

# Education and Care Services National Regulations 2011

## EXPLANATORY STATEMENT

### Background

#### National Quality Framework

1. The Council of Australian Governments (COAG) released a consultation Regulation Impact Statement in July 2009.
2. In December 2009, COAG agreed to a National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (National Partnership Agreement). The National Partnership Agreement sets out a new, jointly governed National Quality Framework (NQF) for long day care, family day care, outside school hours care and preschools (education and care services). With the release of the National Partnership Agreement, COAG also released a Decision Regulation Impact Statement.
3. The NQF will help to ensure that children have access to quality educational programs and environments to develop the knowledge and skills they need for lifelong learning. In addition, families will have more information to make informed choices about the best services for their child.
4. The NQF will also reduce regulatory burden on education and care services by linking the licensing and assessment functions, which are currently split between States and Territories and the National Childcare Accreditation Council resulting in substantial administrative and practical duplication.

#### National Law

5. The *Education and Care Services National Law Act 2010* (National Law) provides the legislative foundation for the NQF. The National Law was developed by all jurisdictions and enacted by Victoria on 12 October 2010. As the legislation follows a national applied laws approach, the National Law has also been adopted in New South Wales by the *Children (Education and Care Services National Law Application) Act 2010*, assented on 19 November 2010. The Education and Care Services National Law (ACT) Bill 2011 was passed in the ACT Legislative Assembly on 25 October 2011.
6. The National Law establishes a new national entity, the Australian Children's Education and Care Quality Authority (ACECQA), to oversee the implementation of the NQF. The Board of ACECQA has been appointed and contains members nominated by each State and Territory and the Commonwealth. ACECQA reports to the Ministerial Council on Education, Early Childhood Development and Youth Affairs (MCEECDYA).
7. The National Law establishes a national system to replace current State and Territory licensing schemes. The system established by the National Law comprises three inter-related approvals:
  - Provider Approval;
  - Service Approval; and
  - Supervisor Certificates.

8. The National Law also sets out an assessment and rating process. Under this process, each State and Territory Regulatory Authority may assess and rate an education and care service in that jurisdiction against the National Quality Standard and the National Regulations. Each assessed service will receive a rating for each quality area and an overall rating for the service. Ratings are subject, upon application, to review and a service can also request a re-assessment and re-rating once every 2 years.
9. The National Law provides that the Ministerial Council has the power to make regulations (Section 221) with the tabling of regulations in each House of Parliament of a participating jurisdiction (Section 303). A committee of the House of Parliament of any participating jurisdiction may consider the regulation and the regulation may be disallowed. Disallowance however, has no effect unless the regulation is disallowed by a majority of participating jurisdictions.
10. The National Regulations are required under a national uniform applied laws legislation scheme and there has been a COAG assessment of costs and benefits undertaken through the consultation and decision Regulation Impact Statement prepared nationally which includes the impact in each jurisdiction.

### **Legislative Provisions**

11. The National Regulations are being made under sections 301 and 324 of the *Education and Care Services National Law Act 2010*.

### **Effect of Operation of the Proposed Regulations**

12. The National Partnership Agreement calls for legislation to be developed that establishes a single national system covering long day care, family day care, outside school hour's care and preschool. The National Regulations will support the National Law in developing this national system and will include detailed implementation matters for the National Quality Framework.
13. The National Regulations will replace ACT Childcare Services Standards that are required under the **Children and Young People Act 2008** in relation to the regulation and approval of education and care services falling within the scope of the national law.
14. The National Regulations will set out a new National Quality Standard for all education and care services. The new National Quality Standard will help services to provide the best possible level of early childhood education and care by being clear about the standards and elements in seven quality areas that best support a child's learning and development.

### **Provide details of the Proposed Regulations**

15. A detailed summary of the proposed National Regulations is included at Attachment A.

## **Attachment A**

### **Chapter 1 – Preliminary (Regulations 1-13)**

Chapter 1 outlines preliminary matters for the purposes of the National Regulations.

Of note, this chapter prescribes a commencement date for the National Regulations of 1 January 2012 and provides definitions or meanings for key terms or phrases used throughout the National Regulations.

