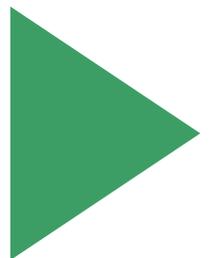


# 2. APPLICATIONS AND APPROVALS

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Provider and service approvals  
Fees  
Waivers and other applications



## ICONS LEGEND

### National Law and Regulations



Sections of the Education and Care Services National Law (National Law) or regulations from the Education and Care Services National Regulations (National Regulations).

### Offence



Offences against the National Law that attract a penalty, for example a fine.

### Sight



Authorised officers will sight documentation provided as evidence to support particular practices at the service (for example, records of attendance, enrolment records, policies and procedures, meeting minutes, safety checklists, newsletters, photos, collections of children's work and documentation of child assessments or evaluations).

### Centre-based service



An education and care service other than a family day care service which includes most long day care, preschool and outside school hours care services that are delivered at a centre.

### Family day care service



An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences.

### Observe



Authorised officers will observe what children, families, educators, co-ordinators and staff members are doing (for example, engaging in caring, friendly and respectful interactions).

### State icons



Information that is specific to a state or territory.

### Birth to three



Children birth to three years of age.

### School age children



Includes children attending school in the year before grade 1, and above.

### Discuss



Authorised officers will discuss why and how particular practices occur at the service, with the approved provider, nominated supervisor, educators, co-ordinators, family day care educators, assistants or staff members.

# APPLICATIONS AND APPROVALS

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# PROVIDER AND SERVICE APPROVALS

There are two main approval processes:

- **Provider approval** – a person may apply to obtain a provider approval, which is ongoing and recognised nationally. A person who has applied for a provider approval may also apply for a service approval to operate one or more services.
- **Service approval** – each service operated by an approved provider requires service approval. Service approvals relate to the individual site/premises and the type of care provided.

This section explains how applications are made and processed.

# 1. PROVIDER APPROVAL



## National Law

Section 103

A person must have provider approval to operate an education and care service under the National Law and Regulations.

Regulatory authorities are responsible for assessing and determining provider approval applications.

## 1.1 APPLICATION FOR PROVIDER APPROVAL



## National Law

Sections 10, 11



An individual, body corporate, eligible association, partnership or prescribed entity may apply to be an approved provider. See the [Glossary](#) for the meaning of these terms.

The application must include all information listed in the National Regulations and payment of the set fee. See [Application checklists – Tables I, II](#) and [Fees](#).

### **Applications by individuals**

- The application must be sent to the regulatory authority in the state or territory where the applicant/s live.

### **Applications by non-individuals**

- The application must be sent to the regulatory authority in the state or territory where the applicant's principal office is located (or where any of the applicants' principal offices are located if there is more than one).

The prescribed information must be included for each person with management or control of the service.

A person with management or control is:

- If the provider is a body corporate – an officer of the body corporate within the meaning of the *Corporations Act 2001* (see the [Glossary](#)) who is responsible for managing the delivery of the education and care service
- If the provider is an eligible association – each member of the executive committee who has responsibility for managing the delivery of the education and care service
- If the provider is a partnership – each partner who has responsibility for managing the delivery of the education and care service
- In any other case, each person who has the responsibility for managing the delivery of the education and care service.

Each entity is jointly and severally responsible for complying with the National Law and Regulations. Regulatory authorities may assess the risk associated with joint applicants when determining applications for approvals.

**Note:** A trust is not a legal entity and therefore cannot hold property or enter into contractual arrangements. For example, a trust cannot hold a provider approval. A trustee can apply for and hold a provider approval, as an individual or body corporate.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

The National Regulations do not specify what type of documentation is required as proof of identity when applying, and do not require applicants to submit 100 points of identity or certified copies of their documentation. The regulatory authority may request certified copies if it is concerned about the authenticity of documents included in an application.

### ***Incomplete applications***

The timeframe for processing an application does not begin until an application is 'valid', meaning complete with all prescribed information.

If an application does not include all prescribed information the regulatory authority may treat the application as invalid and either request missing information be provided within a set timeframe, or close the invalid application.

The National Law does not specify how much time applicants have to provide this information once requested by a regulatory authority. Regulatory authorities will set timeframes taking into consideration:

- the amount and complexity of the information requested
- the applicant's capacity to provide information in that timeframe
- whether a timeframe applies to when the applicant must submit the application.

The regulatory authorities must keep records of incomplete applications. The ***State Records Act 1998*** (NSW) applies to all jurisdictions for the purposes of the National Law and Regulations except to the extent that the National Law applies to a regulatory authority and the records of a regulatory authority (section 265).

Generally, the regulatory authority will not complete applications on behalf of applicants using the information held on file as this information could be out of date. Procedural fairness issues could arise if information is taken into account without the knowledge of the applicant.



## **National Law**

Sections 14–15

### **Timeframe for assessing an application**

The regulatory authority must make a decision within 60 calendar days of receiving a complete application.

If more information is requested, the time taken to provide it is not included in the 60-day period. If the applicant agrees, the 60-day period (not including any time taken to provide additional information) may be extended by up to 30 calendar days.

If a decision is not made within 60 calendar days, the application is taken to be refused.

The regulatory authority must give the applicant written notice of its decision and the supporting reasons, within seven (7) calendar days of making the decision.



## National Law

Sections 15, 16

### **Calculating time**

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

When calculating the timeframe, the day the application is received is excluded. If the timeframe is expressed in the legislation in terms of a number of days, the last day of that timeframe is also excluded. 'Day' means calendar day. For example, a regulatory authority must make a decision on a provider approval application within 60 days after the application is received (see section 15). If the regulatory authority receives the application on 1 March, the 60-day timeframe commences on 2 March and runs until the end of 1 May. 1 March is excluded from the calculation, and 30 April, the 60th day, is also excluded.

If the last day of the timeframe falls on a non-business day, the next business day will be the last day. Using the example above, if 1 May is a Saturday, Sunday or public holiday, the regulatory authority's decision will be due the first working day after 1 May.

## 1.2 CONSIDERING AN APPLICATION FOR FITNESS AND PROPRIETY

When reviewing the application, the regulatory authority will consider:

- if the applicant is a fit and proper person to provide an education and care service
- the applicant's history of compliance or criminal history
- whether the applicant is bankrupt or other financial or medical matters which may limit their capacity to meet their obligations under the National Law.

There may be other circumstances in which a person is considered not to be fit and proper.

### ***Is the applicant a fit and proper person?***

Provider approval will not be granted unless the regulatory authority is satisfied the applicant, and/or each person with management and control, is fit and proper to provide an education and care service.

The head of a government department administering an education law is taken to be a fit and proper person.

The regulatory authority may ask the applicant for more information or make enquiries to assess whether they are fit and proper. This may be in relation to their history of compliance, criminal history or any other relevant matter. If more information is requested, the time taken to provide it is not included in the period for determining the application.

Regulatory authorities may require applicants to attend an information session or interview, or undertake an NQF knowledge test.

If the regulatory authority obtains information from a source other than from the applicant and is considering making a decision that will adversely affect the applicant, principles of natural justice must be taken into account. Decisions that



## National Law

Section 12



## National Law

Sections 14–15

adversely affect a person include refusing to grant provider approval or granting provider approval subject to conditions. For more information (see [\*Good Regulatory Practice – Good decision-making\*](#)).

It is the applicant's responsibility to identify each individual who will be in management or control (see [\*Glossary\*](#)).

For companies, this will generally include directors, and for committees and associations it will usually include executive members. Generally, a person with management or control is someone:

- who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or
- has the capacity to affect significantly the entity's financial standing.

Therefore, while a person – such as a centre manager or nominated supervisor – may have 'day to day charge' of a service, they may not be a person with management or control of a provider.



## National Law

### Section 13

### **History of compliance**

When determining whether a person is fit and proper, the regulatory authority must consider:

- the person's history of compliance with any current or former education and care services law, children's services law or education law
- any decision made under a former education and care services law, a children's services law or an education law of any state or territory to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification issued to the person under that law.

If a person has been served with an infringement notice for an offence under the National Law and has paid the penalty, the offence cannot be taken into account when determining the person's fitness and propriety (section 291).

The National Law does not specify a time period in relation to a person's compliance history. When considering a person's history of compliance the regulatory authority may consider:

- the severity of any issues and how recently they occurred
- the person's willingness to comply, for example, whether escalation was required to resolve compliance issues. See also [\*Good Regulatory Practice – Good decision-making\*](#).

### **Criminal history**

Regulatory authorities must consider the person's criminal history when determining whether they are fit and proper to be involved in providing an education and care service. Because working with children/vulnerable people legislation differs between states and territories, the National Law includes two options for considering a person's criminal history, set out below.



## National Law & Regulations

### Section 13 Regulation 16

## Matters the regulatory authority must consider about criminal history

### Option 1

The regulatory authority must consider the below matters, to the extent that they may affect the person's suitability to provide an education and care service:

- any matters included in a criminal history check, and
- if there is a working with children law:
  - whether the person has a current working with children check or card, or
  - whether the person is a registered teacher under an education law in their state or territory.

### Option 2

The regulatory authority must consider the person's working with vulnerable people check.

In some instances, a check may show information about a person's criminal history that is not relevant to whether they are fit and proper. Regulatory authorities must not take into account irrelevant information which may lead to an unlawful decision (see *Good Regulatory Practice – Good decision-making*).

TAS

Working with children check legislation applies in all states and territories except for Tasmania. In Tasmania, registration to work with vulnerable people is required. See the table at the end of this section for details of screening units in each state and territory.



## National Law

### Section 13

### **Financial matters**

Regulatory authorities must consider whether the applicant is bankrupt or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors. In the case of a body corporate, the regulatory authority must consider whether the applicant is insolvent under administration or an externally-administered body corporate.

Regulatory authorities may also consider whether the applicant's financial circumstances may limit their capacity to meet their obligations under the National Law.

### **Applicant is bankrupt or insolvent**

If the applicant is bankrupt or insolvent according to their declaration, the regulatory authority may consider:

- the period when bankruptcy is discharged
- past circumstances and changes of circumstances
- legal advice about whether the regulatory authority is bound by other law.

The National Personal Insolvency Index, maintained by the Australian Financial Security Authority (Australian Government), may have information about an applicant's financial position and can be accessed at: [www.afsa.gov.au](http://www.afsa.gov.au).



## National Law

### Section 13

### **Concerns about financial circumstances**

Where there are concerns about an applicant's financial circumstances, raised through the initial application, notification or other sources of information, the regulatory authority may ask an applicant to provide more information about their financial capacity, to determine the likelihood that they will be able to sustain ongoing operation of a service. For example, information about:

- liquidity
- cash flow
- asset sustainability
- capital structure and debt protection
- operating efficiency.

Regulatory authorities may make inquiries for more information to determine if a person is fit and proper. This includes seeking advice from an external expert, for example about the financial viability of an applicant to help analyse the applicant's financial capacity.

Although there is a duty of confidentiality (section 273), a regulatory authority can disclose information when assessing a provider approval application.

### **Medical conditions**

The regulatory authority may consider whether the person has a medical condition that may limit their capacity to meet their obligations under the National Law.

Applicants are not required to provide medical information in their initial application. However, the regulatory authority can ask for information, such as an assessment by a medical practitioner if concerned about the applicant's capacity. The regulatory authority will detail why the assessment is needed and give a description of the role, to guide the person doing the assessment. The regulatory authority may require a written report.

### **Management capability**

The regulatory authority may consider whether the person has the management capability to operate an education and care service in accordance with the National Law and National Regulations.

Evidence of management capability does not need to relate only to education and care services, or qualifications in education and care. Evidence of management capability may be related to any previous expertise, experience or qualification in a leadership, governance, administrative or management role in:

- a business, or
- a not-for-profit organisation, or
- a sporting or social club, or
- a community-based committee.

This may include experience gained as a volunteer.

## **Actions taken under Family Assistance Law**

In assessing an applicant's fitness and propriety, the regulatory authority may also take into account certain actions taken under Commonwealth Family Assistance Law, including sanctions and suspensions.



### **National Law**

Section 19

## **Conditions on provider approval**

A condition is a requirement that the person holding the approval must comply with to avoid committing an offence under the National Law.

