

2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**EDUCATION AND CARE SERVICES NATIONAL FURTHER
AMENDMENT REGULATIONS 2017**

**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 Development

Education and Care Services National Further Amendment Regulations 2017

Outline

Statutory Framework

In 2012, pursuant to the National Partnership Agreement on the National Quality Agenda (NP NQA), the National Quality Framework (NQF) commenced, comprising the *Education and Care Services National Law* (National Law) and the *Education and Care Services National Regulations* (National Regulations).

The NQF established the Education and Care Services National Law and a uniform approach to the regulation and quality assessment of the education and care sector.

The NQF contains four key components:

- a national regulatory framework for approving services, keeping children safe and minimum governance standards;
- a new national body: the Australian Children's Education and Care Quality Authority (ACECQA), responsible for establishing consistent and efficient procedures for the operation of the NQF.
- a National Quality Standard (NQS) with seven assessable quality areas containing a total of 58 elements
- a national quality rating and assessment process to complement the NQS.

The NQF provided a transformational reform of the education and care sector. It put into practice research on the early years of life being critical to the development of children from an educational, emotional and social perspective.

States and Territories agreed to use model law to create the national regulatory framework. The ACT decided to adopt the law by reference to the model law that sits within the Victorian statute book.

In the ACT the *Education and Care Services National Law (ACT) Act 2011* (the Adopting Law) was passed in the ACT Legislative Assembly on 25 October 2011.

Nationally, States, Territories and the Commonwealth agreed that the terms of the National Law would be drafted and amended by Victoria and sit in the Victorian statute book. Regulations would be drafted by Victoria but would sit in the NSW statute book.

Amendments to the National Law

Under section 220(1)(g) of the National Law the relevant Ministerial Council (currently the Education Council) has the power to recommend or approve amendments to the National Law.

The Ministerial Council also has the power to make regulations under section 221. The National Law provides for the tabling of regulations in each 'House of Parliament' of a participating jurisdiction under section 303. A committee of the House of Parliament of any participating jurisdiction may consider the regulation and the regulation may be disallowed. The National Law disallowance however, has no effect unless the regulation is disallowed by a majority of participating jurisdictions.

Under section 6 of the ACT's Adopting Law, the Assembly is empowered to disallow an amending law presented to the Assembly. If the Assembly is not presented with an amending law the National Law is taken not to be amended by that law. If the amending law is disallowed, the National Law is taken not to be amended by that law. However, section 6 does not enable the Assembly to amend or propose a new Bill to amend the National Law. To do this the Assembly would need to modify the Adopting Law.

Section 6(2) requires any amendments to the Education and Care Services National Law passed by the Victorian Parliament, to be presented to the Legislative Assembly no later than 6 sitting days.

The National Law amendments as outlined in this explanatory statement were given Royal Assent on 27 March 2017.

Section 6 of the ACT's Adopting Law also modifies the effect of section 303 of the National Law by in effect enabling the Assembly to disallow a regulation unilaterally.

Recommendation

On 15 December 2017 the Education Council made the Education and Care Services National Amendment Regulations 2017 (**Further Amendment Regulations**).

Background

In 2010, pursuant to the National Partnership Agreement on the National Quality Agenda (**NP NQA**), the National Quality Framework (**NQF**) commenced, comprising the Education and Care Services National Law (**National Law**) and the Education and Care Services National Regulations (**National Regulations**).

The NQF establishes a national scheme for the regulation of education and care services and has improved educational and developmental outcomes for children attending services approved under the National Law.

Amendments to the National Law and National Regulations form part of reforms to the NQF identified as part of the 2014 Review of the National Partnership Agreement on the National Quality Agenda for Early

Childhood Education and Care (**2014 Review**). The Education Council agreed to the amendments to the National Law and National Regulations on 31 January 2017.

On 15 September 2017 the Education Council made the Education and Care Services National Amendment Regulations 2017 (**Amendment Regulations**), which commenced on 1 October 2017.