Regulation 5 within Chapter 1 prescribes additional classes of services that are specifically excluded from the meaning of an education and care service set out in the National Law and, thus, that are specifically excluded from the coverage of the national legislation. Exclusion by regulation will give flexibility to jurisdictions to include other services under the National Quality Framework at a later point in time. Of relevance to the ACT, such services include:

- provision of education and care in the child's own home, for example nannies and babysitters providing care in a child's own home
- occasional care services where education and care is provided on an ad hoc or casual basis to children that are mostly preschool age or younger
- services provided by a hotel or resort to children who are temporary guests of the hotel or resort
- services provided at a location where a parent or family member is a guest, visitor or patron and is readily available at all times
- services where parents or family members of the children primarily provide or share the education and care of the children
- secondary schools or colleges that provide education and care to the children of students attending the school or college where the parent retains responsibility for the child
- a service providing education and care for no more than 4 weeks per calendar year during school holidays
- a service funded under the Budget Based Funding Program element of the Child Care Services Support Program, and it is not a service that receives the Child Care Benefit
- a licensed playschool under the *Children and Young People Act 2008* of the Australian Capital Territory.

As a result of the exclusions included in the National Law and the National Regulations, the legislation will, at this time, apply to long day care, family day care, outside school hours care and preschool services, consistent with the National Partnership Agreement.

## **Chapter 2 – Approvals and Certificates**

### **Part 2.1 – Provider Approval (Regulations 14-23)**

This Part details the process of obtaining a Provider Approval, including the prescribed information required for an application for Provider Approval. According to the National Law, each applicant (and in the case of entities, each person who will have management or control of an education and care service) must satisfy the Regulatory Authority that they are fit and proper. As part of this process, Regulation 14 requires applicants to provide information including the following:

- proof of the applicant’s identity;
- any matters included in a national criminal history record check to the extent those matters affect the person’s suitability to be a provider of an education and care service;
- a disciplinary proceedings statement made by the applicant; and
- a bankruptcy declaration made by the applicant.

This Part also sets out the required information to apply for an amendment (Regulation 17) or voluntary suspension (Regulation 19) of a Provider Approval and the required information for an executor (Regulations 20 and 21), personal legal representative or guardian (Regulations 22 and 23) to apply for a limited and temporary Provider Approval upon the death or incapacity of an approved provider.

Regulation 18 prescribes a 12-month limit on voluntary suspensions and on suspensions initiated by a Regulatory Authority.

### **Part 2.2 – Service Approvals (Regulations 24-45)**

Part 2 of Chapter 2 details the process of applying for, amending and suspending a Service Approval, including the prescribed information required for the relevant applications.

Regulations 14-33 deals with Applications for Service Approvals and spells out in Regulations 24 and 25 the requirements for a centre based service approval, including details of the education and care service premises. Regulation 26 details what is required in an application for a family day care service approval.

Regulation 28 prescribes the additional grounds on which the Regulatory Authority may refuse to grant a Service Approval, which include if the Regulatory Authority is not satisfied that the applicant is capable of operating the proposed service in a way which meets the requirements of the National Law, the Regulations or the National Quality Standard.

Regulations 29 to 32 place conditions on the service approval in relation to having current public liability insurance with a minimum cover of \$10 million; requiring a quality improvement plan to be kept at the service premises or family day care service principal office, available for inspection by the Regulatory Authority or available on request to parents

of children attending the service; and requiring a centre-based service to continue to be entitled to occupy the premises.

Regulations 34-35 outlines the process for amending Service Approvals and providing notice of change to the nominated supervisor. Regulations 36-38 outlines the processes for transfer of centre-based and family day care services and the notification of the decision of the Regulatory Authority to intervene in the transfer.

Regulations 39-40 provides for the suspension of service approvals including the application process for voluntary suspension.

Regulations 41-43 outlines the process for applying for a service waiver including the prescribed elements that may be subject to a service waiver. Regulations 44-45 provides for the process for applying for a temporary waiver.