A provider approval is granted subject to the condition that the approved provider complies with the National Law. It may also be granted subject to other conditions imposed. For example, if there are concerns about an applicant's management capacity, the regulatory authority may limit the number of services or size of services the applicant can operate.

A condition applies to the provider unless the condition expressly provides otherwise.

See [Monitoring, Compliance and Enforcement – Conditions](#) for more information about using conditions on a provider approval.

## **Determining an application**

The regulatory authority must give the applicant written notice of its decision and the supporting reasons, within seven (7) calendar days of making the decision (see [Timeframe for assessing an application](#), above).



### **National Law**

Section 16

## **Granting provider approval**

If granted, the regulatory authority must give the approved provider a copy of the provider approval, stating:

- the name of the approved provider
- if the approved provider is not an individual, the address of the principal office of the provider
- any conditions to which the approval is subject (see [Conditions on provider approval](#), above)
- the date the provider approval was granted
- the provider approval number.

The National Law does not specify how much time the regulatory authority has to give the approved provider a copy of the provider approval but it must be done as soon as possible.

## **Refusing to grant provider approval**

The regulatory authority may refuse to grant provider approval if it is not satisfied that the grounds for granting provider approval are met and the applicant is fit and proper (see [Considering an application](#), above).



### **National Law**

Section 15



## National Law

Section 190

### **Appeals**

A decision to refuse to grant a provider approval, or to grant provider approval subject to conditions, is a reviewable decision under the National Law (see [Reviews](#)).



## National Law & Regulations

Sections 266, 270  
Regulation 229

### **After an application has been determined**

#### ***Publication on the register of approved providers***

ACECQA must keep and publish a register of approved providers which includes the information set out below.

The regulatory authority may publish the name of the approved provider.

#### **Information on the register of approved providers**

The name of the approved provider

The postal address of the approved provider

Any conditions on the approval

The date the provider approval was granted

The provider approval number

The service approval numbers of all education and care services provided by the approved provider.



## National Law

Sections 17–18

### ***Duration and effect of provider approval***

A provider approval authorises the holder to operate an approved education and care service and an associated children’s service. It is valid nationally and is ongoing unless cancelled or suspended by the regulatory authority, or surrendered by the approved provider.

In Western Australia, a provider approval granted to an individual is also ongoing until the individual dies.

WA



## National Law

Section 21

### ***Reassessing fitness and propriety***

The regulatory authority may reassess an approved provider’s fitness and propriety at any time. This includes assessment of a person with management or control. If a person is no longer a fit and proper person, the provider approval may be suspended or cancelled (see [Monitoring, Compliance and Enforcement](#)).

## 1.3 AMENDING PROVIDER APPROVAL ON APPLICATION



### National Law & Regulations

Section 22  
Regulation 17

An approved provider may apply to the regulatory authority for an amendment to their provider approval. The application must be in writing and include:

- the approved provider's full name and provider approval number
- the name and contact details for the application
- details of the amendment applied for
- sufficient information or documentation to support the application for amendment.

The National Law and Regulations do not specify the type or level of information needed to support an application for an amendment, however information must be sufficient for the regulatory authority to make a decision.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

#### ***Incomplete applications***

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* in *Application for provider approval* above.

#### **Timeframe for assessing an application**

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

#### ***Calculating time***

The National Law sets out how timeframes are calculated at schedule 1, clause 31. An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in *Application for provider approval*.



## National Law

Section 42

### Considering an application

The regulatory authority may only amend a provider approval after consulting with the regulatory authority of each jurisdiction where the provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.



## National Law

Section 22

### Determining an application

Once the regulatory authority has received a complete application, it must decide to:

- amend the provider approval in the way that was applied for; or
- amend the provider approval in another way, with the applicant's written approval; or
- refuse the amendment of the provider approval.

An amendment may include a change to a condition of the provider approval or introduce a new condition.



## National Law

Section 190

### Appeals

A decision to refuse to amend a provider approval is a reviewable decision under the National Law. Refer to [Reviews](#).



## National Law

Section 24

### After approval has been amended

If the regulatory authority amends the approval, it must give the approved provider a copy. The regulatory authority must also make any necessary amendments to any service approval held by the approved provider and give the approved provider a copy.

The regulatory authority will record these amendments in the National Quality Agenda IT System. ACECQA will publish the national registers on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

## 1.4 AMENDING PROVIDER APPROVAL WITHOUT APPLICATION



### National Law

Sections 23, 42

The regulatory authority may amend a provider approval at any time, without application from the approved provider.

Amendment may include varying a condition on the provider approval or imposing a new condition.

The regulatory authority may only amend a provider approval after consulting with the regulatory authority of each jurisdiction where the provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.

### After approval has been amended

The regulatory authority must give the approved provider written notice of the amendment.

Amendment without application takes effect 14 calendar days after the regulatory authority notifies the approved provider of the amendment, or at the end of another period specified by the regulatory authority.

The regulatory authority must give the approved provider a copy of the amended provider approval. It must also make any necessary amendments to any service approval held by the approved provider and give the approved provider a copy.

The regulatory authority will record these amendments in the National Quality Agenda IT System. ACECQA will publish the national registers on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).



### National Law

Section 190

### Appeals

A decision to amend a provider approval is a reviewable decision under the National Law (see [Reviews](#)).

## 1.5 DETERMINING AN APPLICATION FOR PROVIDER APPROVAL IN CASE OF DEATH OR INCAPACITY OF APPROVED PROVIDER



### National Law

Sections 39–40

If an approved provider can no longer fulfil their role due to death or incapacity, a nominated executor, legal personal representative or guardian can be appointed, subject to meeting the requirements, as the approved provider.

The regulatory authority may receive an application from the executor for a provider approval.

If an approved provider becomes incapacitated, their legal personal representative or guardian may apply to the regulatory authority for a provider approval.

A nominated supervisor or a person in day-to-day charge of an education and care service operated by the approved provider must notify the regulatory authority within seven (7) calendar days if the approved provider dies.

The executor of the approved provider's estate may continue to operate any approved service for the relevant period, if at least one nominated supervisor continues to manage the day-to-day operation of the service. 'Relevant period' means 30 calendar days after the death of the approved provider or, if the executor applies for a provider approval, until the regulatory authority determines the application.



In Western Australia, an executor includes a person entitled to a grant of letters of administration to the intestate estate of an approved provider, in addition to a person who has been granted letters of administration or probate or has been named executor in the approved provider's will.



### National Law

Sections 39–40



### How does an executor, legal representative or guardian apply?

An application must be made in writing and include payment of the set fee.

An application from an executor must be made within 30 calendar days of the provider's death. The National Regulations specify information that must be included in an application (see *Application checklists – Tables III, IV, V, VI*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

Because a provider approval granted to an executor, legal personal representative or guardian only relates to the service formerly operated by the deceased or incapacitated approved provider, the person cannot apply for any additional service approvals, or receive a service approval transferred from another approved provider.

### **Incomplete applications**

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to [Incomplete applications](#) within [Application for provider approval](#) above.



## National Law

Section 41

### Considering an application

The regulatory authority must consider whether the applicant is a fit and proper person to be involved in the provision of an education and care service. See the requirements set out above at [Considering an application for fitness and propriety](#). The provider approval will not be granted to an executor, personal legal representative or guardian; unless they are fit and proper.



## National Law

Section 41

### Determining an application

The regulatory authority may grant the provider approval, grant the approval subject to conditions, or refuse to grant the provider approval. Approval may be granted for a period of not more than six months, and may be extended or further extended for periods of not more than six months at the regulatory authority's discretion.

If granted, it is only in relation to the services that were operated by the approved provider where the applicant is the executor, personal legal representative or guardian.



## National Law

Section 190

### Appeals

A decision to refuse to grant a provider approval is a reviewable decision under the National Law (see [Reviews](#), below).



## National Law

Sections 20, 30

### After approval has been granted

The regulatory authority must give the approved provider a copy of the provider approval.

A service approval is not suspended during any period that a person is approved to manage or control the education and care service in the event that the approved provider dies or becomes incapacitated.

ACECQA will update the register of providers to reflect any amendments to a provider approval as necessary.

## 1.6 VOLUNTARY SUSPENSION OF PROVIDER APPROVAL



### National Law & Regulations

Section 37  
Regulation 19

WA

An approved provider can apply to the regulatory authority to voluntarily suspend – put ‘on hold’ their provider approval – for up to 12 months.

During that time the person must not operate an education and care service.

The approved provider must apply for voluntary suspension in writing.

The National Regulations specify information that must be included in an application to suspend provider approval (see *Application checklists – Table VII*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

### ***Incomplete applications***

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* within *Application for provider approval* above.

### **Notification to parents**

An approved provider must notify parents of children enrolled at their services of their intention to apply for voluntary suspension of a provider approval at least 14 calendar days before making the application.

### **Timeframes for assessing an application**

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

### ***Calculating time***

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in *Application for provider approval*.



## National Law

Section 42

### Considering an application

The regulatory authority can only suspend a provider approval after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the regulatory authority's decision.



## National Law

Section 37

### Determining an application

If the regulatory authority grants an application for voluntary suspension of a provider approval, it may agree on the date the suspension takes effect with the approved provider.

The regulatory authority must give written notice of its decision and, if granted, advise the period of suspension.



## National Law

Section 37

### After approval has been suspended

The effect of suspension is that all service approvals held by the provider are suspended for the same period, unless the service approval is transferred, or a person is approved to manage or control an education and care service in the event the provider dies or becomes incapacitated.

The suspension remains in force for the period specified in the written notice of decision.

The approved provider may apply to have the suspension revoked before the end of the suspension period. If the regulatory authority grants the application to revoke the suspension, they may agree to a date for the suspension to cease with the approved provider.

## 1.7 SURRENDER OF PROVIDER APPROVAL



### National Law

Section 38

An approved provider can surrender their provider approval by giving written notice to the regulatory authority. Once surrendered, the person is not taken to be an approved provider and must not operate a service.

Generally, if an approved provider changes its legal status, for example, where a sole trader becomes a body corporate, they will need to apply for a new provider approval.

The notice to the regulatory authority must specify the date the surrender is intended to take effect. This date must be after the notice is given to the regulatory authority and at least 14 calendar days after parents of children enrolled at any services are notified.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

### Notification to parents

An approved provider must notify parents of children enrolled at any of their services of their intention to surrender their provider approval. Parents must be notified at least 14 calendar days before the date of surrender is to take effect.

### After surrender of provider approval

If a provider approval is surrendered, the provider approval and any service approval held by the provider are cancelled on the date specified in the notice.

## 1.8 EXERCISE OF POWERS BY ANOTHER REGULATORY AUTHORITY



### National Law

Section 42

The regulatory authority of another jurisdiction may exercise all its powers and functions in relation to a provider approval, if the approved provider operates an education and care service in its jurisdiction.

The regulatory authority may only amend, suspend or cancel a provider approval after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the provider approval. Failure to consult other regulatory authorities does not affect the validity of the decision made.

Cancellation or suspension of a provider approval in one state or territory applies to all states and territories.

## 1.9 OFFENCE RELATED TO PROVIDER APPROVAL



### National Law

Section 103

A person must not provide an education and care service unless the person is an approved provider of that service.

## 1.10 ADDITIONAL INFORMATION

The following list outlines the organisations responsible for working with children/vulnerable people check screenings in each state and territory other than Tasmania and for working with vulnerable people registration in Tasmania.

State and territory screening units		
Australian Capital Territory	ACT Chief Minister, Treasury and Economic Development Directorate	<a href="https://accesscanberra.act.gov.au">accesscanberra.act.gov.au</a>
New South Wales	New South Wales Office of the Children's Guardian	<a href="https://kidsguardian.nsw.gov.au">kidsguardian.nsw.gov.au</a>
Northern Territory	Northern Territory Government	<a href="https://nt.gov.au/emergency/community-safety">nt.gov.au/emergency/community-safety</a>
Queensland	Queensland Blue Card Services	<a href="https://bluecard.qld.gov.au">bluecard.qld.gov.au</a>
South Australia	South Australia Screening Unit of the Department for Communities and Social Inclusion (DCSI)	<a href="https://screening.dcsi.sa.gov.au">screening.dcsi.sa.gov.au</a>
Tasmania	Tasmania Department of Justice	<a href="https://www.justice.tas.gov.au/working_with_children">www.justice.tas.gov.au/working_with_children</a>
Victoria	Victoria Justice and Regulation	<a href="https://workingwithchildren.vic.gov.au">workingwithchildren.vic.gov.au</a>
Western Australia	Western Australia Department of Communities	<a href="https://workingwithchildren.wa.gov.au">workingwithchildren.wa.gov.au</a>

## 2. SERVICE APPROVAL



### National Law

Section 103

A person must have service approval to operate an education and care service under the National Law and Regulations. Regulatory authorities are responsible for assessing and determining applications for service approval.

