

Authorised Version

Children's Services Regulations 2020

S.R. No. 32/2020

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Authorised Version

STATUTORY RULES 2020

S.R. No. 32/2020

Children's Services Act 1996

Children's Services Regulations 2020

The Governor in Council makes the following Regulations:

Dated: 12 May 2020

Responsible Minister:

JAMES MERLINO
Minister for Education

CLAIRE CHISHOLM
Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to provide for certain matters for the regulation of the approval and operation of children's services under the **Children's Services Act 1996**.

2 Authorising provision

These Regulations are made under section 191 of the **Children's Services Act 1996**.

3 Commencement

These Regulations come into operation on 17 May 2020.

4 Revocations

The regulations set out in Schedule 1 are **revoked**.

5 Definitions

(1) In these Regulations—

actively working towards a qualification—see regulation 8;

approved certificate III level education and care qualification means—

- (a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved certificate III level education and care qualifications published under regulation 137 of the national regulations; or
- (b) a qualification included in the list of approved diploma level education and care qualifications or approved early childhood teaching qualifications published under regulation 137 of the national regulations;

approved diploma level education and care qualification means—

- (a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved diploma level education and care qualifications published under regulation 137 of the national regulations; or
- (b) a qualification included in the list of approved early childhood teaching qualifications published under regulation 137 of the national regulations;

approved number of places, in relation to a children's service, means the maximum number of children who can be educated and cared for by the service at any one time, stated on the service approval under section 51(g) of the Act;

bankruptcy declaration means a declaration made by an individual about any proceeding in bankruptcy brought against the individual including—

- (a) whether any actions have been taken against the individual under Part IV of the Bankruptcy Act 1966 of the Commonwealth; and
- (b) whether the individual has made any debt agreement under Part IX of the Bankruptcy Act 1966 of the Commonwealth; and
- (c) whether the individual has made any personal insolvency agreement under Part X of the Bankruptcy Act 1966 of the Commonwealth;

building law means the **Building Act 1993**;

building practitioner means—

- (a) a person who is registered as a building practitioner under the building law; or
- (b) a person who is registered as an architect under the **Architects Act 1991**; or
- (c) a person who is registered as a licensed surveyor under the **Surveying Act 2004**;

certificate of final inspection means a certificate issued on completion of building work by a building practitioner under the building law;

child over preschool age means a child who—

- (a) is enrolled or registered at a school; and
- (b) attends, or in the current calendar year, will attend school in the year before grade 1 or in grade 1 or a higher grade;

child preschool age or under means a child under the age of 7 years who is not a child over preschool age;

child protection law means—

- (a) the **Children, Youth and Families Act 2005**; and
- (b) the **Child Wellbeing and Safety Act 2005**; and
- (c) the **Family Violence Protection Act 2008**;

commencement day means 17 May 2020;

criminal history record check means a full disclosure Australia-wide criminal history record check, issued by a police force or other authority of a State or Territory or the Commonwealth;

criminal history statement means a statement made by an individual that—

- (a) states whether the individual has been convicted in Australia of any offences relevant to a person seeking to work with children; and
- (b) includes details of those convictions;

diagnosed as at risk of anaphylaxis, in relation to a child, means a child who has been diagnosed by a registered medical practitioner as at risk of anaphylaxis;

disciplinary proceedings statement means a statement made by an individual that states—

- (a) whether the individual is or has been subject to a formal disciplinary proceeding or action under an education law or an equivalent law of a participating jurisdiction (other than a proceeding or action that was unsuccessful or was withdrawn); and
- (b) the outcome of the proceeding or action (if known);

educational program means a program referred to in section 108 of the Act;

emergency, in relation to a children's service, means an incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person at the children's service;

Examples

- 1 Flood.
- 2 Fire.
- 3 A situation that requires the children's service premises to be locked down.

excursion means an outing organised by a children's service, but does not include an outing organised by a children's service provided on a school site if—

- (a) the child or children leave the children's service premises in the company of an educator; and
- (b) the child or children do not leave the school site;

financial declaration means a declaration made by a person who is not an individual indicating whether the person is or has been declared insolvent or is or has been placed under external administration;

in attendance at a children's service, in relation to an early childhood teacher or a suitably qualified person—see regulation 9;

infectious disease has the same meaning as in the **Public Health and Wellbeing Act 2008**;

limited hours service means a children's service that does not provide education and care to any child who attends the service for more than—