The Amendment Regulations (Tranche 1 and 2) help deliver various reforms to the NQF identified as part of the 2014 Review, including strengthening regulatory requirements for family day care services to improve the quality of education and care provided to children, revoking supervisor certificate requirements and prescribing minimum requirements for persons in day-to-day charge and nominated supervisors.

Legislative Provisions

Sections 301 and 324 of the National Law empower the Education 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 are made under and pursuant to sections 301 and 324 of the National Law.

Effect of the Amended Regulations

1. The Amendment Regulations:
 - (a) make changes to the National Quality Standard (NQS) arising from the 2014 Review which will commence on 1 February 2018, including:
 - (i) giving effect to a streamlined NQS;
 - (ii) providing that an application for the highest rating (i.e. Excellent rating) may only be made if an education and care service is rated at the second highest rating level (i.e. Exceeding NQS) in each quality area;
 - (iii) removing the fee for an application for the highest rating;
 - (iv) amending the Significant Improvement Required rating for an education and care service so that it refers to a “significant” risk, rather than an “unacceptable” risk to the safety, health or wellbeing of a child, to increase clarity for families;
 - (b) clarify information which must be recorded:
 - (i) on the register of family day care educators, co-ordinators and educator assistants;
 - (ii) in the record of other staff engaged or employed by a family day care service;
 - (c) extend the expiry date of transitional regulations relating to:
 - (i) attendance of early childhood teachers at centre-based services in remote and very remote areas (other than in the Australian Capital Territory or Victoria);
 - (ii) qualifications for educators at centre-based services in remote

- and very remote areas of Queensland, Tasmania, South Australia or Western Australia;
 - (iii) persons taken to be early childhood teachers;
 - (iv) general qualifications for educators at centre-based services;
 - (v) educator to child ratios for children aged 15 months to 24 months for certain services in Queensland.
- (d) make minor and technical changes to specific provisions in the National Regulations to clarify their operation and effect, and to improve consistency within the National Regulations.
2. The Further Amendment Regulations also include transitional and savings provisions:
- (a) saving a current quality improvement plan (QIP) held before commencement until the QIP is reviewed and revised under the new NQS;
 - (b) requiring a Regulatory Authority which started a rating assessment before commencement to continue the assessment against the old NQS;
 - (c) requiring a Regulatory Authority which:
 - (i) started but did not finalise a reassessment and re-rating of a service, or a partial reassessment and re-rating of a service before commencement; or
 - (ii) decided to start, but did not actually start, a reassessment and re-rating of a service or a partial reassessment and re-rating of a service on an application from an approved provider before commencement –
to conduct the reassessment against the old NQS;
 - (d) in relation to a service which has not been assessed and rated or reassessed and re-rated against the new NQS, requiring a Regulatory Authority which conducts a reassessment and re-rating of an aspect or element of a service to conduct the reassessment against the old NQS (this requirement applies for 6 months after commencement if the service was assessed and rated before commencement, or for 6 months after the rating for the service is published under section 160 of the National Law if the service was assessed and rated after commencement);
 - (e) requiring assessments and re-assessments and re-ratings of services which are suspended before, on or after commencement and the suspension is lifted on or after commencement, to be conducted against the new NQS;
 - (f) requiring partial reassessments and re-ratings of services which are suspended before, on or after commencement and the suspension is lifted on or after commencement, to be conducted against the old NQS;
 - (g) saving a prescribed provisional rating level for a service held before commencement until the service is assessed and rated;
 - (h) saving a rating for a service held before commencement until the service is next assessed and rated, re-assessed and re-rated or awarded the Excellent rating.

Regulatory Impact

In accordance with section 7 'Exclusion of territory laws' under the *Education and Care Services National Law (ACT) Act 2011* the Adopting Act, section 34 of the *Legislation Act 2001* does not apply. A Regulatory Impact Statement is therefore not required.

Publication

The Further Amendment Regulations will be published 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).

Section 302(2) of the National Law requires publication to occur before 24 December 2017 to ensure the Further Amendment Regulations (except regulations 5, 6, 16, 17 and 18) come into effect on that date. Regulations 5,6,16, 17 and 18 commence on 1 February 2018.