This section sets out how applications are made and processed.

### 2.1 WHAT IS AN EDUCATION AND CARE SERVICE?



### National Law & Regulations

Section 5  
Regulation 5

An education and care service is any service providing or intended to provide education and care on a regular basis to children under 13 years of age.

Services that are excluded by the National Law and Regulations and are not in scope of the National Quality Framework are listed below.

#### Services out of scope of the National Quality Framework

A school providing full-time education to children, including children in the year before Grade 1, but not including a preschool program delivered in a school or a preschool that is registered as a school (as these are within scope)

A preschool program delivered in a school if the program is delivered in a class or classes where a full-time education program is also being delivered to school children and the program is delivered to fewer than six children in the school (a composite class)

A personal arrangement

A service principally conducted to provide instruction in a particular activity (for example, a language class or ballet class)

A service providing education and care to patients in a hospital or patients of a medical or therapeutic care service

Care provided under a child protection law of a participating jurisdiction

Disability services defined under state or territory law, and early childhood intervention services for children with additional needs

Education and care in a child's home

Except in WA, education and care in a residence, other than as part of a family day care service

Primarily ad hoc or casual education and care (commonly referred to as occasional care)

Education and care provided by a hotel or resort to children of short-term guests at the hotel or resort

Education and care that is provided on an ad hoc basis to children of a guest, visitor or patron where the person who is responsible for the children is readily available at all times

Education and care where it is primarily provided or shared by parents or family members

Education and care provided at a secondary school to a child of a student attending the school, where the parent retains responsibility for the child

Mobile services

Services that provide education and care for no more than four weeks per calendar year during school holidays
Transition to school programs provided by a school to orient children to that school
Services that on 30 June 2018 were funded under the Budget Based Funded program and were not approved under family assistance law
Services that on 30 June 2018 were funded under the Indigenous Advancement Strategy but were not approved under family assistance law nor regulated under the National Quality Framework
Playschools licensed in the Australian Capital Territory
Stand-alone services in Queensland
Playcentres in South Australia and New South Wales
Services licensed as Centre-based Class 4 or 5 services under the Child Care Act 2001 in Tasmania
Licensed limited hours or short-term services in Queensland or Victoria
Government-funded services under the <i>Children and Community Services Act 2004</i> of Western Australia.

Education and care services can include services that educate and care for children under 13 years of age and also provide services for children over 13 years of age.

### ***A transport service***

Children are sometimes transported as part of participating in education and care. Whether this transport is part of the education and care service will depend on the circumstances. For example, where children are transported on an excursion as part of the service, the National Law and Regulations would apply.

Where children leave the premises under transport that is not part of the education and care service, the approved provider must ensure children leave the premises in accordance with regulation 99.

Approved providers should also consider other laws and rules that might apply to transport services in their state or territory, such as road safety, driver training and any working with children check requirements.

## 2.2 APPLICATION FOR SERVICE APPROVAL



### National Law

Sections 43, 287

An approved provider may apply to the regulatory authority for a service approval, provided they operate (or will operate) the service and are responsible for the management of staff members and the nominated supervisor for the service.

A person who has applied for a provider approval may also apply for a service approval. However, the service approval can only be granted if the provider approval is granted.

More than one entity may hold a provider or service approval. Each entity is jointly and severally responsible for complying with the National Law and Regulations. Regulatory authorities will assess the risk associated with joint applicants when determining applications for approvals.



### National Law & Regulations

Sections 44, 161  
Regulations 24–26

#### How does an approved provider apply?

An application must be made in writing to the regulatory authority where the service is to be located and must include payment of the fee (see [Fees](#)).

The National Regulations specify information that must be included in an application for service approval (see [Application checklists – Tables VIII, IX](#)).

#### Consent to be a nominated supervisor

The approved provider must nominate one or more individuals to be nominated supervisors for the service.

The application for service approval must include written consent from each person nominated acknowledging that they consent to performing the role of nominated supervisor for the service. The only exception is if an approved provider is an individual and nominates themselves to be a nominated supervisor, in which case they do not need to provide written consent. Written consent is required in all other cases.

A service must have at least one nominated supervisor. There is no maximum number of nominated supervisors that may be appointed at one time for a service.

See [Operational Requirements – Staffing Arrangements](#) for more information on persons in day-to-day charge and nominated supervisors.

#### Applications for service approval including an associated children’s service

If an approved provider wants to operate a service covered by the National Law on the same premises as a service regulated under a different state or territory law (an associated children’s service), they can apply for service approval for both services under the National Law. For example, a provider may deliver a long day care service (approved education and care service) and an occasional care service (an associated children’s service) from the same premises.

Separate approvals are not needed but the associated children’s service must comply with the relevant state or territory children’s services law. See the [Glossary](#) for relevant state and territory children’s services laws.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).



### National Law

Sections 44, 102



## National Law

Sections 50A, 103A

### ***Applications for service approval including request for approval of a family day care venue***

An approved provider may operate a family day care service at a venue only in exceptional circumstances and if approved by the regulatory authority.

An approved provider may apply to have a place approved as a family day care venue by the regulatory authority as part of an application for a new service approval. If the approved provider already holds a service approval, they may apply by seeking an amendment of the service approval (section 54(8A)).

Examples of exceptional circumstances that a regulatory authority may consider in approving a venue include:

- where the proposed venue is located in a rural or remote area, and the location or characteristics of residences are not suited to family day care
- other locations where potential residences may be unsuitable
- for a temporary period (generally up to 12 months), where a residence is unavailable due to essential major repairs or the effects of natural disaster
- where care is provided for a small group of vulnerable or disadvantaged children and a suitable residence is not available. What is considered vulnerable and disadvantaged would depend on the circumstances of each case.

In addition to considering whether exceptional circumstances exist, regulatory authorities must have regard to the suitability of a proposed venue when assessing a new service approval application, and may have regard to suitability when assessing an amendment of a service approval. Approved providers support this process by providing an assessment of the proposed venue in their application. See [\*\*\*Assessments of family day care residences and venues\*\*\*](#).

It is an offence for an approved provider to provide education and care to children from a place that is not an approved family day care venue or residence. This offence attracts a penalty of \$20,000 in the case of an individual, or \$100,000 in any other case.

WA

Approved providers in Western Australia that already operate a service from a venue have until 1 April 2019 to submit a complete application to the regulatory authority for approval of the existing venue. This can be done as an application for an amendment of the service approval. The regulatory authority will make a decision on the application within six months of receiving the application (section 326).

An existing venue (that was approved by a provider before 1 October 2018) will cease to be approved if it is not approved by the regulatory authority, or the approved provider does not apply for venue approval by 1 April 2019.

A declared approved family day care venue continues to be an approved venue after 1 October 2018 (section 327).



## National Law

Section 265

### ***Incomplete applications***

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* within *Application for provider approval* above.



## National Law

Sections 45, 48

### **Timeframe for assessing an application**

A decision must be made within 90 calendar days of the regulatory authority receiving a complete application. This period may be extended with the applicant's agreement. There is no limit on how long this may be if the applicant agrees.

If more information is requested, the time taken to provide it is not included in the 90-day period.

If a decision is not made within 90 calendar days (including any extension), it is taken to be refused.

The regulatory authority must give the applicant written notice of its decision, including the reasons, within seven (7) calendar days after it makes the decision.



## National Law

Section 50

### ***Calculating time***

For more information refer to *Calculating time* in *Application for provider approval*.

### **Considering an application**

#### ***Conducting enquiries and investigations***

When considering an application for service approval, the regulatory authority may:

- undertake inquiries and investigations, including in relation to the previous licensing, accreditation or registration of the service under a former education and care service, children's services or education law
- inspect the policies and procedures for the service
- inspect the service premises and enter the service premises at any reasonable time.

Regulatory authorities will generally inspect a proposed service premises as part of the decision-making process wherever possible for an application for a centre-based service approval.

Where an inspection is not possible, the regulatory authority can use other methods such as inspection of certified plans or topographical evidence, video or photographic evidence. The regulatory authority may also delegate a visit by a third party, as permitted under section 262 (see *Monitoring, Compliance and Enforcement*).



## National Law

Section 46



## National Law & Regulations

Section 47  
Regulation 27

### **Matters the regulatory authority must consider**

The regulatory authority must consider the below matters when determining an application for service approval.

#### **Matters the regulatory authority must consider for a service approval**

The National Quality Framework

Except for a family day care residence, the suitability of the service premises and its site and location for operating an education and care service

The adequacy of the policies and procedures for the service (see *Conducting enquiries and investigations* above)

Whether the applicant is an approved provider

Whether the nominated supervisor for the service has given their written consent

Any suspension of or conditions on the applicant's provider approval.

The regulatory authority may also consider any other matters that are relevant to the application.

Other matters the regulatory authority may consider include:

- whether the applicant's financial capacity, management ability or any other relevant matters affect their capacity to operate the service
- the applicant's history of compliance with the National Law, including in relation to any other service they operate.

For applications that include an associated children's service, the regulatory authority must consider the criteria for grant of a children's service licence under the relevant children's services law, not including the criteria for assessing the applicant's fitness and propriety.

The regulatory authority may do the following:

- Check the status (i.e. approved, suspended, cancelled) of services in other jurisdictions associated with the approved provider for information that may be relevant to their ability to operate a service in accordance with the National Law
- Request proposed budgets for the service, including wages, resources, utility costs, insurances, maintenance of service and professional development. However, it is not the regulatory authority's responsibility to provide advice to applicants about operational budgets for a service
- Request the approved provider to submit all their policies, or a sample for review. The required policies and procedures are set out in regulation 168. Additional policies and procedures required for family day care services are set out in regulation 169. If there are concerns about the adequacy of the policies, the regulatory authority may seek to review further policies and procedures for the service.

Regulatory authorities are not responsible for advising approved providers about the content of their policies and procedures. However, the regulatory authority may direct the provider to some best practice resources, such as Staying Healthy: Preventing infectious diseases in early childhood education and care services published by the National Health and Medical Research Council ([www.nhmrc.gov.au](http://www.nhmrc.gov.au)) and publications by organisations such as the Cancer Council ([www.cancer.org.au](http://www.cancer.org.au)), KidSafe ([www.kidsafe.com.au](http://www.kidsafe.com.au)), Red Nose ([www.rednose.com.au](http://www.rednose.com.au)) or a child protection agency (see [Additional information](#)).



## National Law

Section 45

### **Requiring more information to make decision on application**

The regulatory authority may ask the applicant for any information reasonably required to assess their application.

It can also ask for more information if it is not satisfied the proposed education and care service premises will be suitable because its design makes supervision difficult. In this case, the regulatory authority may ask how they intend to mitigate design issues and ensure adequate supervision at all times.

### **Conditions on service approval**

A condition is a requirement that the person holding the approval must comply with to avoid committing an offence under the National Law.

A service approval is granted subject to conditions that the approved provider must comply with, set out in the table below.

It may also be granted subject to other conditions imposed by the regulatory authority. For example, if there are concerns about the provider's ability to provide an environment safe for infants at the service, a condition may be imposed preventing the provider from providing education and care to children under 12 months of age.

A condition applies to the provider unless the condition expressly provides otherwise.

A condition of service approval does not apply to an associated children's service, unless the regulatory authority specifies otherwise. The regulatory authority may apply a condition of service approval solely to an associated children's service only if it has first consulted with the relevant children's services regulator.

Conditions may be imposed at the time the service approval is granted, or at a later time (see [Amendment of service approval](#)). See [Monitoring, Compliance and Enforcement – Conditions](#) for more information about conditions on a service approval.

