

2025

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

ELEVENTH ASSEMBLY

**Education and Care Services National Amendment (Transitional Provisions)
Regulations 2024 - Explanatory Statement**

**Presented by
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March 2025**

Education and Care Services National Amendment (Transitional Provisions) Regulations 2024

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

EXPLANATORY STATEMENT

Overview

1. On 11 December 2024, 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 (Transitional Provisional) Regulations 2024* (**Amendment Regulations**).
2. The Amendment Regulations amend the *Education and Care Services National Regulations* (**National Regulations**).

Summary of Amendments

3. 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.
4. The National Law is hosted by Victoria and the National Regulations are hosted by NSW.
5. The National Law is adopted in the Australian Capital Territory (ACT) by the *Education and Care Services National Law (ACT) Act 2011* (**Adopting Act**).
6. The workforce transitional provisions under Chapter 7 of the National Regulations support transition to staffing requirements under the NQF. These provisions were introduced to address the disparity between jurisdictions, particularly in rural and remote areas, as well as ongoing challenges in securing early childhood teachers.
7. The Australian Children's Education and Care Quality Authority (ACECQA), on behalf of all governments, coordinated the development of *Shaping our Future – National Children's Education and Care Workforce Strategy* (the National Workforce Strategy), resulting in 21 actions to be implemented over the lifespan of the Workforce Strategy (2022-2031).
8. Action FA5-1 of the National Workforce Strategy commits to a comprehensive review of the current staffing and qualification requirements under the NQF to achieve greater national consistency, support quality, and reduce complexity within the early childhood education and care sector, with a focus on the requirements for early childhood teachers, out of school hours care educators, and expiring transitional workforce provisions. ACECQA completed the review report was completed in December 2023.

9. The Amendment Regulations extend the operation of some of the workforce transitional provisions in the National Regulations, to allow relevant regulatory impact analysis to be undertaken as part of the review of staffing and qualification requirements under the NQF.

Commencement

10. Schedule 1, Items 2 and 3 of the Amendment Regulations commenced on 1 January 2025. The remaining provisions commenced on 13 December 2024, being the date of publication on the New South Wales Legislation website.
11. Subject to tabling requirements, the Amendment Regulations will apply in the ACT, New South Wales, the Northern Territory, South Australia and Tasmania.

Authorising Provisions

12. The Amendment Regulations are made under sections 301 and 324 of the National Law.
13. 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

14. The Transitional Provisions Regulations were published on 13 December 2024, 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

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

Rights Engaged

16. The Amendment Regulations engage with section 11 of the HR Act (Protection of the family and children).
17. No human rights are limited by the Amendment Regulations.

Rights Promoted

Section 11(2) Protection of the family and children

18. Built into the ACT National Law is an obligation upon the Regulatory Authority to carry out its functions in a way that protects children.
19. Section 3 of the National Law sets out objectives and guiding principles of the Law, including the objectives at sections 3(2)(a) and (b):
 - (a) to ensure the safety, health and wellbeing of children attending education and care services;

- (b) to improve the educational and developmental outcomes for children attending education and care services;
20. 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;
 - (b) that best practice is expected in the provision of education and care services.
21. The Amendment Regulations support the early childhood education and care sector to comply with staffing obligations during ongoing shortages of qualified educators since commencement of the NQF, whilst maintaining the safety, health and wellbeing of children.

ACT Regulatory Impact

22. 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.

DETAILED NOTES

23. Item 1 of Schedule 1 to the Amendment Regulations replaces regulation 239A(1) so that this regulation is extended to apply until 31 December 2026 for centre-based services located in a remote or very remote area of New South Wales, the Northern Territory, South Australia, Tasmania or Western Australia. Regulation 239A allows additional circumstances for centre-based services in remote and very remote areas to meet the regulatory requirements for attendance of an early childhood teacher.
24. Item 2 of Schedule 1 to the Amendment Regulations amends regulation 239A(5) to omit “and regulation 240” as regulation 240 will expire on 31 December 2024.
25. Item 3 of Schedule 1 to the Amendment Regulations omits regulation 240 which, up until 31 December 2024, allowed additional circumstances for centre-based services in remote and very remote areas of South Australia, Tasmania, or Western Australia to meet prescribed educator qualification requirements.
26. Item 4 of Schedule 1 to the Amendment Regulations amends regulation 242 to replace “31 December 2024” with “31 December 2026”. Regulation 242 allows additional circumstances for education and care services to meet prescribed requirements for access to early childhood teachers in the Australian Capital Territory, New South Wales, the Northern Territory, South Australia, Tasmania and Western Australia.
27. Item 5 of Schedule 1 to the Amendment Regulations amends regulation 264 to replace “31 December 2024” with “31 December 2027”. Regulation 264 is an Australian Capital Territory-specific provision and allows additional circumstances for centre-based services to meet the requirements of regulation 126(1) in relation to the general qualifications of educators.