

Education, Employment and Training Committee

Examination of the Education and Care Services National Amendment Regulations 2021 made under the Education and Care Services National Law

Key Points

- On 8 July 2021, the Ministerial Council, as defined in section 5(1) of the *Education and Care Services National Law* (National Law) made the *Education and Care Services National Amendment Regulations 2021* (the Amendment Regulations).
- The National Quality Framework (NQF) comprises the National Law and the Education and Care Services National Regulations (National Regulations) and establishes a national scheme for the regulation of early childhood education and care (ECEC) services.
- The Amendment Regulations made amendments to the National Regulations in relation to: display of quality ratings certificate; transportation of children; and the transitional workforce provisions.

Background

Display of quality ratings certificate

- Section 172(d) of the National Law contains an offence where an approved provider of an education and care service fails to display the prescribed information. The information must be clearly visible from the main entrance to the service premises.
- Regulation 173(1)(d) of the National Regulations prescribes information in relation to the rating of the service that must be displayed under section 172(d) of the National Law. The information that must be displayed includes the current rating levels for each quality area stated in the National Quality Standard (NQS) and the overall rating of the service.
- There is currently no requirement within the NQF for services to display the prescribed information about the rating of the service in a particular format. This creates a situation where approved providers are permitted to display their quality ratings certificate in any format they wish, including formats that may be developed by third parties, and not in a format approved by the Regulatory Authority or the National Authority.
- Where approved providers determine for themselves the format in which their services' ratings are displayed, there is a risk that the integrity of the ratings system is undermined as:
 - it increases the risk of inaccuracy in the display of ratings;
 - it may cause confusion for families, by having different and inconsistent formats used by different services; and
 - it potentially undermines the policy objectives underpinning the requirement to have ratings displayed, including to ensure families as consumers understand the NQS rating of each service to aid and guide decisions about which services to enrol their children in.

Transportation of children

- On 1 October 2020, the *Education and Care Services National Amendment Regulations 2020* commenced new requirements for services to have in place policies and procedures for the safe transportation of children, including requirements for risk assessments and written authorisations to have first been undertaken. Some minor amendments were also made to requirements for excursions involving transportation.

- The Amendment Regulations address a gap in the National Regulations, to ensure the effective interaction between the existing provisions relating to authorisations for transportation (Division 7 of Part 4.2 of the National Regulations) and other provisions that relate to the circumstances in which a child may leave the service premises, authorisations, and record-keeping requirements.

Transitional workforce provisions

- The transitional workforce provisions under Chapter 7 of the National Regulations were in place when the NQF was introduced in 2012. These provisions were introduced to address the disparity between workforces in jurisdictions, particularly in rural and remote areas, as well as the difficulties in securing early childhood teachers –
 - Regulation 239A: Centre-based services in remote and very remote areas and attendance of early childhood teachers (ECTs) – allows a service to access an ECT 20% of the time and by means of information and communication technology;
 - Regulation 240: Centre-based services in remote and very remote areas and qualification requirements – allows an educator who has been continuously employed at a service for at least 15 years to be included in the ratio requirements without having to be actively working towards a Certificate III qualification;
 - Regulation 242: Persons taken to be ECTs – Recognises a person who is ‘actively working towards’ their ECT qualification as an ECT; and
 - Regulations 390 and 407: Applies Regulation 135 (replacement of an ECT in temporary absences) as if the reasons for absence include resignation of ECT and suitably qualified person.
- On 28 June 2019, the Ministerial Council endorsed the extension until 31 December 2021 of certain expiring transitional workforce provisions to address the continued challenges faced by the sector in building a highly skilled ECEC workforce, particularly in rural and remote areas.
- On 7 April 2021, the Ministerial Council agreed to further extend the transitional workforce provisions until the end of 2023, where jurisdictions identified this need. The Amendment Regulations give effect to this decision.

Commencement

- Regulations other than regulations 5–9, 11–14 and 16–21 of the Amendment Regulations commenced on 30 July 2021. These provisions relate to the display of quality ratings certificate, South Australia-specific requirements, and transitional and savings provisions.
- Regulations 5–9 of the Amendment Regulations, which relate to the transportation of children, are to commence on 1 October 2021 (31 December 2021 in the Northern Territory).
- Regulations 11–14 and 16–21 of the Amendment Regulations, which relate to the extension of the transitional regulations, are to commence on 30 December 2021.
- The Amendment Regulations will apply in all participating jurisdictions except Western Australia where corresponding amendments will be made to the Education and Care Services National Regulations 2012 (WA).

Consultation

- All jurisdictions have been consulted as part of the policy and drafting process for the Amendment Regulations.
- The Australasian Parliamentary Counsels’ Committee was consulted on the Amendment Regulations in accordance with the Protocol on Drafting National Uniform Legislation.