### **Mandatory maximum number of family day care educators**

A condition on each family day care service approval requires there to be a limit on the number of family day care educators that may be engaged by or registered with a family day care service. The regulatory authority must set the maximum number of educators who may be engaged or registered with that service.

The regulatory authority will consider each service on a case-by-case basis, taking into consideration:



## National Law & Regulations

Section 51  
Regulations 29–32A



## National Regulations

Regulations 32A, 384

- current educator numbers
- NQS rating
- provider compliance history
- length of time the provider and the service has been in operation
- support and supervision arrangements for educators.

The regulatory authority may consult with the provider when determining appropriate maximum educator numbers for the service.

Conditions on a service approval		
Condition	Centre-based service	Family day care service
The service is operated in a way that ensures the safety, health and wellbeing of children educated and cared for by the service, and meets children's educational and developmental needs.	✓	✓
The service commences ongoing operation within six months after the approval is granted, unless the regulatory authority agrees to an extension.	✓	✓
The approved provider has: <ul style="list-style-type: none"> <li>• a current insurance policy providing adequate cover for the service against public liability, with a minimum cover of \$10 million, or</li> <li>• an insurance policy or indemnity against public liability provided for the service by a state or territory government.</li> </ul>	✓	✓
The prescribed number of persons are appointed as family day care co-ordinators to monitor and support the family day care educators engaged or registered with the service.		✓
Each family day care educator is adequately monitored and supported by a family day care co-ordinator.		✓
Each family day care educator holds public liability insurance with a minimum cover of \$10 million.		✓
The service's quality improvement plan is kept at the service premises (the principal office for family day care services).	✓	✓
The service's quality improvement plan is made available for inspection by the regulatory authority or an authorised officer.	✓	✓
The service's quality improvement plan is made available on request to parents of children enrolled, or seeking enrolment, at the service.	✓	✓
The service continues to be entitled to occupy the education and care service premises.	✓	
The number of children educated and cared for by the service at any one time does not exceed the maximum number of children specified by the service approval.	✓	
The number of family day care educators providing education and care as part of the service does not exceed the maximum number of family day care educators determined by the regulatory authority in the service approval.		✓
Each family day care residence, and any approved family day care venue of the service, are located in the jurisdiction that granted the service approval.		✓



## National Law

Section 43

### Management companies

Occasionally, an approved provider will engage a management company to help them operate their service. Management companies vary in the range of services they offer, from payroll, bookkeeping and short notice staffing solutions to a wide range of day to day management services.

The approved provider retains legal responsibility under the National Law for the service even if it engages a management company. Approved providers cannot delegate or outsource their statutory obligations, or liability, regardless of what contractual arrangement the approved provider has with the management company.

The approved provider may only apply for service approval if it (and not the management company) is or will be the operator of the service, and is or will be responsible for the management of the staff members and nominated supervisor.

### ***Requiring more information to make decision on application***

Regulatory authorities can seek more information from the approved provider to determine a service approval application (section 51). For example, the regulatory authority may request details of the management company's name, structure and experience in operating approved education and care services.

Where a management company is or will be involved in running the service, the regulatory authority may make enquiries with the approved provider, by interview or otherwise, to ensure that the approved provider:

- will be responsible for management of staff members and the nominated supervisor
- is fully aware of their responsibilities under the National Law, and understands that they cannot 'contract out' those obligations
- has a contingency plan in place should the management company fail to meet expectations or the contract is terminated
- ensure that services provided by the management company which directly impact the day to day operating of the education and care service are provided in a way that is compliant with the National Law, and does not pose a risk to children or the ability of the provider to meet its obligations under the National Law.

The regulatory authority may impose a condition on a service approval (section 51(5)). For example, a condition to require the approved provider to notify the regulatory authority of a change in the management company, or a significant change in the scope of services supplied by the management company, or that the approved provider ensures that officers engaged through the management company are fit and proper persons.

Similarly, where the regulatory authority becomes aware of a management company after granting a service approval, the approval may be amended and a condition imposed where appropriate (section 55(2)).



## National Law

Sections 51, 55



## National Law

Section 52

### Determining an application

If the regulatory authority grants a service approval, it must provide a copy to the approved provider including the information below.

The service approval must be displayed so that it is visible from the main entrance of the approved service.

#### Information on a service approval

The name of the service

The location of the service for centre-based services, or the location of the principal office and any approved family day care venues

Any conditions on the service approval

The date service approval was granted

The name of the approved provider

Except for family day care services, the maximum number of children who can be educated and cared by the service at any one time

Details of any service waiver or temporary waiver that applies to the service.

The National Law does not specify how much time the regulatory authority has to give the approved provider a copy of the service approval. This means it must be done as soon as possible after deciding to grant the approval (Schedule 1, clause 31).



## National Law

Section 48

If an application for service approval includes an associated children's service that does not meet state or territory-based licensing requirements for children's services, the regulatory authority may grant a service approval only for the education and care service. The regulatory authority cannot grant a service approval that is only for an associated children's service.



## National Law & Regulations

Section 49  
Regulation 28

### Refusing to grant service approval

The regulatory authority cannot grant a service approval if the applicant does not have provider approval, or if the regulatory authority is satisfied the operation of the service would constitute an unacceptable risk to the safety, health or wellbeing of children.

The regulatory authority may refuse to grant a service approval if it is:

- not satisfied that the grounds for granting approval are met
- not satisfied the applicant can operate the service in a way that meets the National Law and Regulations, including the National Quality Standard
- not satisfied the applicant is entitled to occupy the proposed service premises (for centre-based services)
- not satisfied the applicant is capable of assessing family day care venues or residences or monitoring family day care educators (for family day care)



## Family Day Care

- not satisfied the provider can maintain the premises or equipment or provide staff as required by the National Law. This may be due to the provider's financial capacity, management ability or another reason.

In determining capacity to operate a family day care service, there is a range of approaches that regulatory authorities may use, including:

- assessing the adequacy of an applicant's policies and procedures
- holding information sessions for providers who wish to operate family day care services
- conducting interviews with prospective family day care service providers to determine their understanding of policies, the National Quality Standard and other requirements of the National Law and Regulations. The questions asked should be questions that a person operating a service should reasonably be able to understand and answer.

If the regulatory authority is not satisfied of the applicant's capacity to operate a family day care service, it may refuse to grant the service approval, or grant approval subject to conditions (see [Conditions on service approval](#)).

All decision-making should be carried out in accordance with the principles of administrative decision-making (see [Good Regulatory Practice](#)).

### Giving notice of the determination

A decision must be made within 90 calendar days. The regulatory authority must give the applicant written notice of its decision, and the supporting reasons, within seven (7) calendar days of making the decision (see [Timeframe for assessing an application](#), above).

### Appeals

A decision to refuse to grant a service approval, or to grant service approval subject to conditions, is a reviewable decision under the National Law (see [Reviews](#)).



## National Law

Section 190



## National Law & Regulations

Sections 267, 270  
Regulation 230

## After an application has been determined

### *Publication on the register of approved services*

Regulatory authorities must keep a register of approved education and care services operating in their jurisdiction including the information set out below.

Information on the register of approved services
The name of the service
The name of the approved provider for the service
Except in the case of a family day care service, the address of each education and care service premises
In the case of an approved family day care service, the address of the principal office of the service
The rating levels for each service
The contact details for the service
In relation to a centre-based service, the hours of operation of the service
Any conditions to which the service approval is subject
In relation to a centre-based service, the approved number of places
The date the approved provider was granted service approval
The service approval number
The provider approval number.

The regulatory authority and ACECQA may publish the rating levels of the service, the name of the service, the address of the education and care service (except for family day care services) and, in the case of a family day care service, the address of the principal office.

This published information must not identify or lead to the identification of an individual, other than:

- an approved provider
- a person who is being prosecuted for an offence under the National Law.

The address of the principal office of a family day care service should not be published if it is at a private residence. In such cases, the register will not include an address for the service. ACECQA will publish the register of approved services, and regulatory authorities will meet their obligation to publish by linking to the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

### Duration and effect of service approval

A service approval authorises the approved provider to operate the education and care service.

A service approval is ongoing unless cancelled or suspended by the regulatory authority, or surrendered or voluntarily suspended by the approved provider. A service approval can also be limited by a condition applied by the regulatory authority.

## 2.3 AMENDING SERVICE APPROVAL ON APPLICATION



### National Law & Regulations

Section 54  
Regulation 34



An approved provider may apply to the regulatory authority for an amendment of a service approval.

An application must be made in writing and include payment of the fee (see [Fees](#)).

An application must include:

- the name of the service
- the service approval number
- the name and contact details for the contact person for the application
- the details of the amendment applied for, and sufficient information or documentation to support the application.

If the application includes a request for an approval of a family day care venue, the application must also include:

- the location and street address of the venue
- a statement that the applicant has the right to occupy and use the place as a venue and any document evidencing this (e.g. a lease of the premises)
- an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children is protected.

The regulatory authority may ask the approved provider for further information reasonably required to assess the application.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).



### National Regulations

Regulations 174–175

Approved providers are not required to submit a service approval amendment to change the location of the family day care principal office. However, they are required to notify the regulatory authority at least 14 days before the change. Regulatory authorities should update the service approval when they receive a notification (see [Operational Requirements – Governance and leadership](#) and [Applications and Approvals – Amendment of service approval without application](#)).

The approved provider may seek to amend the service approval when requesting approval of a place as a family day care venue. The regulatory authority may approve the application if it considers there are exceptional circumstances and the approved provider has included an assessment of the proposed venue in the application. See [Applications for service approval including request for approval of a family day care venue](#) and [Assessments of family day care residences and venues](#).

### ***Incomplete applications***

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to *Incomplete applications* in the *Application for service approval* section, above.

### **Timeframe for assessing an application**

A decision must be made within 60 calendar days of the regulatory authority receiving a complete application.

### ***Calculating time***

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to *Calculating time* in the *Application for provider approval section*.

### **Considering the application**

The National Law and Regulations do not specify the type or level of information needed to assess an application for amendment of service approval, other than requiring an application to include 'sufficient information'. 'Sufficient information' means enough information for the regulatory authority to make a decision on the application.

### **Determining the application**

Once the regulatory authority has received a complete application, it must decide to:

- amend the provider approval in the way that was applied for; or
- amend the provider approval in another way, with the applicant's written approval; or
- refuse the amendment of the provider approval.

An amendment may include a change to a condition of the provider approval or introduce a new condition.

### ***Appeals***

A decision to refuse to amend a service approval is a reviewable decision under the National Law (see *Reviews*).





## National Law

Section 57

### After approval has been amended

If the regulatory authority amends the service approval, it must give a copy to the approved provider.

## 2.4 AMENDMENT OF SERVICE APPROVAL WITHOUT APPLICATION



## National Law

Section 55

The regulatory authority may amend a service approval at any time without an application from the approved provider. Amendment of a service approval may include varying a condition or imposing a new condition on a service approval.

Regulatory authorities may amend a service approval to reflect a change to the location of the principal office of a family day care service. See [Operational Requirements – Governance and leadership](#) for information about providers’ obligations to notify the regulatory authority.



## National Law

Section 57

### After approval has been amended

The regulatory authority must give the approved provider written notice of the amendment. Amendment takes effect 14 calendar days after the approved provider is notified, or at the end of another period specified by the regulatory authority.

At the request of a relevant children’s services regulator, the regulatory authority must amend a service approval that relates to an associated children’s service, provided the request accords with the relevant children’s services law.

If the regulatory authority amends the service approval, it must give a copy to the approved provider.



## National Law

Section 190

### Appeals

A decision to amend a service approval is a reviewable decision under the National Law (see [Reviews](#)).

## 2.5 OFFENCES RELATED TO SERVICE APPROVAL



## National Law

Section 103

### Operating a service without service approval

It is an offence under the National Law for a person to provide an education and care service without a service approval. A family day care educator providing education and care as part of an approved service is not committing an offence under this section.



## National Law

Section 104

### Advertising a service without service approval

It is an offence for a person to publish (or cause to be published) an advertisement for an education and care service unless the service is approved or an application for service approval has been submitted to the regulatory authority but not yet decided.

A family day care educator can advertise if they make clear they are part of an approved service. Any advertisement should indicate which approved service they are promoting and include contact details for that service.

