



Approved providers can apply for waivers from certain requirements of the National Regulations.

This information sheet explains the types of waivers that are available, and the evidence that can be submitted in support of applications for those waivers.

Evidence is an important part of a waiver application and assists regulatory authorities in making their decision.

WHERE CAN I GET FURTHER INFORMATION?

Several state and territory Regulatory Authorities offer further guidance for waiver applications.

EVIDENCE FOR WAIVER APPLICATIONS

Waivers may be granted by a regulatory authority following application by an approved provider. They waive a service's requirement to comply with one or more of the prescribed regulations in the *Education and Care Services National Regulations* (National Regulations) in relation to the physical environment, staffing and the location of the principal office of a family day care service. A full list of the requirements that may be waived can be found in the *Guide to the National Quality Framework* (Guide to the NQF) – Section 2 Applications and Approvals (3. Waivers and other applications).

There are two types of waivers: service waivers and temporary waivers.

Temporary waivers apply for a period of no more than 12 months, while service waivers have no specified expiry date. Further extensions for temporary waivers for periods of up to 12 months can be sought.

The *Education and Care Services National Law* (National Law) and the National Regulations contain specific requirements for applications for both types.

Applications for service waivers and temporary waivers can be submitted online through the NQA ITS.

SERVICE WAIVERS

Regulation 42 of the National Regulations prescribes the information to be included in the waiver application. The approved provider must submit:

- if applicable, the reasons the service is unable to comply with the prescribed regulation(s), and details and evidence of any attempts made to comply with the specified regulation(s); or
- otherwise, the reasons that the service seeks the service waiver; and

- the measures taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the service waiver is in force.

Information on service waivers can be found in Section 2 Applications and Approvals (3 Waivers and other applications – 3.1) of the Guide to the NQF.

TEMPORARY WAIVERS

Regulation 45 of the National Regulations prescribes the information to be included in the temporary waiver application. The approved provider must submit:

- the reasons that the service is unable to comply with the prescribed regulation(s);
- details and evidence of any attempts made to comply with the specified regulation(s);
- the period for which the waiver is sought and the reasons for seeking that period;
- details of steps taken or that will be taken to comply with the specified regulation(s); and
- the measures being taken or that will be taken to protect the wellbeing of children being educated and cared for by the service while the waiver is in force.

Information on temporary waivers can be found in Section 2 Applications and Approvals (3 Waivers and other applications – 3.2) of the Guide to the NQF.

EVIDENCE TO SUBMIT

Examples of the evidence that can be submitted in support of waiver applications are set out in the table below.

Please note that:

- these are examples only and your state or territory regulatory authority may request additional or different evidence
- A regulatory authority is not obliged to grant a waiver if one is applied for
- A regulatory authority may decide to inspect the service premises or principal office of a family day care service to assist in deciding to grant or refuse a waiver.

Type of waiver	Examples of evidence
Service waiver	
Physical environment – general	<p>Plans covering risk management, supervision strategy and revised use of space (Regulation 42(g))</p> <p>Relevant space plans, diagrams or photographs (Regulation 42(g))</p> <p>Evidence of how the environment would be adapted, facilities and/or equipment that would be used to promote quality experiences in natural environments, if the application is granted (Regulation 42(g))</p> <p>Information on programming and practices to facilitate access to quality experiences in natural environments (Regulation 42(g))</p> <p>Facilities and equipment to engage and develop gross motor skills (Regulation 42(g))</p> <p>For temporary waivers, alternative means of maintaining service quality while a part of the physical environment is temporarily unavailable (Regulation 45(i))</p> <p>Details of any arrangement to ensure the safety, health and wellbeing of children during the waiver term (Regulation 45(i))</p>
Physical environment – insufficient indoor/outdoor space	<p>Outline of the space reduction being requested, the reason, what areas of the program will be impacted and how the service will ensure children’s safe access to reduced indoor/outdoor space (Regulations 42(e), (f), (g))</p> <p>Where renovations are being undertaken, evidence:</p> <ul style="list-style-type: none"> • that the service is unable to schedule the renovations, or particular aspects of the renovations, for times when children are not present • of the expected length of time that the works will take • of how much space will be unavailable for the time of the works being undertaken • of what areas of the program will be impacted • of how the service will minimise the impact of any works on the children • of a risk assessment and how the service will ensure children cannot access any unsafe areas during the renovations • of how the service will manage the movement of tradespeople through the service • that temporary fencing (if required) meets the requirements of regulation 104 • of how the service will evaluate the effectiveness of meeting the needs of the children whilst the works are being undertaken (Regulations 42(e), (f), (g)).