### Part 2.3 – Supervisor Certificates (Regulations 46-53)

In this part, Regulations 46-50 outlines the process for an applicant to apply for a supervisor certificate including the minimum requirements for qualifications, experience and management capability. The minimum requirements include an adequate knowledge and understanding of the provision of education and care to children and the ability to effectively supervise and manage an education and care service. The applicant must also meet qualification or experience requirements. Persons who hold a supervisor certificate are eligible to be a nominated supervisor or placed in day to day charge of an education and care service.

Regulation 48 outlines the other matters that the Regulatory Authority must regard that may affect the person's suitability for the role of supervisor, specifically matters relating to criminal history. Regulation 49 outlines the prescribed classes of person which may be granted a supervisor certificate without application, including for example a principal of a school.

Regulation 51 describes the process for amending a supervisor certificate and Regulations 52-53 the process for suspending a supervisor certificate. Regulation 54 outlines the process required for placing a certificated supervisor in day to day charge of an education and care service.

## **Chapter 3 – Assessment and Ratings**

This chapter provides for the assessment and ratings of education and care services against the National Quality Standard.

### Part 3.1 – Quality Improvement Plans (Regulations 55 and 56)

Regulation 55 provides that the approved provider must ensure that a Quality Improvement Plan is prepared for the education and care service. It outlines the requirements for Quality Improvement Plans which are to include an assessment of practices at the service, identify areas for improvement and contain a statement of philosophy of the service. Regulation 56

requires the approved provider to ensure that the quality improvement plan is reviewed and revised at least annually or when directed by the Regulatory Authority.

### Part 3.2 – Prescribed Rating Levels (Regulations 57 and 62)

This part prescribes the rating levels and their descriptions as follows:

- Regulation 59- Significant improvement required, if a service does not meet a quality area or a relevant regulation in a way that the Regulatory Authority is satisfied constitutes an unacceptable risk to a child’s health, safety and wellbeing;
- Regulation 60- Working towards National Quality Standard, if a service does not meet a standard for a quality area or a relevant regulation for that quality area;
- Regulation 61- Meeting National Quality Standard if a service meets the standards and the relevant regulations for a quality area;
- Regulations 62- Exceeding National Quality Standard if a service exceeds the standards for a quality area and complies with the relevant regulations. An Exceeding National Quality Standard may only be given for the educational program and practice quality area of services with children eligible to attend preschool if the service provides a preschool program or has an arrangement with another provider to offer that program; and
- Excellent is the highest rating and requires an application to be made to the National Authority and is explained in Regulation 71.

Regulation 58 provides for a rating of “Provisional-Not Yet Assessed under the National Quality Framework” until the first assessment occurs under the National Law.

### Part 3.3 – Assessment (Regulations 63 and 67)

Regulations 63-65 prescribes the process and matters that the Regulatory Authority considers when making assessments of approved education and care services and determining a rating.

Regulations 66-67 outlines the process for an applicant to apply for a re-assessment of an education and care service.

### Part 3.4 – Review of Ratings (Regulations 68 and 70)

Regulations 68-70 provides for the Review of Ratings. Regulation 68 outlines the process for an applicant to apply for a review of a rating by the Regulatory Authority. Regulation 69 outlines the process to apply for a further review of a rating by a Ratings Review Panel and in addition to requirements in the national Law, the expertise and knowledge of Review Panel persons Regulation 70.

### Part 3.5 – Highest Rating (Regulation 71)

Regulation 71 describes the process by which an education and care service, if eligible, may apply for the highest rating.

### Part 3.6 – Offences (Regulation 72)

Regulation 72 outlines offences relating to falsely representing the overall rating or a rating in respect of a quality area of the National Quality Standard.

## **Chapter 4 - Operational Requirements**

This Chapter outlines the ongoing operational requirements of an education and care service in the Regulations. These requirements are aligned with the seven quality areas of the National Quality Standard.

### Part 4.1 – Educational Programs and Practice (Regulations 73-76)

This Part outlines the obligations of an education and care service related to the delivery of its educational programs and practices. Under the National Law, a service is required to deliver an educational program to all children being educated and cared for by the service. The Regulations in this part support the delivery of an educational program for the children including requirements for documenting assessments or evaluations of children’s progress against outcomes; and information about the educational program to be given to parents and kept available for inspection.