Activities that are part of a planning process, such as gauging interest in the feasibility of a service, do not constitute advertising a non-approved service.

## 2.6 TRANSFER OF SERVICE APPROVAL



### National Law & Regulations

Sections 58–61  
Regulations 36–37

An approved provider (the transferring approved provider) may transfer a service approval to another approved provider (the receiving approved provider).

### Notification of decision to transfer

The transferring and receiving approved providers must jointly notify the regulatory authority of the transfer at least 42 calendar days before it is intended to take effect.

The regulatory authority may agree to a shorter notification period if it considers there are exceptional circumstances (see below).

The notice must be in writing, include the required information and payment of the fee (see *Application checklists – Table X* and *Fees*).

### Regulatory authority consent

A service approval can only be transferred with the regulatory authority's consent. The regulatory authority is taken to have consented if it is notified of the transfer and, 28 calendar days before the transfer is to take effect, has not advised the approved providers that it intends to intervene.

The regulatory authority may reassess waivers when notified of the transfer of service approval.

### Exceptional circumstances

Regulatory authorities may agree 'exceptional circumstances' exist to justify a shorter notification period of less than 42 calendar days where, for example, the approved provider is ill and no longer able to operate the service, and it is in the best interests of the children at the service to ensure continuity by transferring the service to a new approved provider.



Where a service in SA, NSW, TAS or WA is transferred under a transitional arrangement, the notification of transfer must include information regarding the requirements that will need to be met by the service.

Where a service is in NSW and has a waiver, the notification must include how the service will fulfil obligations of the waiver, i.e. whether they will be keeping on an Early Childhood Teacher nominee for a staffing waiver.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).



## National Law & Regulations

Section 62  
Regulation 38

### Decision to intervene in transfer of service approval

The regulatory authority may intervene in a transfer if it is concerned about any matter it considers relevant including:

- the receiving approved provider’s capacity to operate the service, considering their financial capacity, fitness and propriety and management ability
- the receiving approved provider’s history of compliance with the National Law and Regulations, including in relation to any other education and care service they operate.

If the regulatory authority decides to intervene both the transferring and receiving approved provider must be notified in writing at least 28 calendar days before the transfer is intended to take effect. This does not apply in cases where a notification of service transfer is not lodged in accordance with section 59 of the Law. The notice must include the information set out below.

#### Information that must be included in notification to intervene in transfer of service approval

The name of the education and care service

The service approval number

The transferring approved provider’s name

The receiving approved provider’s name

The matters about which the regulatory authority is concerned.



## National Law

Sections 63–64

If the regulatory authority intervenes, a transfer cannot proceed unless the regulatory authority gives written consent.

The regulatory authority may request more information from the transferring or receiving approved providers to inform its decision to consent or refuse to consent to the transfer. The regulatory authority may also make inquiries about the receiving approved provider.



## National Law

Sections 65–66

### Decision following intervention in transfer

The regulatory authority may impose conditions on its consent to transfer, including specifying the date the transfer will take effect. The service approval must be transferred in accordance with any conditions imposed.

If the regulatory authority intervenes in a transfer of a service approval, it must notify the transferring and receiving approved providers of its decision at least seven (7) calendar days before the transfer is intended to take effect.

The notice must specify the regulatory authority’s decision according to the options set out below.

### Transfer of service approval – notice of outcome

Consent to the transfer, including the date on which the transfer will take effect and any conditions on the consent to transfer (notice may also include any new conditions placed on the receiving provider's provider approval or service approval), **or**

Refusal to consent to the transfer (service cannot be transferred), including the reasons for refusal, **or**

Suspension of consideration of the transfer until more information is received, and that the transfer may not proceed until the regulatory authority gives its written consent, **or**

Decision not yet made on the transfer but will decide within 28 calendar days, and that the transfer may not proceed until the regulatory authority gives its written consent.



#### National Law

Section 67

A transfer of service approval is void if it is made:

- without the regulatory authority's consent
- in a way that does not satisfy conditions imposed on the regulatory authority's consent
- to a person other than the receiving approved provider who notified the regulatory authority of the transfer.

A cancelled service approval cannot be transferred. A service approval that is going to be cancelled may be able to be transferred (see [Monitoring, Compliance and Enforcement](#)).



#### National Law

Section 68

### Notification following transfer of service approval

The transferring and receiving approved providers must notify the regulatory authority in writing within two (2) calendar days after the transfer takes effect, specifying the date of the transfer. Transfer of a service approval includes transfer of any associated children's service included on the service approval.

On receiving notice that the service has been transferred, the regulatory authority must amend the service approval and give the receiving approved provider an updated copy. The amendment to the service approval is taken to have effect on the date of transfer.

The receiving approved provider must notify parents of children enrolled at the service of the transfer at least two (2) calendar days before transfer takes effect.

### Transfer of suspended service approval

The regulatory authority may consent to the transfer of a suspended service approval. In this case, the suspension ceases when the transfer takes effect, unless the regulatory authority has imposed a condition on the transfer stating otherwise.

### Application to transfer service approval when provider approval is cancelled

An approved provider can apply to the regulatory authority for consent to transfer a service approval if their provider approval will be cancelled (see [Monitoring, Compliance and Enforcement](#)).



#### National Law

Section 76



#### National Law

Section 34



## National Law

Sections 81–82

The application to transfer must be made within 14 calendar days after the date of the decision to cancel the provider approval. In this case, the service approval is suspended until the regulatory authority has determined the application for consent to transfer.

If the regulatory authority consents to the transfer, suspension of the service approval ceases on the date the transfer takes effect, unless conditions of transfer specify a later date.

If the regulatory authority decides not to consent to the transfer, the service approval is cancelled from the date of its decision.

### Application to transfer cancelled service approval

An approved provider can apply to the regulatory authority for consent to transfer a service approval that is to be cancelled, unless the cancellation relates only to an associated children's service.

The application must be made within 14 calendar days after the regulatory authority decides to cancel the service approval.

If the approved provider applies for consent to transfer, the service approval is suspended, rather than cancelled, until the regulatory authority determines the application.

If the regulatory authority consents to the transfer, its decision to cancel the service approval is revoked. The suspension of the service approval ceases when the transfer takes effect, unless the regulatory authority imposes a condition on their consent to transfer, specifying a later date.

If the regulatory authority refuses to consent to the transfer, the service approval is cancelled, effective from the date of its decision.

The National Law does not specify how an approved provider must apply for consent to transfer service approval if their approval will be cancelled. To ensure it has all the necessary information to decide whether to consent to the transfer, the regulatory authority can request an application be made in the same form as an application to transfer service approval in ordinary circumstances (See [\*Notification of decision to transfer\*](#), above).

## 2.7 SUSPENSION OF SERVICE APPROVAL



### National Law & Regulations

Sections 30, 70–75,  
84–85  
Regulations 39–40

The regulatory authority may suspend the service approval for up to 12 months.

A regulatory authority may suspend a service approval on a number of grounds, such as:

- there is a reasonable belief that it would not be in the best interests of the children for the service to continue to operate
- the service has operated at a rating level not meeting the National Quality Standard and
  - a service waiver or temporary waiver does not apply to the service in respect of that non-compliance
  - there has been no improvement in the rating level

- the approved provider has not complied with a condition of the service approval or the National Law and Regulations
- the approved provider has not complied with a direction, compliance notice or emergency order under the National Law
- the approved provider has not paid the annual fee for the service approval.

Before a regulatory authority takes action to suspend a service approval, it must:

- notify the approved provider and provide reasons for the action (a ‘show cause notice’)
- allow the approved provider to respond in writing to the notification before making its final decision
- advise the approved provider in writing of the final decision.

The regulatory authority may require the approved provider to notify parents of enrolled children of the suspension in writing.

A regulatory authority may also suspend a service approval without prior notification if there is immediate risk to the safety, health or wellbeing of a child or children. If a regulatory authority suspends a service approval without notification, the suspension can be for no longer than six months.

An approved provider may also apply to voluntarily suspend a service approval for up to 12 months (see *Transfer of service approval*, above).

## 2.8 VOLUNTARY SUSPENSION OF SERVICE APPROVAL



### National Law

Section 85

An approved provider may apply for voluntary suspension of a service approval and put the service approval ‘on hold’ for up to 12 months.

During that time, the person must not operate the service.

An approved provider may apply if, for example, they no longer wish to operate the service but have not negotiated transfer of the service to another approved provider, or if they need to temporarily relocate a service to different premises during refurbishment.

See *Monitoring, Compliance and Enforcement* for information on non-voluntary suspension of a service approval.

### How does the approved provider apply?

An application for voluntary suspension must be in writing and include payment of the prescribed fee.

The National Regulations specify information that must be included in an application to suspend service approval (see *Application checklists – Table XI*).

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).



### National Law & Regulations

Section 85

Regulation 40

### ***Incomplete applications***

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to [\*Incomplete applications\*](#) within the [\*Application for service approval\*](#) section, above.

### **Notification to parents**

An approved provider must notify parents of children enrolled at their services of their intention to apply for voluntary suspension of service approval at least 14 calendar days before making the application.

### **Timeframes for assessing an application**

A decision must be made within 30 calendar days of the regulatory authority receiving a complete application.

### ***Calculating time***

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to [\*Calculating time\*](#) in the [\*Application for provider approval\*](#) section.



#### **National Law**

Sections 85, 101

### **Considering the application**

The regulatory authority should consider whether the suspension is reasonable in the circumstances.

The regulatory authority can only suspend a service approval of a family day care service after consulting with the regulatory authority of each jurisdiction where the approved provider operates an education and care service. This includes the regulatory authority which granted the service approval. Failure to consult other regulatory authorities does not affect the validity of the decision.



#### **National Law**

Section 85

### **Determining an application**

If the regulatory authority grants an application for voluntary suspension of service approval, it may agree to the date the suspension takes effect with the approved provider.

### **After approval has been suspended**

The suspension of the service approval remains in force for the period specified in the written notice of decision. The regulatory authority can lift a period of voluntary suspension at the approved provider's request.

## 2.9 SURRENDER OF SERVICE APPROVAL

The surrender of service approval means giving up service approval. Once surrendered, the person cannot operate the education and care service.



### National Law

Section 86

### How does the approved provider surrender approval?

An approved provider can surrender their service approval by giving written notice to the regulatory authority.

The notice to the regulatory authority must specify a date on which the surrender is intended to take effect. The date of effect must be after the notice is given to the regulatory authority and at least 14 calendar days after parents of children enrolled at any services are notified.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

### Notification to parents

An approved provider must notify parents of children enrolled at the service of their intention to surrender the service's approval. Parents must be notified at least 14 calendar days before the date of surrender is to take effect.

# FEES



## National Law

Section 261

Regulatory authorities have the power to collect, waive, reduce, defer and refund fees (including late payment fees) and enter into agreements in relation to fees.

Fees associated with applications to ACECQA are not covered in this chapter.

Visit the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au) for a full list of prescribed fees under the National Regulations.



## National Regulations

Regulation 232  
Schedule 2

### Application fees

The National Regulations prescribe fees for certain applications to the regulatory authority.

There is no fee to amend or voluntarily suspend a provider approval or service approval.



## National Law & Regulations

Section 53  
Regulations 33, 232  
Schedule 2

### Annual fee

An approved provider must pay the prescribed annual fee for each service approval they hold.

Fees must be paid to the relevant regulatory authority on or before 1 July each year.



## National Law

Section 233

### Late payment fee

The regulatory authority may charge a late payment fee if an annual fee is not paid by 1 July. The late fee is 15 per cent of the relevant annual fee per 30 days (or part thereof) that the payment is overdue.

If the annual fee is not paid, the regulatory authority may consider taking compliance action (see *Monitoring, Compliance and Enforcement*). Failure to pay the annual fee is grounds for suspension of provider approval and service approval (sections 25 and 70).

Repeated instances of non-payment may indicate poor financial management, and the regulatory authority may decide to reassess the provider's fitness and propriety to provide an education and care service (see *Applications and Approvals*).



## National Law & Regulations

Section 261  
Regulation 234

### Waiving or varying a fee

The regulatory authority may waive, reduce, defer or refund a fee payable or that has been paid if there are exceptional circumstances.