- (a) 3 hours per day; and
- (b) 6 hours per week;

medication means medicine within the meaning of the Therapeutic Goods Act 1989 of the Commonwealth;

occasional care service means a children's service that is not a limited hours service;

occupancy permit means a permit issued under the building law that permits a building to be occupied;

overseas criminal history statement means a statement made by an individual that—

- (a) states whether the individual has been convicted outside Australia of any offences relevant to a person seeking to work with children; and
- (b) includes details of those convictions;

planning and development law means the **Planning and Environment Act 1987**;

planning permit means a permit issued under Part 4 of the planning and development law in respect of the use or development of any land;

previous service statement means a statement made by an individual that states—

- (a) whether or not the individual has held any role with an education and care service or a children's service in the previous 3 years; and
- (b) includes the following details for each role—
 - (i) the name of the service;
 - (ii) the State or Territory in which the service was located;
 - (iii) the nature of the role;

regular outing, in relation to a children's service, means a walk, drive or trip to and from a destination—

- (a) that the service visits regularly as part of its educational program; and
- (b) where the circumstances relevant to the risk assessment are the same on each outing;

responsible person, in relation to a children's service, means a person referred to in section 103(a) to (c) of the Act;

serious incident—see regulation 10;

soil assessment means an analysis of soil conducted by an environmental consultant, environmental consulting firm, or environmental auditor for the purposes of determining—

- (a) the nature, extent and levels of contamination; and
- (b) the actual or potential risk to human health resulting from that contamination;

suitably qualified person means a person who has—

- (a) a qualification for the education and care of children generally or children of a specified age that is approved by the National Authority and included in the list of approved qualifications for suitably qualified persons published under regulation 137 of the national regulations; or
- (b) a qualification approved by the National Authority as a higher qualification for suitably qualified persons and included in the list of approved qualifications for suitably qualified persons published under regulation 137 of the national regulations;

the Act means the **Children's Services Act 1996**;

working directly with children—see regulation 11.

- (2) A requirement under these Regulations applying in relation to a stated number of children applies each time there is the stated number of children or a part of the stated number.

Example

There are 30 children aged 36 months or over (not including children over preschool age) at a children's service. Regulation 90(1)(b) requires one educator for each 11 children. In this case, 3 educators would be required.

6 Prescribed entity

For the purposes of paragraph (e) of the definition of *person* in section 3(1) of the Act, a body politic is a prescribed entity.

7 Types of children's service

For the purposes of these Regulations, each of the following is a type of children's service—

- (a) an occasional care service;
- (b) a limited hours service.

8 Meaning of *actively working towards* a qualification

For the purposes of these Regulations, an educator is *actively working towards* a qualification if the educator—

- (a) is enrolled in the course for the qualification;
and
- (b) provides the approved provider with documentary evidence from the provider of the course that—
 - (i) the educator has commenced the course; and
 - (ii) the educator is making satisfactory progress towards completion of the course; and
 - (iii) the educator is meeting the requirements for maintaining the enrolment; and
 - (iv) in the case of an approved diploma level education and care qualification, the educator—
 - (A) holds an approved certificate III level education and care qualification; or

- (B) has completed the units of study in an approved certificate III level education and care qualification determined by the National Authority under the national regulations; or
- (C) has completed the percentage of total units of study required for completion of an approved early childhood teaching qualification determined by the National Authority under the national regulations.

9 Meaning of *in attendance* at a children's service

For the purposes of these Regulations, an early childhood teacher is *in attendance* at a children's service if the early childhood teacher—

- (a) is physically present at the service; and
- (b) carries out education and care activities at the service including one or more of the following—
 - (i) working directly with children;
 - (ii) planning programs;
 - (iii) mentoring, coaching or supporting educators;
 - (iv) facilitating education and care research.

10 Meaning of *serious incident*

For the purposes of the definition of *serious incident* in section 3(1) of the Act, each of the following is prescribed as a serious incident—

- (a) the death of a child—
 - (i) while that child is being educated and cared for by a children's service; or

- (ii) following an incident occurring while that child was being educated and cared for by a children's service;
- (b) any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by a children's service—
 - (i) which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
 - (ii) for which the child attended, or ought reasonably to have attended, a hospital;

Example

A broken limb.

- (c) any incident involving serious illness of a child occurring while that child is being educated and cared for by a children's service for which the child attended, or ought reasonably to have attended, a hospital;

Example

Severe asthma attack, seizure or anaphylaxis reaction.