### Part 4.2 – Children’s Health and Safety (Regulations 77-89)

This Part outlines the obligations of an education and care service related to the protection of children’s health and safety. The regulations provide for the safety, health and wellbeing of children being educated and cared for by a service.

Regulations 77-89 are to ensure the health, safety and wellbeing of children. This includes a requirement for services to implement good health and hygiene practices and safe food practices (Regulation 77); to ensure that children have access to food and beverages and where a services provides food, it is nutritious and adequate for each child (Regulations 78 and 79). A weekly menu is required to be displayed (Regulation 80). Regulation 81 requires a provider to take reasonable steps to ensure children’s needs for sleep and rest are met. Regulation 82 and 83 require the service to ensure that children are provided with an environment that is free from the use of tobacco, illicit drugs or alcohol and that staff members are not affected by alcohol or drugs so as to impair their capacity to supervise or educate and care for children. Regulation 84 places an obligation on the approved provider to ensure that staff members and the nominated supervisor are aware of obligations under child protection laws.

Regulations 85-89 are directed at managing and minimising incidents, injuries, trauma and illness. Regulations 85-87 require a service to have policy and procedures to be followed in the event of an injury, incident or trauma which include notifying the parents of the child, and

the Regulatory Authority where required, as well as making an appropriate record. This division also requires appropriate action to be taken to prevent the spread of infectious diseases (Regulation 88); and that suitably equipped first aid kits are available wherever children are being educated and cared for (Regulation 89).

Regulations 90-91 are directed at the requirement for an education and care service to have a medical conditions policy that sets out the practices to manage medical conditions including asthma, diabetes or a child at risk of anaphylaxis, and for this policy to be provided to parents.

Regulations 92-96 outlines requirements and procedures for the administration of medication (Regulation 95) with authority from parents (Regulation 93) including medication records to be kept (Regulation 92) and allowing a service to permit a child over preschool age to self-administer medication in accordance with policy (Regulation 96).

Regulations 97-98 outlines emergency procedures and communication requirements with services being required to have emergency and evacuation procedures (Regulation 97), including requirements for regular rehearsals by staff members and children and the capacity for immediate communication with emergency services and parents (Regulation 98).

Regulations 99-102 provide for the safety of children when leaving an education and care service premises, including authorised excursions and collections from the premises by a parent or authorised person (Regulation 99). There is a requirement to conduct a risk assessment (Regulations 100-101) and obtain an authorisation from parents before conducting an excursion (Regulation 102).

#### Part 4.3 – Physical Environment (Regulations 103- 117)

This Part outlines the obligations of an education and care service relating to its physical environment. The Regulations provide for requirements of the premises to be used to provide an education and care service including repair, design, layout and space. These requirements differ depending on whether services are centre-based or family day care services.

Regulations 103-110 apply to both centre-based services and family day care services. Regulation 103 provides an overall requirement that premises, furniture and equipment are safe, clean and in good repair. Regulation 104 sets out requirements for fencing of a height and design so that children preschool age or under cannot go through, over or under the fence. Regulation 105 requires sufficient furniture, materials and equipment suitable for the education and care of each child. Regulation 106 outlines requirements for laundry facilities or arrangements to store and dispose of soiled clothing. Regulations 107 and 108 prescribe the indoor and outdoor space requirements for centre-based services and family day care venues. Other requirements include ventilation and adequate natural light (Regulation 110), and toilet and hygiene facilities (Regulation 109).

Regulations 111- 115 place additional requirements on centre-based services for the health and safety of children, such as the need for appropriate nappy change facilities where children wear nappies (Regulation 112) and appropriate design of the premises to facilitate

supervision of children at all times they are being educated or cared for (Regulation 115). This division also requires an appropriate outdoor environment for children including shade (Regulation 114) and opportunities for children to explore and experience the natural environment (Regulation 113).