The regulatory authority may also offer flexible payment options to providers who are unable to pay their fees due to exceptional circumstances.

Decisions to waive or vary a fee should be made on a case-by-case basis, depending on the circumstances. For example, if a service has been affected by a natural disaster that has significantly impacted the provider's financial position. The regulatory authority may seek documentary evidence to support the provider's claims of exceptional circumstances.



## National Regulations

Regulations 235–6

### Indexation

Fees are indexed each year according to published indexation figures, and are available on the ACECQA website at [www.cecqa.gov.au](http://www.cecqa.gov.au) before the beginning of each financial year.

### GST

Government regulatory fees are exempt from GST.

# WAIVERS AND OTHER APPLICATIONS

## 3. WAIVERS

Waivers play an important role in helping providers maintain their level of service to families while dealing with special circumstances or unexpected events.

An approved provider may apply to a regulatory authority for a waiver of an element of the National Quality Standard and/or the National Regulations. Approved providers can apply for a service waiver where an issue is likely to be ongoing, or a temporary waiver, where the issue can be addressed within 12 months.

### 3.1 APPLICATION FOR SERVICE WAIVER



#### **National Law**

Sections 41, 87, 93

A service waiver allows a service to be taken to comply with requirement/s of the National Regulations and element/s of the National Quality Standard.

Requirements that can be waived by the regulatory authority under the National Regulations, are set out in the table below.

## Requirements that may be covered by a service waiver

Reg	Requirement
72A	Location of principal office of family day care service
<b>Physical environment</b>	
NQS	The standards and elements set out in Quality Areas 3 and 4*
104	Fencing
107	Indoor space (Centre-based only)
108	Outdoor space (Centre-based only)
110	Ventilation and natural light
117	Glass (Family Day Care only).
<b>Staffing</b>	
120	Educators who are under 18 to be supervised (Centre-based only)
123	Educator to child ratios—centre-based services (Centre-based only)
124	Number of children who can be educated and cared for (Family Day Care only)
126	Educator to child ratios—centre-based services (Centre-based only)
127	Family day care educator qualifications (Family Day Care only)
128	Family day care co-ordinator qualifications (Family Day Care only)
130	Requirement for early childhood teacher—centre-based services—fewer than 25 approved places (Centre-based only)
131	Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children
132	Requirement for early childhood teacher—centre-based services—25 to 59 children
133	Requirement for early childhood teacher—centre-based services—60 to 80 children
134	Requirement for early childhood teacher—centre-based services—more than 80 children (Centre-based only)
Division 2 of Part 4.3	(Centre-based only) 111 Administrative space 112 Nappy change facilities 113 Outdoor space—natural environment 114 Outdoor space—shade 115 Premises designed to facilitate supervision
Ch.7	Any jurisdiction-specific, transitional or saving provisions that apply in place of the regulations outlined above.

\* See schedule 1 of the National Regulations for standards and elements in Quality Area 3: Physical Environment and Quality Area 4: Staffing Arrangements that may be waived.



### National Law

Section 88

## How does an approved provider apply?

An application for a service waiver must be in writing and include payment of the prescribed fee (see [Fees](#)).

An approved provider may apply for a service waiver and a service approval at the same time.

An approved provider can only apply for a waiver of the regulations and elements set out in the above table. The application may be refused and the application fee refunded if the application seeks to waive other regulations or elements.



## National Regulations

Regulation 42

The National Regulations specify information that must be included in an application for a service waiver (see [Application checklists – Table XIII](#)).

The application must detail any attempts made to comply with the requirement and include the measures being taken, or to be taken, to protect the wellbeing of children at the service.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

The National Law allows an approved provider to apply for a service waiver from staffing requirements. However, if the issue may be resolved within 12 months, a temporary waiver may be more appropriate.

### **Incomplete applications**

If an application does not include all the required information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to [Incomplete applications](#) in the [Application for provider approval](#) section, above.



## National Law

Section 265



## National Law

Section 91

### **Timeframe for assessing an application**

The regulatory authority must notify the applicant of its decision within 60 calendar days after the application is made. The timeframe for determining an application cannot be extended.

If the approved provider applied for a service waiver and a service approval simultaneously, the regulatory authority may notify the applicant of the outcome of both applications at the same time.

### **Calculating time**

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

For more information refer to [Calculating time](#) in the [Application for provider approval](#) section.



## National Law

Sections 89–90

### **Considering an application**

When considering an application for a service waiver, the regulatory authority may consider whether the service is able to meet the objectives of the element and/or regulation by alternative means, and any other information included in the application.

## ***Assessment of waiver applications***

All applications for service or temporary waivers are assessed on a case-by-case basis. A regulatory authority may request more information or may inspect the service premises or office to assist in deciding to grant or refuse a waiver. If more information is requested, the time taken to provide it is not included in the period for determining the application.

If the regulatory authority grants a waiver, it must issue or reissue the service approval specifying the element and/or the regulation to which the service waiver applies.

In assessing a waiver application a regulatory authority should consider:

### ***General***

- the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the proposed waiver would be in place
- whether the service can meet the objectives of the regulations by alternative means
- the benefits to families, children and communities in having the service operate
- the service's Quality Improvement Plan
- the number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirement(s)
- the cost of any adjustments needed for the service to comply with the regulations for which a waiver is being sought
- the compliance history of the approved provider and/or the service
- unusual or unforeseen circumstances, such as natural disasters
- whether the issue is ongoing (i.e. longer than 12 months) and requires a service waiver, rather than a temporary waiver, or circumstances have changed and a temporary waiver is required instead of a service waiver.

### ***Staffing Waivers***

- staff details, including rosters and qualifications
- evidence of recruitment e.g. advertising and the outcomes of a recruitment attempt
- evidence of progress towards relevant qualifications
- strategies in place to attract, upskill and retain staff
- what the service is doing to meet the immediate shortfall.

### ***Physical Environment Waivers (including indoor and outdoor spaces)***

- access to indoor and outdoor spaces, or facilities e.g. toilets
- building and floor plans by a certified building practitioner

- photos of relevant spaces, e.g. simulated outdoor space
- details of renovations
- impact on programming, educational outcomes and experience of children
- at the discretion of the regulatory authority, an authorised officer may visit the service premises to view the relevant spaces and gather additional information.



## National Regulations

Regulation 72A

### ***Waiver of requirement to have FDC principal office in the same jurisdiction as FDC service approval***

- family day care services are in Local Government Areas in adjacent jurisdictions (e.g. Albury/Wodonga)
- strategies in place to ensure educators will be adequately supported and monitored.

### **Waiver Conditions**

A waiver may be granted subject to conditions. For example, a condition on a waiver may limit it to applying for a specific period of time, i.e. one day a week.

A regulatory authority may grant a waiver subject to conditions for a variety of reasons, including where it considers that limiting the scope of the waiver is appropriate to protect the wellbeing of children educated and cared for by the service.

Conditions on a waiver may be removed, added to or varied at any time. For instance, if a provider fails to take measures to protect the wellbeing of children, as set out in the application, a condition may be imposed which would affect the validity of the waiver. The waiver only applies where steps are taken, in accordance with application, to protect wellbeing of children at service.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver. Conditions on a waiver are recorded on the service approval certificate. These conditions are in addition to any conditions that apply to the service approval itself.



## National Law

Section 91

### **Determining an application**

The regulatory authority may decide to grant or refuse an application for a service waiver.

If the regulatory authority receives an application for a service waiver which should have been an application for a temporary waiver, it can be processed as if it was an application for a temporary waiver. The approved provider is not required to resubmit an application (see [\*Application for temporary waiver\*](#), below).

### ***Applications to waive multiple regulations***

At the discretion of the regulatory authority, an approved provider may include multiple regulations/elements in a single waiver application. If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver.



## National Law

Section 91

### After a service waiver has been granted

The regulatory authority must give the approved provider a copy of their service approval that lists the element and/or regulation to which the waiver applies and any conditions placed on the waiver.



## National Law & Regulations

Section 92

Regulation 43

### Revoking a service waiver

A service waiver is ongoing and remains in force until revoked. There is no maximum period for which a service waiver can apply.

While a service waiver is ongoing, it is not 'permanent', as the regulatory authority may revoke a service waiver at its discretion. If a service waiver is revoked, the waiver ceases to apply:

- 60 calendar days after the regulatory authority notifies the approved provider of their decision, or
- at the end of a period determined by the regulatory authority and agreed by the approved provider.

An approved provider may apply to the regulatory authority to have a service waiver revoked. In this case, the waiver ceases to apply:

- 14 calendar days after the regulatory authority notifies the approved provider that the application for revocation is approved, or
- at the end of a period determined by the regulatory authority and agreed by the approved provider.

If a service waiver is granted and the regulatory authority later becomes aware that the grounds on which it was granted no longer apply, or if a condition placed on the service approval has not been complied with, it may revoke the waiver.

If the regulatory authority revokes a waiver and the approved provider fails to comply with a requirement of the National Law and Regulations, it may take compliance action.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

## 3.2 APPLICATION FOR TEMPORARY WAIVER



## National Law

Sections 94, 100

An approved provider may apply to the regulatory authority for a temporary waiver.

A temporary waiver means a service is not required to comply with a specified requirement or requirements of the National Regulations and element/s of the National Quality Standard.

If the regulatory authority becomes aware of a service not being able to meet staffing or physical environment requirements, despite attempts to comply, it may inform the approved provider that they may apply for a temporary waiver, if it is satisfied the approved provider has reasonable justification for not being able to comply.



## National Regulations

Regulation 44

### What requirements can be the subject of an application for a temporary waiver?

Requirements that can be temporarily waived by the regulatory authority under the National Regulations are set out in the table below.

#### Requirements that may be covered by a temporary waiver

Reg	Requirement
72A	Location of principal office of family day care service
<b>Physical environment</b>	
NQS	Quality Areas 3 and 4*
104	Fencing
107	Indoor space (Centre-based only)
108	Outdoor space (Centre-based only)
110	Ventilation and natural light
117	Glass (Family Day Care only).
<b>Staffing</b>	
120	Educators who are under 18 to be supervised (Centre-based only)
123	Educator to child ratios—centre-based services
124	Number of children who can be educated and cared for (Family Day Care only)
126	General educator qualifications – centre-based services
127	Family day care educator qualifications (Family Day Care only)
128	Family day care co-ordinator qualifications (Family Day Care only)
130	Requirement for early childhood teacher—centre-based services—fewer than 25 approved places (Centre-based services only)
131	Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children
132	Requirement for early childhood teacher—centre-based services—25 to 59 children
133	Requirement for early childhood teacher—centre-based services—60 to 80 children
136	First aid qualifications
Division 2 Part 4.3	Additional requirements for centre-based services 111 Administrative space 112 Nappy change facilities 113 Outdoor space—natural environment 114 Outdoor space—shade 115 Premises designed to facilitate supervision
Ch.7	Any jurisdiction-specific, transitional or saving provisions that apply in place of the regulations outlined above.

\* See schedule 1 of the National Regulations for standards and elements in Quality Area 3: Physical Environment and Quality Area 4: Staffing Arrangements which may be waived.



## National Law

Section 95

### How does an approved provider apply?

An application for a temporary waiver must be in writing and include payment of the prescribed fee (see [Fees](#)).

An approved provider can only apply for a waiver of the prescribed regulations and elements set out in the above table. If the regulatory authority receives an application for a waiver of a regulation or element that is not prescribed, the application may be refused and the application fee refunded.



## National Law & Regulations

Section 95

Regulation 45

The National Regulations specify information that must be included in an application for a temporary waiver (see [Application checklists – Table XIII](#)).

The National Regulations do not specify the type of evidence that must be included to support a waiver application. Therefore, the regulatory authority has discretion to accept a range of evidence.

Applications and notifications can be submitted to the regulatory authority online using the National Quality Agenda IT System on the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

### Incomplete applications

If an application does not include all the prescribed information, the regulatory authority may treat the application as invalid. The timeframe for processing an application does not begin until an application is complete and therefore valid.

For more information refer to [Incomplete applications](#) within the [Application for provider approval](#) section, above.



## National Law

Section 98

### Timeframe for assessing an application

The regulatory authority must notify the applicant of their decision within 60 calendar days of receiving a complete application. There is no provision to extend the timeframe for determining an application for a temporary waiver.

