

Minor changes to the National Regulations 2019

From 1 January 2020, in addition to an early childhood teacher (ECT), the Education and Care Services National Regulations (National Regulations) require centre-based services to have a second ECT or, alternatively, a 'suitably qualified person,' when 60 or more children preschool age or under are being educated and cared for on a given day. In October 2018 the ACECQA Board determined the qualifications that are required for a suitably qualified person, which you can find [here](#).

The relevant regulations that implement the staffing requirement, (133(1)(b) and 134(1)(b)), apply in all states and territories other than NSW, as NSW already has separate requirements for ECTs.

In June 2019, the Education Council agreed to progress amendments to the National Regulations to support the practical operation of the 'suitably qualified person' requirements from 1 January 2020. At the same time, Ministers also agreed to extend a number of transitional workforce provisions to address the ongoing challenges faced by the early childhood education and care sector in building a highly skilled workforce, particularly in rural and remote areas.

The Amendment Regulations that give effect to these changes were made by the Education Council on 12 December 2019 and are now published on the New South Wales legislation website.

Below is a summary of the changes or extensions to staffing provisions that have been agreed by the Education Council, including their date of commencement and state or territory in which they will apply.

Suitably qualified persons

Amendment	What this means	Jurisdictions affected by amendment(s)	Commencement of amendment
<p>Regulation 4(1) Amend definition of 'in attendance' to insert reference to suitably qualified person</p>	<p>Regulation 4 is a list of definitions that includes 'in attendance'. The definition of 'in attendance' previously related only to an ECT.</p> <p>It directed the reader to regulation 11 for the definition of 'in attendance' in relation to an ECT.</p> <p>The reference to 'suitably qualified person' has been added to this regulation.</p> <p>This means that the definition of 'in attendance' applies to an ECT as well as a suitably qualified person.</p>	All except NSW	31 Dec 2019

<p>Regulation 11 Amend meaning of 'in attendance' at a centre-based service to insert reference to suitably qualified person</p>	<p>Regulation 11 is the full definition of 'in attendance' and previously only applied to an ECT at a centre-based service.</p> <p>Suitably qualified person has been added to this definition so that it applies to a suitably qualified person as well as an ECT.</p>	<p>All except NSW</p>	<p>31 Dec 2019</p>
<p>Regulation 122 Include ECT and suitably qualified person as an educator for the purposes of working directly with children</p>	<p>Regulation 122 is about when an educator can be included in the educator to child ratio of a centre-based service.</p> <p>ECT and suitably qualified person have been added to this regulation.</p> <p>This makes it clear that an ECT or a suitably qualified person can be included as educators when calculating ratios if they are working directly with children.</p>	<p>All except NSW</p>	<p>31 Dec 2019</p>
<p>Regulation 123(3) Include suitably qualified person as an alternative to an ECT for the purposes of educator to child ratios</p>	<p>Regulation 123 explains the educator to child ratios in centre-based services. Subregulation 3 clarifies that an ECT can be counted in ratios as an educator if they are in attendance at the service.</p> <p>Suitably qualified person has been added to this provision so that it applies to a suitably qualified person as well as an ECT.</p> <p>This means that a suitably qualified person can also be counted in the ratios as an educator if they are in attendance at the service and are working directly with children.</p>	<p>All except NSW</p>	<p>31 Dec 2019</p>
<p>Regulation 126(3) Include suitably qualified person as a qualification that satisfies general educator qualifications requirements</p>	<p>Regulation 126 explains that fifty per cent of educators who are being counted towards the educator to child ratio must have, or be actively working towards, an approved diploma level qualification, and all other educators must hold, or be actively working towards, an approved certificate III level qualification.</p> <p>ECTs who are working directly with children can be taken to meet the diploma requirement when calculating the ratio.</p> <p>Suitably qualified person has been added to this regulation.</p>	<p>All except NSW</p>	<p>31 Dec 2019</p>