Regulations 116-117 are additional requirements for family day care services. The assessment of the physical environment of a family day care residence or venue is the responsibility of the approved provider, not the Regulatory Authority. Regulation 116 requires an assessment of family day care residences or venues by an approved provider before education and care can be provided as part of the service and at least annually. This includes consideration of the requirements in Divisions 1 and 3; the suitability of the residence or venue with regard to the number, ages and abilities of the children attending the service; the suitability of nappy changing arrangements and the existence and risks posed by any animals, water hazards or pools nearby. Regulation 117 requires a family day care service to ensure that glazed areas in residence or venues, if they are accessible to children, meet certain standards.

#### Part 4.4 – Staffing Arrangements (Regulations 118-154)

This Part outlines the obligations of an education and care service relating to its staffing arrangements, including the qualifications of educators.

Regulation 118 requires the designation of an educational leader to lead the development and implementation of educational programs in the service.

Regulations 119-120 provides for age and supervision of educators at the service. Under these regulations, a family day care service cannot engage or register a family day care educator or educator assistant, unless the person has attained the age of 18 years (Regulation 119). Centre-based services may engage a person under the age of 18 years, provided that they do not work alone with children and the educator is adequately supervised at all times by an educator who has attained the age of 18 years (Regulation 120).

Regulations 121-124 prescribes the minimum number of educators required to educate and care for children at an education and care service, also called the educator to child ratio. The educator to child ratio varies dependent on the ages of the children being educated and cared for and whether it is a family day care service or centre-based service. The regulations in set out the new national requirements for staffing arrangements, as outlined in the National Partnership Agreement. These requirements are staged for implementation through to 2020. Chapter 7 sets out transitional or savings arrangements that apply nationally or by jurisdiction until the new national ratios are implemented.

The educator to child ratios for centre-based services is outlined in Regulation 123 and includes:

- a) For children from birth to 24 months of age – 1 educator to 4 children;
- b) For children over 24 months and less than 36 months of age – 1 educator to 5 children;

- c) For children aged 36 months of age and over (not including children over preschool age) – 1 educator to 11 children; and
- d) For children over preschool age the ratio is that outlined in Chapter 7 – a national ratio for this age range has not been agreed.

Regulation 124 outlines the ratio for family day care services of 1 educator to 7 children with no more than 4 children under preschool age. The regulation provides some flexibility in exceptional circumstances.

Regulations 125-128 prescribes the educational qualifications for educators who are educating and caring for children preschool age and under (Regulation 126). For centre-based services, it is required that at least 50% of the educators required to meet the ratio have, or are actively working towards, a diploma level education and care qualification and that the other 50% have or are actively working towards, a certificate III level education and care qualification. For family day care services, all family day care educators are required to have, or be actively working towards, an approved certificate III level education and care qualification (Regulation 127) and family day care co-ordinators are required to have an approved diploma level qualification (Regulation 128). Chapter 7 sets out transitional or savings arrangements that apply nationally or by jurisdiction until the new national requirements for qualifications are implemented.

For the ACT the primary differences between the Regulations and the current *ACT Childcare Services Standards 2009* requirements are:

- The current 1:5 ratio for children aged birth to 24 months will change to 1:4; and
- The requirement to have 50% of educators either holding or working towards a certificate III for centre based services is a new requirement.

Regulations 129-135 supplements the requirements under the National Law by providing that the staffing arrangements in centre-based services must include access to or attendance of early childhood teachers. The Regulations outline the required number of hours and the number of teachers based on the size of the service and its operating hours. In a centre-based service with less than 25 children, the service must have access to an early childhood teacher for at least 20% of the time the service provides education and care. For services with 25 or more children, the early childhood teacher must be in attendance for the prescribed time period. The regulations make provision for other suitably qualified persons, other than early childhood teachers, to be included in circumstances where a second teacher would be required from 2020. Regulation 135 provides for when a teacher is absent for a period not exceeding 12 weeks and requires their replacement with a person holding a primary teaching qualification or an approved diploma level qualification.

Regulation 136 outlines the first aid qualification requirements for education and care services. Under this division an education and care service is required to have at least one educator with a current first aid qualification and training in anaphylaxis and asthma management on the site wherever children are being educated and cared for.