### Calculating time

The National Law sets out how timeframes are calculated at schedule 1, clause 31.

An application cannot begin to be processed unless the application is complete/valid and includes all the required information.

When calculating the timeframe, the day the application is received is excluded. If the timeframe is expressed in the legislation in terms of a number of days, the last day of that timeframe is also excluded. ‘Day’ means calendar day. For example, a regulatory authority must make a decision on a provider approval application within 60 days after the application is received (see section 15). If the regulatory authority receives the application on 1 March, the 60-day timeframe commences on 2 March and runs until the end of 1 May. 1 March is excluded from the calculation, and 30 April, the 60th day, is also excluded.

If the last day of the timeframe falls on a non-business day, the next business day will be the last day. Using the example above, if 1 May is a Saturday, Sunday or public holiday, the regulatory authority’s decision will be due the first working day after 1 May.



## National Law

Sections 96–97

If more information is needed, the time period for responding to the regulatory authority request is excluded from the 60-day limit within which the regulatory authority must decide the application.

### Considering an application

The regulatory authority must consider whether any special circumstances disclosed in the application reasonably justify the grant of a temporary waiver.

The regulatory authority may ask for more information or may inspect the service premises or office for the purpose of assessing the application. If more information is requested, the time taken to provide it is not included in the period for determining the application.

### Assessment of waiver applications

All applications for service or temporary waivers are assessed on a case-by-case basis with reference to the requirements of the National Law and Regulations. If the regulatory authority grants a waiver, it must issue or reissue the service approval specifying the element and/or the regulation to which the service waiver applies.

In assessing a waiver application a regulatory authority should consider:

#### General

- the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the proposed waiver would be in place
- whether the service can meet the objectives of the regulations by alternative means
- the benefits to families, children and communities in having the service operate
- the service's Quality Improvement Plan
- the number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirement(s)
- the cost of any adjustments needed for the service to comply with the regulations for which a waiver is being sought
- the compliance history of the approved provider and/or the service
- unusual or unforeseen circumstances, such as natural disasters
- whether the issue is ongoing (i.e. longer than 12 months) and requires a service waiver, rather than a temporary waiver, or circumstances have changed and a temporary waiver is required instead of a service waiver.

### **Staffing Waivers**

- staff details, including rosters and qualifications
- evidence of recruitment e.g. advertising and the outcomes of a recruitment attempt
- evidence of progress towards relevant qualifications
- strategies in place to attract, upskill and retain staff
- what the service is doing to meet the immediate shortfall.

### **Physical Environment Waivers (including indoor and outdoor spaces)**

- access to indoor and outdoor space, or facilities e.g. toilets
- building and floor plans by a certified building practitioner
- photos of relevant spaces e.g. simulated outdoor space
- details of renovations
- impact on programming, educational outcomes and experience of children

At the discretion of the regulatory authority, an authorised officer may visit the service premises to view the relevant spaces and gather additional information.

## **Determining an application**

### **Granting or refusing a temporary waiver**

If granted, the regulatory authority must specify the period for which the temporary waiver will apply, which can be up to 12 months. The regulatory authority must issue or reissue the service approval, specifying the element and/or regulation to which the temporary waiver applies, the period of the waiver, and any conditions placed on the waiver.

### **Conditions on temporary waivers**

If a temporary waiver is granted, the regulatory authority may place conditions on the waiver including limiting the use of the waiver. The regulatory authority may also remove, add to or vary any conditions placed on the temporary waiver at any time.

### **Applications to waive multiple regulations**

At the discretion of the regulatory authority, an approved provider may include multiple regulations/elements in a single waiver application. If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.

If a waiver applies to multiple regulations, conditions may be imposed on some or all aspects of the waiver.

If the regulatory authority receives an application seeking to waive multiple requirements, it may decide to grant a waiver in relation to some regulations/elements but refuse others.





## National Law

Section 99

### Revoking a temporary waiver

The regulatory authority may revoke a temporary waiver at its discretion.

An application for a temporary waiver must include details of any attempts made to comply with the requirement and the measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service. The regulatory authority may consider revoking a temporary waiver after it has been granted, if made aware that the grounds on which it was granted no longer apply or that the service approval has not been complied with.

There is no notice period for revoking a temporary waiver.

If the regulatory authority revokes a waiver and the approved provider fails to comply with a requirement of the National Law and Regulations, it may consider whether it is appropriate to take compliance action.

An approved provider may contact the regulatory authority seeking to have a temporary waiver revoked if it is no longer required. The National Law does not prescribe the process for revoking a temporary waiver at a provider's request.

## 3.3 COMBINING A WAIVER WITH CONDITIONS ON SERVICE APPROVAL



## National Law

Section 51

The regulatory authority can impose any conditions it considers appropriate on a service approval and on a waiver.

The regulatory authority may grant a temporary waiver and place conditions on the service approval at the same time.

Conditions may also be placed on the service approval at a later time.

This approach may be suitable where there:

- is a greater risk to children in granting the waiver, such as where the service would not be allowed to operate without meeting certain conditions or taking certain steps
- are concerns about whether the provider will maintain their efforts to meet the requirement and follow through on any agreed actions.

This approach may be preferred if it is important families using the service are aware of the grounds on which the waiver has been issued, as the details of any conditions on a service approval must be displayed at the entrance to the service premises.

See *Monitoring, Compliance and Enforcement – Conditions* for more information about using conditions on a service approval.



## National Law

Section 98

### After a temporary waiver has been granted

The regulatory authority must give the approved provider a copy of their service approval that lists the element and/or regulation to which the waiver applies, the period of the waiver and any conditions placed on the waiver.

Regulatory authorities should take a risk-based approach to monitoring compliance of services with a temporary waiver (see [\*Monitoring, Compliance and Enforcement\*](#) for more information about monitoring activities).

If a service is transferred to a new provider, any waivers that apply will remain in place. However, the regulatory authority might decide to monitor the service after it is transferred, to ensure the grounds on which the waiver was issued still exist.

The National Law does not explicitly give regulatory authorities the power to publish information about waivers. Regulatory authorities may, however, publish information about conditions on service approvals.



## National Law

Sections 98, 100

### Expiry of a temporary waiver

Once the period for which a temporary waiver is granted has passed, the waiver no longer applies and the service must comply with the National Law and Regulations, unless an extension has been granted.

To help ensure families can access current information about the service, the regulatory authority should reissue the service approval once a temporary waiver expires.

Once a temporary waiver expires, the regulatory authority might decide to monitor the service to ensure the requirement is being met (see [\*Monitoring, Compliance and Enforcement\*](#) for more information).



## National Law

Section 98

### Application to extend a temporary waiver

The approved provider may apply for an extension of a temporary waiver. The regulatory authority cannot extend a temporary waiver without an application from the approved provider. The application must be in writing and include payment of the prescribed fee (see [\*Fees\*](#)).

The regulatory authority may extend a temporary waiver for up to 12 months. Approved providers may apply for further extensions to a temporary waiver however this will be assessed on a case-by-case basis.

An application for an extension of a temporary waiver must relate to the same regulations and/or elements and circumstances for which the initial waiver was granted. For instance, a provider might apply for an extension to a temporary waiver if building works take longer than expected, or if an educator needs some more time to complete their approved qualification. If the provider is seeking a waiver of different requirements, they must submit a new application.

When considering an application for extension of a temporary waiver, the regulatory authority will consider the same matters as for an initial application, paying particular attention to the attempts made and/or steps taken by the service to comply with the regulation and/or elements. If the regulatory authority extends the service waiver the service approval will be amended.

## Table I

### Information that must be included in an application for provider approval made by an individual (regulation 14)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's full name, and any former or other name the applicant may be known by
  - The applicant's residential address and contact details
  - The applicant's date and place of birth
  - Proof of the applicant's identity
  - A previous service statement made by the applicant (see *Glossary*)
  - In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:
    - a. if held by the applicant, a copy of their current working with children card or check, or
    - b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.
- For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.
- For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.
- Except for applications to the Queensland regulatory authority:
    - a. a copy of the applicant's current working with vulnerable people check, or
    - b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.
  - If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant
  - A disciplinary proceedings statement made by the applicant
  - A bankruptcy declaration made by the applicant.

## Table II

### Information that must be included in an application for provider approval made by a person other than an individual (for example, an association or corporation) (regulation 15)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's name and any trading or other name used by the applicant
- The applicant's street address and postal address or, if there is more than one address, the street address and postal address of the applicant's principal office
- The name and contact details of the contact person for the purposes of the application
- Documentary evidence of the legal status of the applicant and its constitution (for example, the partnership agreement for a partnership)
- A financial declaration regarding the applicant
- For each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in Table 1 must be included in an application for provider approval made by an individual.

**Table III**

**Information that must be included in an application for provider approval by an executor who is an individual (regulation 20)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

The applicant's full name, and any former or other name the applicant may be known by

The applicant's residential address and contact details

The applicant's date and place of birth

In relation to the current (deceased) approved provider:

a. their full name

b. provider approval number

c. the date of their death

d. a copy of the death certificate or other evidence of their death

The proposed duration of the provider approval (cannot exceed six months)

Proof of the applicant's identity

In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:

a. if held by the applicant, a copy of their current working with children card or check, or

b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.

For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.

For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.

Except for applications to the Queensland regulatory authority:

a. a copy of the applicant's current working with vulnerable people check, or

b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.

If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant

A disciplinary proceedings statement made by the applicant

A bankruptcy declaration made by the applicant.

**Table IV**

**Information which must be included in an application for provider approval by an executor who is not an individual (e.g. an association or corporation) (regulation 21)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's name and any other trading or other name they use
- The applicant's street and postal address, or if there is more than one address, the street and postal address of their principal office
- The name and contact details for the purpose of the application

In relation to the deceased approved provider:

- a. their full name
- b. provider approval number
- c. the date of their death
- d. a copy of the death certificate or other evidence of their death
- The proposed duration of the provider approval (cannot exceed six months) documentary evidence of the legal status of the applicants and its constitution (for example, the partnership agreement for a partnership)
- A financial declaration regarding the applicant
- For each individual who will be a person with management or control of an education and care service to be operated by the applicant, the information set out in Table 1 must be included in an application for provider approval made by an individual.

**Table V****Information which must be included in an application for provider approval by a legal personal representative or guardian who is an individual (regulation 22)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's full name, and any former or other name the applicant may be known by
  - The applicant's residential address and contact details
  - The applicant's date and place of birth
  - The current approved provider's full name and provider approval number
  - The proposed duration of the provider approval (cannot exceed six months)
  - In states excluding NSW or QLD, if the participating jurisdiction has a working with children law:
    - a. if held by the applicant, a copy of their current working with children card or check, or
    - b. if the applicant is a teacher registered under an education law of that jurisdiction, proof of the current registration under that law.
- For applications to the NSW regulatory authority, the applicant's working with children clearance number or a copy of the applicant's current working with children card or check.
- For applications to the Queensland regulatory authority, a copy of the applicant's current working with children card or check.
- Except for applications to the Queensland regulatory authority:
    - a. a copy of the applicant's current working with vulnerable people check, or
    - b. a criminal history record check issued not more than six months before the date of the application, and a criminal history statement in relation to the period after the date on which the check was issued, to the date of the application.
  - If the applicant lived and worked outside Australia at any time within the previous three years, an overseas criminal history statement made by the applicant
  - A disciplinary proceedings statement made by the applicant
  - A bankruptcy declaration made by the applicant.

## Table VI

### Information which must be included in an application for provider approval by a legal personal representative or guardian who is not an individual (for example, a corporation or association) (regulation 23)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's name and any other trading or other name they use
- The applicant's street and postal address, or if there is more than one address, the street and postal address of their principal office
- The name and contact details for the purpose of the application
- The current approved provider's full name and provider approval number
- Documentary evidence of the legal status of the applicant and its constitution (for example, the partnership agreement for a partnership)
- A financial declaration regarding the applicant
- The prescribed information set out at Table V above for each individual who will be a person with management or control.

