

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**EDUCATION AND CARE SERVICES NATIONAL AMENDMENT REGULATIONS
2025 (NSW)**

AS ADOPTED BY THE

EDUCATION AND CARE SERVICES NATIONAL LAW (ACT) ACT 2011

EXPLANATORY STATEMENT

**Presented by
YVETTE BERRY MLA
MINISTER FOR EDUCATION AND EARLY CHILDHOOD
JUNE 2025**

Education and Care Services National Amendment Regulations 2025

made under the Education and Care Services National Law as applied by the law of the States and Territories.

EXPLANATORY STATEMENT

OVERVIEW

On 12 June 2025, 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 2025* (**Amendment Regulations**).

The Amendment Regulations amend the *Education and Care Services National Regulations* (**National Regulations**)

The National Quality Framework (**NQF**) includes the National Law and National Regulations and established a national scheme for the regulation of early childhood education and care services.

The NQF operates as a national applied law scheme. The National Law is enacted by Victoria, as host jurisdiction, and the National Regulations are hosted by NSW.

The National Law is adopted in the Australian Capital Territory (ACT) by the *Education and Care Services National Law (ACT) Act 2011* (**Adopting Act**).

In December 2023, the Australian Children's Education and Care Quality Authority (ACECQA) published the [Review of Child Safety Arrangements under the National Quality Framework](#) (CSR).

The CSR made 16 recommendations which seek to strengthen national approaches for improving child safe cultures, safer online environments, more effective information sharing systems across jurisdictions, and building workforce knowledge and capabilities in the education and care sector.

In February 2024, Education Ministers agreed to the implementation of recommendations from the CSR, subject to expert advice, broad consultation, and regulatory impact analysis. After targeted stakeholder consultation, Ministers agreed to progress an initial set of recommendations. Other recommendations are undergoing full public consultation and regulatory impact analysis.

The Amendment Regulations implement those of the initial set of recommendations requiring legislative change. They aim to improve child safety practice across the education and care system by:

- (a) Supporting Regulatory Authorities in their oversight and intervention role to protect children when physical or sexual abuse risks or issues arise, by decreasing the time that approved providers must notify Regulatory Authorities of any physical or sexual abuse allegations and incidents from

seven days to 24 hours – in line with notification timeframes for serious incidents and complaints.

- (b) Eliminating the health risks of vaping to children in education and care services by requiring that approved providers must ensure that children at education and care services are provided with an environment free from vaping devices and vaping substances.
- (c) Facilitating the mitigation of risks associated with the increased use of digital technology to children in education and care services by requiring approved providers to put in place a policy and procedures relating to the safe use of digital technologies and online environments. Potential risks at education and care services that this amendment is intended to address include:
 - (i) inappropriate taking, accessing, retaining, storing and sharing of images and/or videos of children;
 - (ii) infringing upon children’s rights to dignity, privacy and their voice;
 - (iii) unsafe or inappropriate use of devices by children while attending the service; and
 - (iv) opportunities for unscrupulous persons to engage in offending behaviour.
- (d) Supporting child safe culture to be embedded in education and care services by making more explicit reference to child safety in the NQS.

Commencement

The Amendment Regulations (other than Part 3) come into operation on 1 September 2025.

Part 3 comes into operation on 1 January 2026.

Authorising Provisions

The Amendment Regulations are made under sections 301 and 324 of the National Law.

Section 301 of the National Law empowers the Ministerial Council to make regulations for the purposes of the National Law, and section 324 permits regulations of a savings or transitional nature in certain circumstances.

Publication

The Transitional Provisions Regulations were published on 16 June 2025, on the New South Wales Legislation website in accordance with section 302(1) of the National Law and Part 6A of the *Interpretation Act 1987* (NSW).

CONSISTENCY WITH HUMAN RIGHTS

The *Human Rights Act 2004* (HR Act) applies to the ACT National Law and National Regulations.

Rights Engaged

The Amendment Regulations engage with sections 11 (Protection of the family and children) and section 27C (Right to a healthy environment) of the HR Act.

No human rights are limited by the Amendment Regulations.

Rights Promoted

Section 11(2) Protection of the family and children

Built into the National Law is an obligation upon the Regulatory Authority to carry out its functions in a way that protects children.

Section 3 of the National Law sets out objectives and guiding principles of the Law, including the objectives at sections 3(2)(a), (b) and (c):

- (e) to ensure the safety, health and wellbeing of children attending education and care services;
- (f) to improve the educational and developmental outcomes for children attending education and care services; and
- (g) to promote continuous improvement in the provision of quality education and care services.

