

Education, Employment and Training Committee

Education and Care Services National Amendment (Bassinets) Regulations 2023 made under the Education and Care Services National Law

Key Points

- On 11 August 2023, the Education Ministers Meeting (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 (Bassinets) Regulations 2023* (the Bassinets Amendment Regulations).
- The Bassinets Amendment Regulations made amendment to the National Regulations in relation prohibiting the use of bassinets in early childhood education and care (ECEC) services.

Background

- The National Quality Framework (NQF) establishes a national approach to regulation, assessment and quality improvement for ECEC, and outside school hours care services, across Australia. Most ECEC services in Queensland are regulated under the NQF.
- The NQF commenced on 1 January 2012 and comprises the National Law, the Education and Care Services National Regulations (National Regulations) and National Quality Standard (NQS). The NQF sets the national benchmark for ECEC and outside school hours care services in Australia.
- The National Law and National Regulations outline the legal obligations of approved providers, nominated supervisors and educators, and explain the powers and functions of the state and territory regulatory authorities and the national Australian Children's Education and Care Quality Authority (ACECQA). Each state and territory has a regulatory authority, which implements the functions set out in the National Law, including approvals, monitoring and compliance, and quality assessment. In Queensland, the Department of Education is the regulatory authority under the NQF.
- The Bassinet Amendment Regulations implement the decision of the Education Ministers Meeting to prohibit the physical presence of bassinets on an ECEC premises at any time during which children are being educated and cared for by the service.
- The decision of the Education Ministers Meeting and the Amendment Regulations respond to the New South Wales Coroner's recommendation 4, handed down on 22 December 2021, arising from the Inquest into the death of a 7-month-old child while in the care of a family day care service:

The NSW Government, in consultation with the governments of other jurisdictions under the National Quality Framework, take steps to amend the National Law and/or National Regulations to expressly prohibit the use of bassinets in all early childhood education and care settings.
- Regulations 84A(1) and (2) of the National Regulations provide that an approved provider and a nominated supervisor, respectively, of an ECEC service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by a service are met, having regard to the ages, development stages and individual needs of the children. Regulation 84A(3) of the National Regulations sets out the same requirements for family day care educators.
- Regulation 103 of the National Regulations provides that an approved provider must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Examination of the Education and Care Services National Amendment (Bassinets) Regulations 2023

- Prior to the Bassinet Amendment Regulation there were no provisions within the National Law and National Regulations that prohibited the use of bassinets in ECEC settings.

Commencement

- The Amendment Regulations commenced on 1 October 2023.
- The Amendment Regulations will apply in all participating jurisdictions except Western Australia where corresponding amendments are made to the *Education and Care Services National Regulations 2012 (WA)*.

Consultation

- All state and territory governments, the Australian Government and ACECQA were consulted through the Legislation Working Group of the Early Childhood Policy Group on the draft of the Bassinets Amendment Regulations.

Authorising provisions

- Sections 301 and 324 of the National Law empower the Ministerial Council to make regulations for purposes including general matters to support the National Law, transitional matters and specific provisions that apply to individual jurisdictions.
- The Bassinet Amendment Regulations were made under section 301 of the National Law as there are no transitional matters or jurisdiction specific provisions.
- As required by section 302(1) of the National Law and Part 6A of the *Interpretation Act 1987 (NSW)*, the Amendment Regulations were published on the New South Wales Legislation website on 18 August 2023.
- In accordance with section 303 of the National Law, Queensland tabled the Amendment Regulations and associated Human Rights Certificate in the Legislative Assembly on 17 October 2023.

Regulatory impact

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

Effect of the Amendment Regulations

- The Bassinet Amendment Regulations amend the National Regulations to prohibit the physical presence of bassinets on an ECEC premises at any time during which children are being educated and cared for by the ECEC service. The responsibility for ensuring this is placed on the approved provider, the nominated supervisor and family day care educator.
- Paragraph 1, Schedule 1 inserts new regulation 84D in the National Regulations to require the approved provider, nominated supervisor, and a family day care educator to ensure that a bassinet is not on the ECEC premises at any time during which children are being educated and cared for by the service (new sub-regulation 84D(1), (2) and (3). Penalties of \$2200 apply for failure to comply with regulation 84D.
- Paragraph 2, Schedule 1 amends regulation 190 of the National Regulations to insert new sub-regulation 190(c)(ca) to allow infringement notices to be issued to a person for contravention of offences against regulation 84D.
- Paragraph 3, Schedule 1 amends Schedule 3 of the National Regulations to provide for a compliance direction to be issued for failure of the approved provider to comply with new sub-regulation 84D(1).