	<p>This means that a suitably qualified person can also be counted towards the number of diploma level educators when calculating the ratio.</p>		
<p>Regulation 135 Provide for the replacement of a suitably qualified person during their short-term illness or absence, and the replacement of an ECT during their short-term illness or absence with a suitably qualified person</p>	<p>Regulation 135 allows a person who holds a primary teaching qualification, or a person who holds an approved diploma level qualification, to be taken to be an ECT if the ECT is absent due to short-term illness or leave. This applies for up to 60 days in a 12 month period.</p> <p>This is continuing with the amended regulations.</p> <p>In addition, the application of the regulation to services with 60 or more children has been changed to add that:</p> <p>If a first or second ECT is absent due to short term illness or leave, the following persons can be taken to be the first or second ECT:</p> <ul style="list-style-type: none"> • a suitably qualified person • a person who holds a primary teaching qualification • a person who holds an approved diploma level qualification. <p>The same timeframe applies.</p> <p>If a suitably qualified person is absent due to short-term illness or leave, the following persons can be taken to be the suitably qualified person:</p> <ul style="list-style-type: none"> • a person who holds a primary teaching qualification • a person who holds an approved diploma level qualification. <p>The same timeframe applies.</p> <p>The amendments also clarify that the 60 days in a 12 month period relate to an FTE ECT or suitably qualified person, and should be calculated pro rata for ECTs and suitably qualified persons working less than FTE hours.</p> <p>A formula that can be used to calculate the entitlement of days is as follows:</p> $M = (N/FTE) \times 60$ <p>Where</p> <p><i>M is the maximum number of days in any 12 month period;</i></p>	<p>All except NSW</p>	<p>31 Dec 2019</p>

	<p><i>N is the number of hours per week for which the relevant person has been engaged by the service;</i></p> <p><i>FTE is the number of hours per week for which a full-time equivalent early childhood teacher is engaged by the service.</i></p>		
<p>Regulation 152(2) Provide for the keeping of records of attendance of suitably qualified persons at services</p>	<p>Regulation 152(2) requires that a service with 25 or more children preschool age or under must keep a record of when ECTs are working with the service, when they are working directly with children (and when not), and when they are in attendance at the service.</p> <p>The regulation has changed so that a record must be kept that shows when an ECT is in attendance and when a suitably qualified person is in attendance at the service.</p>	All except NSW	31 Dec 2019
<p>Regulations 404, 405, 406, 407 and 408 Provide for the replacement of a suitably qualified person during their short-term absence due to resignation</p>	<p>Regulations 404 and 405 (ACT), 406 and 407 (Qld), 408 and 409 (Tas), and 410 and 411 (WA) only apply in those particular jurisdictions.</p> <p>These are new regulations that allow for regulation 135 to apply when the reason a suitably qualified person is absent is due to resignation, until 31 December 2021.</p> <p>This mirrors the effect of regulations 385 to 394 that allow regulation 135 to apply when an ECT resigns until 31 December 2021.</p>	ACT, Qld, Tas, WA	31 Dec 2019
<p>Regulation 265 Provide for suitably qualified persons to be qualified educators for the purpose of absences of qualified educators</p>	<p>Regulation 265 applies in ACT only. It explains who is considered qualified for the purposes of regulation 264.</p> <p>The regulation has been changed so that a suitably qualified person is also seen as a qualified educator for the purposes of regulation 264.</p> <p>For more information on this regulation, please contact the ACT regulatory authority.</p>	ACT	31 Dec 2019
<p>Regulations 299F, 299G, 299H, 299I Provide for impact on ratios and attendance requirements of suitably qualified persons, and</p>	<p>Regulations 299F, 299G, 299H, 299I apply in Qld only. They detail the conditions under which educators can take a rest pause (maximum 10 minutes) or when educators can be absent for 5 minutes or less.</p> <p>These regulations have been changed to include a suitably qualified person, and educators taken to be ECTs and taken to be suitably qualified persons.</p>	Qld	31 Dec 2019

<p>educators taken to be ECTs and suitably qualified persons, taking rest pauses and short absences</p>	<p>For more information about these regulations, please contact the Queensland regulatory authority.</p>		
<p>Regulation 324 Provide for the replacement of an ECT during their short-term illness or leave with a suitably qualified person, and provide that the remaining educators required for ratios at government and prescribed preschools must have or be actively working towards at least a Certificate III qualification</p>	<p>Regulation 324 applies in SA only. It prescribes the ECT requirements for preschools in SA and replaced regulation 126 (general educator qualifications in centre-based services).</p> <p>This clarifies that all other educators (other than the first and second ECT for government preschools or the first and third ECT for prescribed preschools) who are required to meet the educator to child ratios for the preschool must have, or be actively working towards, at least an approved certificate III level qualification.</p> <p>The regulation also allows that when an ECT is absent because of short term illness or leave, the following persons can be taken to be the ECT:</p> <ul style="list-style-type: none"> • a suitably qualified person • a person who holds a primary teaching qualification • a person who holds an approved diploma level qualification. <p>In SA a person ‘taken to be an ECT’ requires registration or special authority to teach from the Teachers Registration Board.</p> <p>For more information about this regulation, please contact the SA regulatory authority.</p>	SA	31 Dec 2019
<p>Regulation 373(4) Provide for a suitably qualified person to be in attendance at a kindergarten or pre-kindergarten programme provided at a school.</p>	<p>Regulation 373 applies in WA only. It details requirements for ECTs in pre-kindergarten programmes or kindergarten programmes provided by a school.</p> <p>Subregulation 4 clarifies that an ECT must be in attendance at all times children are being educated and cared for by the programme. This regulation has been changed to add a suitably qualified person as an alternative person who can be in attendance for services with 60 or more children.</p> <p>For more information about this regulation, please contact the WA regulatory authority.</p>	WA	31 Dec 2019