There are two relevant guiding principles at sections 3(3)(a) and (f):

- (a) that the rights and best interests of the child are paramount; and
- (f) that best practice is expected in the provision of education and care services.

The Amendment Regulations promote protection of children by further embedding child safe practices in early childhood education and care services, including in online environments.

Section 27C Right to a healthy environment

The National Regulations require early childhood education and care service environments to be free from the use of tobacco, alcohol and drugs.

The Amendment Regulations add the requirement for early childhood education and care service environments to be free from the use of vaping substances or vaping devices, as those terms are defined under the *Therapeutic Goods Act 1989* (Cth).

ACT Regulatory Impact

Section 7 of the Adopting Act operates to exclude section 34 of the *Legislation Act 2001* from application. Additionally, there is no appreciable cost on the community or part of the community. Accordingly, a regulatory impact statement is not required.

The Office of Impact Analysis has been continuously consulted through the Child Safety Review and also confirmed that full regulatory impact analysis was not required.

The Education Directorate undertook targeted consultation with key ACT stakeholders in August 2024 in relation to the Child Safety Review recommendations being implemented by the Amendment Regulations. Stakeholders supported the recommendations.

DETAILED NOTES

Regulation 1 — Title

Regulation 1 provides that the name of the Amendment Regulations is the *Education and Care Services National Amendment Regulations 2025*.

Regulation 2 — Authorising Provisions

Regulation 2 states the authorising provisions of the National Law.

Regulation 3 — Commencement

Regulation 3 provides that Part 3 of the Amendment Regulations commences on 1 January 2026, with the remaining provisions commencing on 1 September 2025.

Regulation 4 — National Regulations

Regulation 4 confirms terminology within the Amendment Regulations.

Regulation 5 — Definitions

Regulation 5 defines terms used in the Amendment Regulations: optical surveillance device, vaping device and vaping substance. Terms are defined with reference to Commonwealth legislation governing use of the specified items.

Regulation 6 — Tobacco, drug and alcohol-free environment

Regulation 6 amends regulation 82 of the National Regulations to require approved providers and family day care (FDC) educators to ensure that children are provided with an environment that is free from the use of use of vaping devices and vaping substances.

Regulation 7 — Education and care services must have policies and procedures

Regulation 7 substitutes existing regulation 168(2)(h) of the National Regulations with new regulations 168(2)(h) and 168(2)(ha).

New regulation 168(2)(h) requires services to have a policy and procedures in relation to providing a child safe environment including matters relating to the promotion of a culture of child safety and wellbeing within the service.

New Regulation 168(2)(ha) expands the existing requirement for education and care services to have a policy and procedures related to the safe use of online environments to include the safe use of digital technologies, and specifically including matters relating to:

- a. the taking, use, storage and destruction of images and videos of children being educated and cared for by the service (new regulation 168(2)(ha)(i));

- b. obtaining authorisation from parents to take, use and store images and videos of children being educated and cared for by the service (new regulation 168(2)(ha)(ii));
- c. the use of any optical surveillance devices at the service (new regulation 168(2)(ha)(iii));
- d. the use of any digital device issued by the service (new regulation 168(2)(ha)(iv));
- e. the use of digital devices by children being educated and cared for by the service (new regulation 168(2)(ha)(v)).

Regulation 8 — Time to notify certain information to Regulatory Authority

Regulation 8 inserts new regulations 176(2)(bb) and 176(2)(bc) in the National Regulations.

New regulation 176(2)(bb) reduces the period within which approved providers must notify Regulatory Authorities of an incident of physical or sexual abuse from within 7 days to 24 hours of the incident of physical or sexual abuse or of the approved provider becoming aware of the incident.

New regulation 176(2)(bc) reduces the period within which approved providers must notify Regulatory Authorities of an allegation of physical or sexual abuse from within 7 days to 24 hours of the allegation of physical or sexual abuse being made or of the approved provider becoming aware of the allegation.

Regulation 9 —Schedule — National Quality Standard

Regulation 9 amends the NQS in Schedule 1 to the National Regulations to make explicit reference to child safety in Quality Area 2: Children's Health and Safety and Quality Area 7: Governance and Leadership.

In Quality Area 2, Element 2.2.3 is amended to clarify that management, educators and staff must be aware of their roles and responsibilities regarding child safety.

In Quality Area 7, the following three changes are made:

- (a) the preamble to Quality Area 7 is amended to refer to the contribution of policies and procedures to the ethical management of a quality service that is child safe;
- (b) Standard 7.1 is amended to clarify that governance supports the operation of a quality service that is child safe; and
- (c) Element 7.1.2 is amended to clarify that management systems enable the effective management and operation of a quality service that is child safe.