Authorising provisions

- The Amendment Regulations are made under sections 301 and 324 of the National Law. Section 221 of the National Law empowers the Ministerial Council to make regulations for purposes including general matters to support the National Law, transitional matters and specific provisions which apply to individual jurisdictions.
- The Amendment Regulations were published on the New South Wales Legislation website on 16 July 2021 in accordance with section 302(1) of the National Law and Part 6A of the *Interpretation Act 1987* (NSW).
- In accordance with section 303 of the National Law, Queensland tabled the Amendment Regulations and related Human Rights Certificate in the Legislative Assembly on 9 August 2021.

Regulatory impact

- It is not anticipated that the Amendment Regulations will impose additional regulatory burden on ECEC services.

Effect of the Amendment Regulations

Display of quality ratings certificate

- Regulation 10 of the Amendment Regulations inserts a new regulation 173(3)(a) to require an approved provider of an ECEC service to display information specified in regulation 173(1)(d) by displaying the certificate issued to the approved provider by, or on behalf of, the Regulatory Authority about the current rating levels for each quality area stated in the NQS and the overall rating of the service.
- New regulation 173(3)(b) requires an approved provider of an ECEC service to display information specified in regulation 173(1)(d) by displaying the certificate about the overall rating of the service issued to the approved provider by the National Authority, if the National Authority has given the service the highest rating level.
- Failure of an approved provider to comply with the requirements under regulation 173(3) is an offence carrying a penalty of \$2,000.
- Regulation 22 of the Amendment Regulations inserts new regulation 412 (Division 1 of Part 7.13), a transitional and savings provision which clarifies that the requirements specified under new regulation 173(3) only apply to an approved provider if the provider is issued a certificate referred to in regulation 173(3) on or after 30 July 2021. This means that the requirements under new regulation 173(3) will not apply to certificates issued prior to 30 July 2021.

Transportation of children

- Regulation 5 of the Amendment Regulations inserts new regulation 99(4)(ca) to clarify that a child may leave the relevant premises if the child is transported by the service or on transportation arranged by the service in accordance with Division 7 of Part 4.2 of the National Regulations. This amendment does not apply in Western Australia, as an equivalent provision exists under the *Education and Care Services National Law (WA) Act 2012*.
- Regulations 6 and 7 of the Amendment Regulations amends existing regulations 102(4) and 102D(4) to reflect the policy intent to restrict record keeping requirements to persons authorised by a parent. It also aligns with the policy intention expressed in section 170(5) (definition of authorised nominee) and regulation 99(4).
- Regulation 7 of the Amendment Regulations amend existing regulation 102D(4) to make clear in the National Regulations that only a parent (defined in the National Law) can grant a person the authority to authorise the child being transported by the service, or on transportation arranged by the service.

- Similarly, regulation 6 of the Amendment Regulations amends existing regulation 102(4) to enable only a parent to authorise other persons to have the authority to authorise a child to go on an excursion.
- New regulation 160(3)(b)(vi) requires that the child’s enrolment record must include the name, address and contact details of any person authorised by a parent to authorise the ECEC service to transport the child or arrange transportation of the child. This amendment is contained in regulation 8 of the Amendment Regulations.
- New regulations 161(1)(c) and 161(2)(c) are inserted to require an authorisation given under regulation 102D(4) for regular transportation of the child to be kept in the enrolment record for each child enrolled at an ECEC service and each child educated and cared for by a family day care educator respectively (regulation 9 of the Amendment Regulations).
- A new transitional and savings provision – regulation 414 (contained in regulation 22 of the Amendment Regulations) – provides that the above amendments to provisions relating to the transportation of children do not apply in the Northern Territory until 31 December 2021.

Transitional workforce provisions

- Since their introduction in 2012, the transitional provisions had been extended twice (in 2017 and 2019) giving the sector almost a decade to comply. Queensland determined not to further extend.
- The following table lists the transitional workforce provisions that have been further extended, the affected jurisdictions, and the extension dates:

Regulation	Affected jurisdictions	Extended expiry date
Regulation 239A Attendance of an ECT at a service in remote or very remote location.	NSW, SA, TAS	31 December 2023
Regulation 240 Qualification requirements for educators working in remote and very remote services.	SA, TAS	31 December 2023
Regulation 242 Persons taken to be an ECT.	ACT, NSW, SA, TAS	31 December 2023
Regulation 264 General qualifications for educators in centre-based services.	ACT specific	31 December 2023
Regulation 386, 392, 394 Resignation of an ECT.	ACT, TAS, WA specific	31 December 2023
Regulations 405, 409, 411 Resignation of a Suitably Qualified Person.	ACT, TAS, WA specific	31 December 2023

South Australia-specific transitional provision

- Regulation 333A adopts the substance and timing of the existing transitional workforce regulations that apply to regulation 135 so that the reasons for replacing an early childhood teacher or a suitably qualified person during a short-term absence include resignation.
- Regulation 333A will cease to have effect on 31 December 2023 to align with other states and territories. These amendments are contained under regulation 15 of the Amendment Regulations.