Provisions affecting centre-based services in remote and very remote areas

Amendment	What this means	States affected	Commencement of amendment
<p>Regulation 239A(1) Extend time periods of application of alternate ECT attendance requirements for remote centre-services, for some jurisdictions.</p>	<p>Regulation 239A(1) allows centre-based services located in remote or very remote areas in NSW, Qld, SA, Tas, NT and WA to meet the ECT attendance requirements in regulations 132 to 134 if the service has access to an ECT working with the service at least 20 per cent of the time the service provides education and care.</p> <p>Regulation 239A was due to expire on 1 January 2020 but has now been extended.</p> <p>The regulations have been changed to reflect the extension periods.</p> <p>They are:</p> <ul style="list-style-type: none"> • 31 December 2021 in NSW, Qld, SA and Tas • 31 December 2023 in NT and WA. 	NSW, Qld, SA, Tas, NT, WA	31 Dec 2019
<p>Regulation 239A(2) Provide for alternate second ECT or suitably qualified person attendance requirements for some jurisdictions.</p>	<p>Regulation 239A(1) allows centre-based services located in remote or very remote areas in NSW, Qld, SA, Tas, NT and WA to meet the ECT attendance requirements in regulations 132 to 134 if the service has access to an ECT working with the service at least 20 per cent of the time the service provides education and care.</p> <p>From 31 December 2019 services in NSW in remote and very remote areas with 25 to 29 children preschool age or under can meet the attendance requirements for an ECT under regulation 272(1A) if they have access to the ECT for at least 20 per cent of the time the service provides education and care.</p> <p>From 1 July 2020 services in NSW, Qld, SA, Tas, NT and WA in remote and very remote areas with 25 to 59 children can also meet the attendance requirements for an ECT if they have access to the ECT for at least 20 per cent of the time the service provides education and care.</p>	NSW, Qld, SA, Tas, NT, WA	1 July 2020

	<p>Following the commencement of the requirements for the second ECT or suitably qualified persons, from 1 July 2020 regulation 239A will also change to afford the same proportionate attendance requirements currently in place for ECTs to suitably qualified persons.</p> <p>Services in remote and very remote areas not in NSW with 60+ children can either:</p> <p>Have access to an ECT working with the service at least 40 per cent of the time the service provides education and care</p> <p>OR</p> <p>Have access to an ECT working with the service at least 20 per cent of the time the service provides education and care AND Have access to a second ECT or suitably qualified person working with the service at least 20 per cent of the time the service provides education and care.</p> <p>Like the requirements for an ECT, the regulation has also changed to:</p> <ul style="list-style-type: none"> • add a suitably qualified person’s attendance to be by means of information communication technology • also allow the attendance of a suitably qualified person to be calculated on a quarterly basis. 		
<p>Regulation 240 Extend time periods of application of alternate qualification requirements for remote services for some jurisdictions</p>	<p>Regulation 240 applies to services located in remote or very remote areas in Qld, Tas, SA and WA. It allows an educator who is employed by the same approved provider before 1 January 2012, to continue to be employed by that provider without needing to hold, or be actively working towards, an approved qualification. This educator can be counted towards the certificate III requirement under regulation 126(1)(b).</p> <p>This was due to expire on 1 January 2020, but has been extended.</p>	<p>Qld, SA, Tas, WA</p>	<p>31 Dec 2019</p>

	<p>The regulation will change to reflect the extension periods.</p> <p>They are:</p> <ul style="list-style-type: none"> • 31 December 2021 in Qld, SA & Tas • 31 December 2023 in WA 		
Extension of provisions previously due to expire			
Amendment	What this means	States affected	Commencement of amendment
<p>Regulation 242 Extend the application of persons taken to be ECTs</p>	<p>Regulation 242 explains that a person who is actively working towards an approved ECT level qualification, and provides the approved provider with documentary evidence of this, can be taken to be an ECT in certain circumstances. This was due to expire on 1 January 2020 but is being extended.</p> <p>The regulation will change to reflect the extension periods.</p> <p>They are:</p> <ul style="list-style-type: none"> • 31 December 2021 in NSW , ACT, Qld, SA & Tas • 31 December 2023 in NT & WA <p>The regulations have also clarified that this regulation applies to services in NSW that are educating and caring for less than 30 children preschool age and under.</p>	<p>ACT, NSW, NT, Qld, SA, Tas, WA</p>	<p>31 Dec 2019</p>
<p>Regulation 264 Extend the application of qualification requirements for qualified educators</p>	<p>Regulation 264 applies in ACT only and explains general qualifications for educators in centre-based services. It was due to expire on 31 December 2020, but has been extended until 31 December 2021.</p> <p>For more information about this regulation, please contact the ACT regulatory authority.</p>	<p>ACT</p>	<p>31 Dec 2019</p>

