

Education and Care Services National Amendment Regulations 2020

1. On 14 August 2020, the Education Council made the *Education and Care Services National Amendment Regulations 2020* (Amendment Regulations).
2. The Amendment Regulations made amendments to the Children's Education and Care Services National Regulations (the National Regulations) including to:
 - clarify and strengthen operational requirements for Early Childhood Education and Care (ECEC) service operators providing transportation for purposes other than transportation for excursions, such as providing regular transport service to and from the service and family home; and
 - make consequential amendments to the existing requirements for policies and procedures for excursions involving transport, to ensure they are clear and consistent.

Background

3. In December 2009, Queensland agreed at the Council of Australian Governments to establish a National Quality Framework (NQF) for ECEC services to provide a consistent, national approach to the regulation of early childhood providers and set minimum quality standards for service delivery.
4. The NQF comprises the Education and Care Services National Law (National Law) and the National Regulations and establishes a national scheme for the regulation of ECEC services for children.
5. A significant number of serious incidents during transportation of children attending ECEC services has occurred nationwide in recent years. These include the death of a child in Cairns 2020 and a 2019 case in New South Wales where a toddler was left unsupervised in a vehicle for six hours.
6. Improving children's safety while being transported by an ECEC service is one of the issues being considered through the current 2019 NQF Review. The 2019 NQF Review is currently entering the national Consultation Regulatory Impact Statement stage. Based on current time projections, and considering the delay experienced due to the COVID-19 health pandemic, any regulatory amendments arising from the 2019 NQF Review would not likely be made until 2022.
7. The Education Council decided more immediate regulatory amendments were required to clarify and strengthen operational requirements for ECEC service operators providing transportation. While the National Regulations already require approved providers of ECEC services to have policies and procedures in place for excursions, the relevant provisions were not adequate to cover transportation that may not be for the purposes of an excursion, such as providing a regular transport service to and from the service and family home.
8. The National Regulations have been amended to ensure ECEC services that provide transportation have specific transport related policies and procedures in place. Those services must also conduct risk assessments and obtain written authorisation for the transportation of children, based on the existing provisions for excursions (regulations 100 to 102 of the National Regulations). Consequential amendments have also been made to existing excursion requirements where they involve transport, to ensure they are clear and consistent.
9. A key objective of the amendments is to strike a balance between having appropriate risk assessment processes in place without those processes becoming unnecessarily onerous. Guidance to assist services to comply with the new requirements is available in the Australian Education and Care Quality Authority's *Guide to the National Quality Framework* at www.acecqa.gov.au.
10. The provisions relating to transport policies and procedures commenced on 1 October 2020.

Authorising Provisions

11. 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 that apply to individual jurisdictions.
12. In order for them to take effect, the Amendment Regulations were published on the New South Wales Legislation website on 17 August 2020 in accordance with section 302(1) of the National Law and Part 6A of the *Interpretation Act 1987* (NSW). All participating jurisdictions, including Queensland, were required to table the Amendment Regulations in their respective Parliaments as soon as reasonably practicable in accordance with section 303 of the National Law.
13. The Amendment Regulations were tabled in the Queensland Parliament on 14 September 2020.

Consultation

14. All jurisdictions were consulted as part of the policy and drafting process for the Amendment Regulations.
15. The Australasian Parliamentary Counsels' Committee was consulted on the Amendment Regulations in accordance with the Protocol on Drafting National Uniform Legislation.
16. Consultation on the 2019 NQF Review Issues Paper found sector stakeholders support strengthening regulatory requirements for transportation. Almost two-thirds (63%) of survey respondents supported the need for supervision and educator to child ratio requirements where transportation is provided by a service. The regulatory amendments clarify and strengthen existing operational requirements for service operators. The NQF Review Consultation Regulation Impact Statement will consult further on the complex issues associated with adequate ratio and qualification requirements in the first half of 2021.

Cost/Regulatory Burden

17. At the time Education Council agreed to the making of the Amendment Regulations, there were no known direct budget implications for Government.
18. Although some ECEC services already providing transportation have existing policies and procedures in place for transportation, services that do not would easily be able to model new policies and procedures from existing procedures for excursions. As a result, it was not anticipated that the Amendment Regulations would impose additional regulatory burden on ECEC services.

Effect of the Amended Regulations

Policies and procedures for the safe transportation of children

19. The Amendment Regulations amend the list of required policies and procedures in regulations 168(2) of the National Regulations to add transport policies and procedures if the service transports or arranges transportation of children other than as part of excursions.
20. The new Division 7 (comprising new regulations 102A to 102D) deals with transportation of children other than as part of an excursion. It places an explicit requirement on the approved provider, a nominated supervisor, and a family day care educator to ensure a risk assessment is carried out in accordance with regulation 102C before an authorisation is sought to transport a child. Failure of each person respectively to comply with the requirements under regulation 102B is an offence, carrying a penalty of \$2000.
21. New regulation 102C sets out matters that must be considered in conducting a risk assessment for the transportation of a child by the service, or on transportation arranged by a service, such as the requirement for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported.

22. New regulation 102D requires the approved provider, a nominated supervisor, and a family day care educator to ensure that a child being educated and cared for by the service is not transported by the service, or on transportation arranged by the service, unless written authorisation has been given by a parent or other person named in the child's enrolment record as having authority to provide the authorisation.
23. Further amendments were made to regulation 102D(5) to require that, if the transportation is regular transportation, the authorisation is only required to be obtained once in a 12-month period. A new definition of 'regular transportation' was therefore inserted into regulation 4(1) of the National Regulations. This provides that 'regular transportation' means transportation by the service, or arranged by the service, where circumstances relevant to a risk assessment are substantially the same for each occasion on which the child is transported. To align with the new definition of 'regular transportation', the definition of 'regular outing' was amended accordingly.
24. For consistency, and to align with the requirements set out in the new Division 7, existing risk assessment and authorisation requirements for excursions were amended accordingly.
25. Existing regulation 101(2)(d) was amended so that, where an excursion involves transportation, the matters that must be considered in conducting a risk assessment are consistent with the requirements in new regulation 102C for conducting risk assessments for transporting children. The existing requirements for matters to be considered in the conduct of risk assessment for excursions were replaced with requirements to consider:
 - (a) the means of transport;
 - (b) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported;
 - (c) the process of entering and exiting the education and care service premises and the pick-up location and destination (as required); and
 - (d) the procedures for embarking and disembarking the means of transportation, including how each child is to be accounted for on embarking and disembarking.
26. Similarly, regulations 102(4)(c) and (e) were amended so that, where an excursion involves transportation, the matters that must be stated in the authorisation are consistent with the requirements in new regulation 102D for authorisations for transporting children.
27. A technical amendment was made to regulations 100(1), (2) and (3) to more accurately reflect the effect of regulation 100 and achieve consistency with the language and effect of new regulation 102B.