Regulations 137- 143 outline the process for the approval and determination of qualifications. Under the requirements, the National Authority must publish a list of approved qualifications. Persons may apply to the National Authority to have a qualification assessed for approval, or for a determination that a qualification is equivalent to an approved qualification.

Regulation 144 establishes the concept of a family day care educator assistant to assist in transporting children to school and other education and care services; or a child's home; providing education and care in an emergency situation when the educator requires urgent medical care or treatment; for periods where the educator attends an appointment for less than 4 hours; or to provide assistance to the educator while educating and caring for children (Regulation 144).

Regulations 145-152 apply to centre-based services only. They outline the requirement for centre-based services to keep a staff record, which includes details of the nominated supervisor (Regulation 146) and other staff members (Regulation 147), such as their names, addresses and dates of birth, evidence of qualifications and any working with children checks; the designation of an educational leader (Regulation 148) and details of volunteers (Regulations 149) working at the service. Regulations 150-152 also require centre-based services to keep a record of the name of the responsible person at the service, the times that educators are working directly with children and the times when a service with under 25 children has access to an early childhood teacher.

Regulations 153-154 applies only to family day care services. This division augments the requirement under the National Law for approved providers to keep a register of family day care educators, outlining the relevant information which is to be kept on the register for each family day care educator, co-ordinator and educator assistant engaged or registered by the service.

#### Part 4.5 – Relationships with children (Regulations 155-156)

Regulations 155-156 outlines the obligations of an education and care service in developing and maintaining relationships with children. Under the National Law, an education and care service is required to ensure that interactions with children encourage their development, including the development of self-reliance and self-esteem; maintain the dignity and rights of each child; give each child positive guidance and encouragement toward acceptable behavior and have regard to the family and cultural values, age and physical and intellectual development of each child (Regulation 155). Regulation 156 requires opportunities for children to interact and develop respectful and positive relationships with each other and with staff members and, for this purpose, the approved provider must have regard to the size and composition of the groups of children in the service.

#### Part 4.6 – Collaborative relationships with families and communities (Regulation 157)

Regulation 157 outlines the obligations of an education and care service in developing and maintaining collaborative partnerships with families and communities. The regulations in this Part require approved providers, nominated supervisors and educators to allow the parent of a child access to the service while the child is being educated and cared for, unless there is a

court order prohibiting entry, risk to the safety of children or staff at the service, or a conflict with another duty under the National Law.

#### Part 4.7 – Leadership and Service Management (Regulations 158-185)

This Part outlines the leadership and service management obligations of an education and care service, which are necessary under the National Law.

Regulations 158- 162 outlines the requirements for the management of services. This includes requirements for attendance records (Regulations 158 and 159); enrolment records to be kept by the approved provider and family day care educator (Regulation 160); authorizations to be kept in the enrolment record, including consent to medical treatment for a child and transportation in an ambulance and any consent to routine outings (Regulation 161); health information to be kept, including any specific health care needs of the child and any allergies or diagnoses as at risk of anaphylaxis; any medical management plan; any dietary restrictions; immunisation status and if a health record has been sighted for the child (Regulation 162).

In addition, this division stipulates the additional requirements for other adults residing at a family day care residence. Under Regulation 163, the approved provider of a family day care service must ensure that persons over the age of 18 years residing in a residence and all family day care educator assistants are fit and proper. The family day care educator has a further responsibility to keep a record of all visitors to the residence or venue while children are being educated and cared for (Regulation 165), and to ensure that visitors are never left alone with children (Regulation 166).

Regulations 168- 172 provides for the policies and procedures which must be kept and followed by an education and care service (Regulation 168-169). Details regarding the content of these policies are outlined in the other areas of this Chapter. Regulation 172 outlines the requirements to notify parents of changes to a policy which may have a significant impact on the provision of the service or affect the family's ability to use the service.

Regulations 173-185 identifies other information and record keeping requirements. These include the information that must be displayed at the service, and the requirements to notify the Regulatory Authority in the event of a change in contact details, operation of the service, or incident that requires closure of the service. The division also outlines the prescribed enrolment and other documents required to be kept by the service (Regulation 177) and evidence of the current public liability insurance (Regulation 180). This division also outlines requirements for confidentiality and storage of records, including where a service is transferred and transfer of records with parental consent (Regulation 184). There is a requirement to ensure that a copy of the National Law and Regulations are accessible at the education and care service (Regulation 185).