Other state-specific amendments

Amendment	What this means	States affected	Commencement of amendment
<p>Regulation 272 Correct the application of the ECT to child ratio requirements, and provide for the replacement of an ECT during their short-term illness or absence with a diploma or primary teaching qualified educator</p>	<p>Regulation 272 applies in NSW only. It previously explained the ECT requirements for when a service is educating and caring for 30 or more children preschool age or under.</p> <p>This regulation has been changed to clarify that it applies in place of regulations 132 to 135, in relation to when a centre-based service is educating and caring for 25 or more children preschool age or under.</p> <p>Further, it clarifies that when there are 25 to 29 children preschool age or under being educated and cared for at the service, one ECT must be in attendance:</p> <ul style="list-style-type: none"> • for at least 6 hours on that day, if the service operates for 50 or more hours a week; or • for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week. <p>Regulation 272 has also added that when an ECT is absent because of short-term illness or leave, the following persons can be taken to be the ECT:</p> <ul style="list-style-type: none"> • a person who holds a primary teaching qualification • a person who holds an approved diploma level qualification. <p>This applies for up to 60 days in a 12 month period for a full-time equivalent ECT position.</p>	NSW	31 Dec 2019
<p>Regulation 358 Require AP to read WWCC before engagement of a nominated supervisor, and require AP/NS to read WWCC before engagement of a</p>	<p>Regulation 358 applies in Victoria only.</p> <p>It states that working with children checks of educators, family day care educators, volunteers or staff members must be read before being engaged at a service.</p> <p>The regulation did not make it clear that individuals nominated as nominated supervisors should also have their working with children checks read. It also did not clarify that persons placed in day-to-day</p>	Vic	31 Dec 2019

person in day-to-day charge	<p>charge of a service cannot read their own working with children checks.</p> <p>The regulation has been changed to specify that an approved provider must read the working with children check for nominated supervisors before they are engaged.</p> <p>The regulation has also been changed to specify that an approved provider or nominated supervisor must read the working with children check for persons in day-to-day charge of a service before they are engaged.</p> <p>In relation to a part time ECT, 60 days is to be calculated on a pro-rata basis.</p>		
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<p>Regulation 299 Change application of qualification requirements for caring for children over preschool age to apply to groups of mixed age children as well as groups of only preschool age children</p>	<p>Regulation 299 only applies in Qld. It lists the general qualification requirements for educators at a centre-based service educating and caring for children over preschool age in Qld.</p> <p>The word 'only' has been removed from this regulation, and references to preschool age children inserted, to clarify that the qualification requirements under regulation 299 apply when the service is educating and caring for children over preschool age.</p> <p>Regulation 126(1) sets out the qualification requirements for centre-based services caring for children preschool age or under.</p>	Qld	31 Dec 2019
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Revocation of spent or expired regulations

Amendment	What this means	States affected	Commencement of amendment
<p>Regulation 235(1) Remove prescription of fees in the National Regulations</p>	The section of this regulation that references fees payable before 2013 has been removed.	All states and territories	31 Dec 2019

Regulation 301 Remove educator to child ratios for children 24 months to 13 years	Regulation 301 only applies in Qld. This regulation about educator to child ratios applicable until 31 December 2015 has been removed.	Qld	31 Dec 2019
Regulation 346 Remove educator to child ratios at certain declared approved services	Regulation 346 only applies in Tas. This regulation about educator to child ratios applicable until 31 December 2017 has been removed.	Tas	31 Dec 2019
Regulation 384 Remove requirement to amend service approval to include condition specifying maximum number of educators at a family day care service	Regulation 384 only applies in WA. This regulation requiring regulatory authorities to apply conditions on service approval relating to the maximum number of educators at an FDC service prior to 1 April 2018 has been removed.	WA	31 Dec 2019

Miscellaneous

Amendment	What this means	States affected	Commencement of amendment
Regulation 10 Correct wording regarding who is required to make satisfactory progress towards completing a course and meeting the requirements of enrolment	Regulation 10 lists the requirements for an educator to be considered actively working towards an approved qualification. The regulation has been changed to make a technical clarification that the requirements apply specifically to the educator that is actively working towards an approved qualification.	All states & territories	31 Dec 2019