## Table VII

### Information which must be included in an application to suspend provider approval (regulation 19)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The approved provider's full name
- Their provider approval number
- The name and contact details of the contact person for the application
- The reasons for the suspension
- The date on which the suspension is proposed to take effect, and the duration of the suspension
- What is intended to happen to each service operated by the approved provider during the proposed suspension
- A statement indicating that the approved provider has notified parents of children enrolled at their services of their intention to apply for a voluntary suspension.

**Table VIII**

**Information that must be included in an application for service approval – centre-based service (regulations 24, 25)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's full name and provider approval number (or the applicants contact details if the applicant has applied for a provider approval but the application has not yet been determined)
- The name of the proposed education and care service
- The proposed date on which the education and care service will start operating
- If known, the contact details for the proposed service, including an after-hours telephone number
- The proposed ages of children to be educated and cared for by the service
- The proposed maximum number of children
- The proposed hours and days of operations
- A description of the nature of the service
- The details of any associated children's service for which approval is sought
- A statement that the applicant has prepared the required policies and procedures as required by regulation 168, see *Governance and Leadership*
- In relation to the person who will be the nominated supervisor for the service:
  - a. their full name and contact details, including an after-hours telephone number
  - b. their written consent to being the nominated supervisor for the service
- The location and street address of the proposed service premises.

**Table IX****Information that must be included in an application for service approval – centre-based service (regulations 24, 25, 25A)**

- Plans prepared by a building practitioner of the proposed service premises that show:\*
  - a. the location of all buildings, structures, outdoor play areas and shaded areas
  - b. the location of all entries and exits
  - c. the location of all fences and gates, specifying the type of fence or gate used or to be used
  - d. the location of toilet and washing facilities, nappy changing areas and any food preparation areas
  - e. the boundaries of the premises
  - f. landscape of (or landscaping plans for) outdoor spaces that will be used by the service, specifying the natural environments that are (or will be) provided
  - g. a floor plan indicating unencumbered indoor and outdoor spaces suitable for children
  - h. the location of any associated children’s service
  - i. calculations, carried out by a building practitioner, relating to unencumbered indoor and outdoor space (as set out in regulations 107–108)
  - j. the elevation plans of the premises
- If a swimming pool or other water hazard is situated on the proposed service premises, a copy of the service’s water safety policy
- One of the following:
  - a. a soil assessment for the site of the proposed service premises
  - b. if relevant, a statement specifying the date of a previous a soil assessment
  - c. a statement from the applicant that, to the best of their knowledge, the site history does not indicate the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children
- For OSHC, if the approved provider is seeking to locate the early childhood education and care service on a school site, the regulatory authority may determine that a soil assessment is not required
- If a planning permit is required under the state or territory planning and development law, a copy of the planning permit for the proposed service premises
- A statement that the applicant has the right to occupy and use the premises, and any document evidencing this, for example, a lease of the premises
- Unless the service premises is a government or registered school, one of the following:\*
  - a. a copy of an occupancy permit; certificate of final inspection; building certificate; certificate of classification; or building surveyor’s statement for the final construction and fit-out of the service premises
  - b. a statement from a building practitioner that the service premises complies with the building requirements under state or territory building law or planning development law.

\* Regulatory authorities may waive this requirement if the approved provider is seeking: – to relocate the education and care service to alternative premises for not more than 12 months, or – to locate the education and care service on a school site.

**Table X****Information that must be included in an application for service approval – family day care service (regulation 26)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- The applicant's full name and provider approval number (or the applicants contact details if the applicant has applied for a provider approval but the application has not yet been determined)
- The name of the proposed service
- The proposed date the service will start operating
- If known, the contact details for the proposed principal office of the service, including an after-hours telephone number
- The proposed hours and days of operation, including whether the service proposed to engage or register family day care educators who will provide overnight or weekend care
- The proposed location and street address of the principal office of the service
- The proposed number of family day care educators to be engaged by or register with the service within six months of operating
- The states and territories and proposed local government areas where family day care educators expected to be engaged or registered with the service will provide education and care
- The proposed number of family day care co-ordinators expected to be engaged by the service within six months of operating
- A statement that the applicant has prepared the required policies and procedures (as required by regulation 168, see Operational Requirements)
- A copy of the proposed policies and procedures for (required by regulation 169):
  - a. assessment and approval, and reassessment of approved family day care venues and residences, including the requirements in regulation 116
  - b. engagement or registration of family day care educators
  - c. keeping a register of family day care educators
  - d. monitoring, support and supervision of family day care educators, including how the service will manage educators at remote locations
  - e. assessment of family day care educators, family day care educator assistants and persons residing at family day care residences, including the requirements in regulation 163
  - f. visitors to family day care residences and venues while education and care is provided to children
  - g. provision of information, assistance and training to family day care educators
  - h. engagement or registration of family day care educator assistants
- If the service will permit a family day care residence or venue with a swimming pool or a water hazard, a copy of a proposed water safety policy for the service (Note: swimming pools are prohibited in Tasmania for all education and care services)
- In relation to the person who will be a nominated supervisor for the service: their full name and contact details, including an after-hours telephone number, and their written consent to being a nominated supervisor for the service

### Table X (continued)

- A statement that the applicant has the right to occupy and use the proposed premises as a principal office and any document evidencing this (e.g. a lease of the premises)
- A statement that each family day care residence and venue will be located in this jurisdiction
- If the application includes a request for a venue approval, include:
  - a. the location and street address
  - b. a statement that the applicant has the right to occupy and use the place as a family day care venue and any document evidencing this and
  - c. an assessment (including any risk assessment) of the place conducted by the approved provider to ensure that the health, safety and wellbeing of children being educated and cared for by the service are protected.

### Table XI

#### Information that must be included in notification of transfer of service approval (regulations 36, 37)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- Name of the education and care service
- Service approval number
- Transferring approved provider's name, contact details and provider approval number
- Receiving approved provider's name, contact details and provider approval number
- Date the transfer is intended to take effect
- Any proposed changes in relation to the information required to be included in an application for service approval (see Table VIII for centre-based services, and Table IX for family day care services).

### Table XII

#### Information that must be included in an application for voluntary suspension of service approval (regulation 40)

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- Name of the service
- Service approval number
- Name and contact details of the contact person for the application
- Reasons for the suspension
- Date on which the suspension is proposed to take effect and the duration
- A statement indicating that the approved provider notified parents of children enrolled at the service (and any associated children's service) of their intention to apply for a suspension at least 14 days before making the application.

**Table XIII****Information that must be included in an application for a service waiver (regulation 42)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- Name of the education and care service
- Service approval number
- Name and contact details for the contact person for the application
- A statement that specifies:
  - a. the elements of the NQS and/or the regulations for which the service waiver is sought, and
  - b. the way in which the service does not, or will not, comply with the specified elements and/or regulations
- Reasons the service is unable to comply, and details and evidence of any attempts made to comply with the specified elements and/or regulations, or any other reasons why the service seeks the waiver
- Measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service while the waiver is in force.

**Table XIV****Information that must be included in an application for a temporary waiver (regulation 45)**

*(Note: The WA regulatory authority may not require all of the below information for an application for provider approval)*

- Name of the education and care service
- Service approval number
- Name and contact details for the contact person for the application
- A statement that specifies:
  - a. the elements of the NQS and/or the regulations for which the service waiver is sought, and
  - b. the way in which the service does not, or will not, comply with the specified elements and/or regulations
- Reasons the service is unable to comply, and details and evidence of any attempts made to comply with the specified elements and/or regulations
- Period for which the temporary waiver is sought (up to 12 months)
- Details of steps being taken, or that will be taken, to comply with the elements and/or regulations
- Measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service while the waiver is in force.

## 3.4 APPLICATION TO USE INDOOR SPACE AS OUTDOOR SPACE



### National Regulations

Regulation 108

The approved provider of a centre-based service or a family day care venue, which educates and cares for children over preschool age, may apply to the regulatory authority to include an area of unencumbered indoor space in calculating the outdoor space at the service.

Approval (if granted) must be in writing.

An application may be made with the initial application for service approval, or at a later time. Regulatory authorities consider applications on a case-by-case basis.

### Considering an application

When making a decision on an application, regulatory authorities will balance the objectives of the legislation to prioritise children's safety, health and developmental outcomes, with the interests of providers to offer services, and for families to have access to those services.

When reviewing the application, the regulatory authority may consider the:

- number and ages of children and the time spent at the service
- physical elements of the space
- proportion of indoor space to be included in the outdoor space.

These factors are not criteria that must be satisfied for an application to be approved.

Regulatory authorities must consider each application on its merits.

### ***Number and ages of children and the time spent at the service***

Regulatory authorities may consider the ages of the children at the service and what proportion of children are over preschool age. Indoor space can only be calculated as outdoor space when children over preschool age are being educated and cared for at the service.

The amount of time children spend at the service will also be considered.

Using indoor space in calculating outdoor space is more likely to be appropriate at an outside school hours care service where children are only at the service for a couple of hours each morning and/or afternoon, than at a vacation care service, where children attend from 8am to 5pm each day.

### ***Physical elements of the space***

Regulatory authorities may consider how the indoor space can be used. For example, can the indoor space be safely used for activities which would ordinarily be done outside, such as throwing a ball, skipping or running? Regulatory authorities may look at flooring, whether any glass areas are or can be protected, and whether the space is sufficiently lit and ventilated for physical activity.

Where the space is intended to be used for these types of activities, such as gymnasiums or halls, or where they can be safely used for these types of activities, they may be suitable to be included in calculating outdoor space.

### ***Proportion of indoor space to be included in calculating outdoor space***

The greater the proportion of indoor space that will be included in calculating outdoor space, the more important it will be for the regulatory authority to be satisfied that the space can be used for activities which would typically be undertaken outside.

### **If an application is refused**

If an application is refused, the approved provider may apply for a service or temporary waiver (see [Waivers](#) for more information).

## **3.5 APPLICATION TO USE A VERANDAH AS INDOOR SPACE**



### **National Regulations**

Regulation 107

There must be at least 3.25 square metres of unencumbered indoor space for each child being educated and cared for at a centre-based or family day care venue.

An approved provider can apply to the regulatory authority to use a verandah as indoor space.

The application may be made with the initial application for service approval, or at a later time.

### **Considering an application**

The regulatory authority will determine applications on a case-by-case basis.

In some climates and in some buildings, verandah space may be a preferable space for children to carry out indoor play activities. Regulatory authorities will balance the health, safety and wellbeing of children with the intent of the legislation to allow suitable verandahs to be included in indoor space calculations.

### **Services in Queensland**



Approval in Queensland is subject to evidence from a building practitioner which demonstrates that the verandah meets the requirements under the relevant building code to be classed as indoor space. A building practitioner may impose requirements on a provider to enable such evidence to be provided (such as requiring the installation of waterproof blinds) and to ensure the space can be considered 'indoors'.

### **Services in Tasmania**



The Early Childhood Centre and School Age Care Facilities Code restricts the Tasmanian regulatory authority from approving verandahs as indoor space, due to the climate.

## Services in all other states and territories

All other regulatory authorities may consider the following factors in approving a verandah as indoor space:

- the square metres of usable and unencumbered space
- taking into account the physical elements of the space, such as adequate flooring, roofing and the shape of the space, and whether there are significant periods of the year in which the space will be unsuitable
- taking into account year round weather conditions, community expectations of suitability and measures available to manage climate, such as air conditioning, heating and weatherproofing.

Regulatory authorities may refuse applications if children are at risk of overcrowding because the verandah is unsuitable for indoor play activities for a significant period of time.

These factors are not criteria that must be satisfied for an application to be approved.

Regulatory authorities must consider each application on its merits.

## Minimum space requirements

There are no minimum space requirements for verandahs to be approved as indoor space.

## Building requirements

All regulatory authorities (excluding Queensland) do not need to consider building approvals when assessing applications for verandahs to be included in indoor space calculations.

## Light and ventilation

The requirements for natural light, ventilation and temperature that apply to indoor spaces do not apply to verandahs.

## Supervision

Adequate supervision is a consideration for any part of the service premises where children are educated and cared for. Supervision does not generally form part of the considerations for assessing whether verandahs are counted towards indoor or outdoor space. Regulatory authorities may consider supervision in cases where the approved provider alters, or intends to alter, the service premises as part of making a verandah suitable as an indoor space (see *Operational Requirements – Physical Environment*).

QLD