## **Chapter 5 – Review, Enforcement and Compliance (Regulations 185-191)**

This Chapter provides for the processes of internal review of decisions of the Regulatory Authority and for enforcement and compliance of obligations under the National Law.

### **Part 5.1 – Internal Review (Regulation 186)**

Regulation 186 outlines the application process for an internal review of a reviewable decision of a Regulatory Authority.

### **Part 5.2 – Enforcement and Compliance (Regulation 187 -191)**

Regulation 187 outlines the prescribed form of the identity card to be carried by authorised officers. Regulation 188 provides for Schedule 3 of the regulation to list the regulations for which a compliance direction may be issued. This Part also includes the application to cancel a prohibition notice (Regulation 189) and in Regulation 190, identifies the regulations for which a Penalty Infringement Notice may be issued. Regulation 191 provides penalties for providing to the National Authority any information or document that a person knows is false or misleading.

## **Chapter 6 – Administration**

### **Part 6.1– Australian Children's Education and Care Quality Authority (Regulations 192-194)**

Regulations 192-194 sets out provisions relating to the National Authority. Regulation 192 prescribes classes of bodies which may co-operate and share information with the National Authority, participating jurisdictions or the Commonwealth. The regulations in this Part also set out processes for allocating, transferring and reimbursing money to a participating jurisdiction and for the National Authority to invest money in the Authority Fund.

### **Part 6.2 – Information, Records and Privacy— National Authority and Regulatory Authorities (Regulations 195- 231)**

This Part sets out matters relating to information, records and privacy, affecting the National Authority and Regulatory Authorities. Regulations 195- 203 provide for the application of the Commonwealth Privacy Act 1988 with modifications. Regulation 204-211 provides for the application of the Commonwealth Freedom of Information Act 1982 with modifications. Regulations 212- 217 provides for the application of the New South Wales State Records Act 1988, with modifications, to the National Authority. Regulations 218- 225 provides for the application of the Commonwealth Ombudsman Act 1976.

The intention is to create a nationally consistent approach to privacy and freedom of information for the operation of the Regulatory Authorities and the National Authority by the application of Commonwealth legislation as a law of each state and territory, with appropriate modifications. Application of the New South Wales State Records Act will also create a nationally consistent approach for the record keeping by the National Authority, which will be located in New South Wales.

The National Law provides for the Office of the National Education and Care Services Freedom of Information Commissioner, the Office of the National Education and Care Services Privacy Commissioner and the National Education and Care Services Ombudsman. The regulations modify the application of these laws, including their scope, financial procedures, reporting, determinations and the circumstances in which the Commissioners may be removed.

Regulations 225- 228 provides for the publication of information including information kept on the register of approved providers, the register of approved education and care services and the register of certified supervisors.

This part also outlines information which may be published for the purposes of the National Law such as information relating to the operation of an education and care service (e.g. hours of operation and contact details), as well as information about compliance notices, enforceable undertakings, suspensions or cancellation of approvals or supervisor certificates.

#### Part 6.3—Fees (Regulations 232-236)

Regulations 232-236 prescribes the fees payable under the National Law, including information regarding late payment, waivers, reductions, refunds, indexation and publication of fees. Service approvals under the National Law will be subject to an annual fee based on the size of the service. Other fees apply to particular transactions, such as a service requesting a ratings assessment outside the ordinary rating cycle.

#### Part 6.4 — Delegations (Regulation 237)

Regulation 237 identifies the prescribed classes of persons to whom the Regulatory Authority may delegate any of its functions or powers.

### **Chapter 7 – Transitional and Savings provisions**

Chapter 7 provides for transitional and saving provisions.

#### Part 7.1 – General transitional and saving provisions (Regulations 238-257)

This part outlines provisions that will apply for all jurisdictions. Regulation 238 provides for the preparation of quality improvement plans. This is to allow approved provider's adequate time after the scheme commencement date to have in place a quality improvement plan.