Type of waiver	Examples of evidence
Service waiver	
Physical environment – insufficient indoor/outdoor space, cont.	<p>Accessing outdoor space away from the approved premises to satisfy outdoor space requirements</p> <p>Details of the outdoor space the service intends to use including a map identifying this space in relation to the service (Regulation 42(g))</p> <p>Details of the outdoor space the service intends to use including a map identifying this space in relation to the service (Regulation 42(g))</p> <p>If accessing outdoor space away from the premises, a copy of the service’s policies and procedures in relation to excursions including procedures for complying with the requirements for risk assessment and authorisations set out in regulations 100-102 (Regulation 42(g))</p> <p>Copy of the service’s policies and procedures for the supervision of children using the outdoor space (Regulation 42(g))</p> <p>Copy of the completed risk assessment for taking children to the outdoor space (Regulation 42(g))</p> <p>Using additional indoor space as outdoor space to satisfy outdoor space requirement</p> <p>Details of the additional indoor space the service intends to use as outdoor space including a map/ plan identifying this space in relation to the service (Regulation 42(g))</p> <p>Area measurements for the space (Regulation 42(g))</p> <p>Details of how this space can be adapted to provide children with an experience of being outdoors, including information related to how the indoor space will be perceived through the child’s sense of sight, sound and smell (Regulation 42(g))</p>
Staffing – general	Plan illustrating how educational program and practice meet the outcomes of the approved learning framework (Regulation 42 (g))
	Evidence of staffing rosters, including continuity of care (Regulation 45(i))
	Staff qualifications or staff progression records towards qualifications, including enrolment details and transcripts if relevant (Regulation 45(h))
	Evidence of mentoring arrangements and planning provisions to ensure the health, safety and wellbeing of children and the program is not impacted (Regulation 45(i))
	Evidence of regular advertisements (Regulation 45(h))

Type of waiver	Examples of evidence
Service waiver	
Staffing – requirement for ECT/diploma level qualified educator	Evidence of efforts to recruit a diploma level qualified educator (for example, copies of advertisements) (Regulation 42(e))
	Copy of the nominated educator’s qualification (in particular if that qualification is not an approved qualification) (Regulation 42(g))
	Evidence of the nominated educator’s current enrolment including the name of the course and/or course code and the date the educator is expected to complete their studies, or staff progression towards qualifications, including transcripts if relevant (Regulation 42(g))
	Details of the mentoring and support available to the nominated educator (Regulation 42(g))
	Plan for training and supervision for individual in ECT role (Regulation 42(g))
	Evidence of planning provisions to ensure the health, safety and wellbeing of children and the program is not impacted (Regulation 42(g))
	Evidence of unsuccessful recruitment attempts (for example job advertisements dated within the previous 3 months, information on unsuitable applicants or no response) (Regulation 42(g))
	Number of enrolled children per day of week and enrolment waitlist (if applicable) (Regulation 42(g))
	Nominee’s ECT course enrolment (Regulation 42(g))
	Evidence of the nominee’s Diploma qualification or 50% completion of ECT course (Regulation 42(g))

EXTENSION OF TEMPORARY WAIVERS

Extensions for temporary waivers must relate to the same regulation(s) and circumstances for which the initial waiver was granted. When considering the extension application, the regulatory authority will consider the continued attempts made by the service to comply with the regulation(s) and why the attempts have not resolved the service’s non-compliance.