.

74. Regulations 245 to 247 deleted

Delete regulations 245 to 247.

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75. Regulation 249 amended

Delete regulation 249(2) and insert:

- (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.

Note:

At the end of regulation 249 the following note is to be inserted:

2. This regulation differs from regulation 249 of the national regulations made by the Ministerial Council.

76. Regulation 371 deleted

Delete regulation 371.

77. Regulations 374 to 378 deleted

Delete regulations 374 to 378.

78. Regulation 379 amended

Delete regulation 379(1).

79. Chapter 7 Part 7.9 Division 4 Subdivision 2 deleted

Delete Chapter 7 Part 7.9 Division 4 Subdivision 2.

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80. Chapter 7 Part 7.10 replaced

Delete Chapter 7 Part 7.10 and insert:

Part 7.10 — Transitional and savings provisions — *Education and Care Services National Amendment Regulations (No. 3) 2018*

Division 1 — General

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

- (1) This regulation applies to a family day care service that, immediately before the commencement of regulation 32A, was an approved family day care service.
- (2) The Regulatory Authority must, on or before 1 April 2019, amend the service approval for the family day care service under section 55 of the Law to include a condition specifying a maximum number of family day care educators.

Note for this regulation:

This regulation differs from regulation 384 of the national regulations made by the Ministerial Council.

Division 2 — Australian Capital Territory

Note for this Division:

The national regulations made by the Ministerial Council include provisions as Division 2 which are not relevant to Western Australia.

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Division 3 — New South Wales

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

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

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

393. Application of Division

This Division applies to Western Australia.

393. 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.

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81. Schedule 2 replaced

Delete Schedule 2 and insert:

Schedule 2 — Prescribed fees

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

<i>Section of the Law</i>	<i>Description</i>	<i>Fee</i>	
		<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
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

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<i>Section of the Law</i>	<i>Description</i>	<i>Fee</i>	
		<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
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

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<i>Section of the Law</i>	<i>Description</i>	<i>Fee</i>	
		<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
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

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<i>Section of the Law</i>	<i>Description</i>	<i>Fee</i>	
		<i>Centre-based service (No. of approved places or places to be offered)</i>	<i>Family day care service (No. of family day care educators engaged by or registered with service)</i>
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

<i>Provision of the Law or regulation</i>	<i>Description</i>	<i>Fee</i>
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

Notes:

1. The Guide to Chapter 2 is to read:

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

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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.

2. The Guide to Chapter 4 is to read:

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.

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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.

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Division 3 sets out information and record-keeping requirements.

3. The Guide to Chapter 7 is to read:

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*.

4. At the end of regulation 369 the following note is to be inserted:

Note for this regulation:

This regulation differs from regulation 369 of the national regulations made by the Ministerial Council.

M. INGLIS, Clerk of the Executive Council.