Regulation 240 allows for educators who have worked continuously in an education and care service for 15 years to continue working as an educator without a qualification. Regulations 241 to 245 provides for educators who are taken to hold approved qualifications. This includes qualifications previously recognised by participating jurisdictions to ensure educators are disadvantaged by moving into the new system.

Regulations 246 and 247 allow for educators in jurisdiction where anaphylaxis and asthma management training was not previously required, to obtain by 1 January 2013, the required training to meet the requirements of the Regulations.

Regulations 248 to 251 provide that certain regulations relating to physical environments will not apply in some circumstances to preschools, family day care residence and declared out of scope services.

Regulation 252 and 253 provides that information held by regulatory authorities under previous laws and regulations may be shared between jurisdictions in circumstances prescribed by the National Law.

Regulation 254 provides for the list of approved learning frameworks. For the ACT the Every Child to Learn Curriculum is an approved learning framework until 31 December 2015. This is to allow education and care services to adjust over time to using the Early Years Learning Framework.

Regulation 255 sets out that provider approval fees do not apply to declared out of scope services. Declared out of scope services are those services who will be part of the new system that were not required under a former law to hold an approval to operate. There are no 'declared out of scope services' in the ACT.

Regulation 256 provides that in circumstances where a service is taken to comply with a prescribed regulation a statement to that effect must be displayed in place of the prescribed information.

#### Part 7.2 – Australian Capital Territory- specific provisions (Regulations 258-269)

This part (Regulations 258-269) sets out the specific saving and transitional provisions for education and care services in the ACT. Regulation 258 provides for the application of this part in the Australian Capital Territory.

Regulation 259 provides for definitions to assist in the consistent interpretation and application of the provisions throughout this part.

Regulations 260 to 262 allows for the saving of ratio and qualification requirements for education and care services for children over preschool age. These provisions will in effect provide for school age care services to continue operating as they have under the ACT Childcare Standards in relation to qualification and ratio requirements.

Regulation 263 to 265 provides for transitional provisions for education and care services for children preschool age and under. These provisions will in effect provide for centre based services and preschools to continue to operate with the existing qualification requirements until the new requirements come into effect from 1 January 2014. The provisions will allow for the new ratio requirement to be progressively applied to preschools in the ACT.

Regulations 266 and 267 sets out that the new requirements to provide access to or employ and early childhood teacher do not apply until 1 January 2014.

Regulation 268 and 269 provides for the progressive implementation of the new qualification requirements for family day care educators and coordinators.

### Part 7.3 – New South Wales- specific provisions (Regulations 270-287)

This part provides for specific provisions for New South Wales and does not apply to the ACT.

### Part 7.4 – Northern Territory- specific provisions (Regulations 288-296)

This part provides for specific provisions for Northern Territory and does not apply to the ACT.

### Part 7.5 – Queensland- specific provisions (Regulations 297-317)

This part provides for specific provisions for Queensland and does not apply to the ACT.

### Part 7.6 – South Australia- specific provisions (Regulations 318-339)

This part provides for specific provisions for South Australia and does not apply to the ACT.

### Part 7.7 – Tasmania- specific provisions (Regulations 340-353)

This part provides for specific provisions for Tasmania and does not apply to the ACT.

### Part 7.8 – Victoria- specific provisions (Regulations 354-366)

This part provides for specific provisions for Victoria and does not apply to the ACT.

### Part 7.9 – Western Australia- specific provisions (Regulations 367-383)

This part provides for specific provisions for Victoria and does not apply to the ACT.

## **Schedule 1**

Schedule 1 outlines the new National Quality Standard and is divided into seven areas that contribute to the quality of early childhood education and care. These areas have been identified by research and are:

1. Educational program and practice
2. Children’s health and safety
3. Physical environment
4. Staffing arrangements (including the number of staff looking after children)
5. Relationships with children
6. Collaborative partnerships with families and communities
7. Leadership and service management

## **Schedule 2**

Schedule 2 contains the prescribed fees for approvals and other transactions outlined in the National Law.

## **Schedule 3**

Schedule 3 lists the provisions for which a compliance direction may be issued by the Regulatory Authority.