- (d) any emergency for which emergency services attended;
- (e) any circumstance where a child being educated and cared for by a children's service—
 - (i) appears to be missing or cannot be accounted for; or
 - (ii) appears to have been taken or removed from the children's service premises in a manner that contravenes these Regulations; or

- (iii) is mistakenly locked in or locked out of the children's service premises or any part of the premises.

11 Meaning of *working directly with children*

For the purposes of these Regulations, a person is *working directly with children* at a given time if at that time the person—

- (a) is physically present with the children; and
- (b) is directly engaged in providing education and care to the children.

Part 2—Provider approvals

12 Application for provider approvals by individual

For the purposes of section 11(c) of the Act, the following information is prescribed for an application for a provider approval made by an individual under section 10 of the Act—

- (a) the applicant's full name, and any former or other name the applicant may be known by;
- (b) the applicant's residential address and contact details;
- (c) the applicant's date and place of birth;
- (d) proof of the applicant's identity;
- (e) a previous service statement made by the applicant;
- (f) if held by the applicant, a copy of the applicant's current working with children assessment notice;
- (g) if the applicant is a registered teacher under the education law, proof of the current registration under that law;
- (h) a criminal history record check in respect of the applicant issued not more than 6 months before the date of the application;
- (i) a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check referred to in paragraph (h) was issued to the date of the application;
- (j) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;

- (k) a disciplinary proceedings statement made by the applicant;
- (l) a bankruptcy declaration made by the applicant.

Note

If there is more than one applicant, the prescribed information must be provided in respect of each applicant—see section 10(3)(a) of the Act.

13 Application for provider approval by person other than an individual

For the purposes of section 11(c) of the Act, the following information is prescribed for an application for a provider approval made by a person other than an individual under section 10 of the Act—

- (a) the applicant's name and any trading or other name used by the applicant;
- (b) 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;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) documentary evidence of the legal status of the applicant and its constitution;

Example

The partnership agreement for a partnership.

- (e) a financial declaration regarding the applicant;

- (f) for each individual who will be a person with management or control of a children's service to be operated by the applicant, the information set out in regulation 12.

Note

If there is more than one applicant, the prescribed information must be provided in respect of each applicant—see section 10(3)(a) of the Act.

14 Matters relating to criminal history

For the purposes of section 13(1)(d)(i) of the Act, the following matters relating to the criminal history of a person that the Regulatory Authority must have regard to are prescribed—

- (a) whether the person—
- (i) holds a current working with children assessment notice; or
 - (ii) is a registered teacher under the education law;
- (b) any matters included in a criminal history record check.

15 Application for amendment of provider approval

For the purposes of section 22(2)(b) of the Act, the following information is prescribed for an application under section 22 of the Act for an amendment of a provider approval—

- (a) the full name of the approved provider;
- (b) the provider approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the details of the amendment applied for;
- (e) sufficient information or documentation to support the application for amendment.

16 Maximum period of suspension of provider approval

For the purposes of sections 27(b)(i) and 33(1)(a)(ii) of the Act, the prescribed maximum period of suspension of a provider approval under section 27(b)(i) or 33(1)(a)(ii) of the Act is 12 months.

17 Application for voluntary suspension of provider approval

For the purposes of section 37(2)(b) of the Act, the following information is prescribed for an application under section 37 of the Act for the suspension of a provider approval—

- (a) the full name of the approved provider;
- (b) the provider approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the reasons for the suspension;
- (e) the date on which the suspension is proposed to take effect and the duration of the suspension;
- (f) what is intended to happen to each children's service operated by the approved provider during the proposed suspension;
- (g) a statement indicating that the approved provider has notified the parents of children enrolled at the children's services operated by the approved provider in accordance with section 37(3) of the Act.

18 Application by individual executor for provider approval

For the purposes of section 39(6)(b) of the Act, the following information is prescribed for an application for a provider approval made under

section 39(5) of the Act by an executor who is an individual—

- (a) the applicant's full name, and any former or other name the applicant may be known by;
- (b) the applicant's residential address and contact details;
- (c) the applicant's date and place of birth;
- (d) in relation to the current approved provider—
 - (i) the approved provider's full name; and
 - (ii) the provider approval number; and
 - (iii) the date of the approved provider's death; and
 - (iv) a copy of the death certificate or other evidence of the death of the approved provider;
- (e) the proposed duration of the provider approval;

Note

This period cannot exceed 6 months—see section 41(4)(a) of the Act.

- (f) proof of the applicant's identity;
- (g) if held by the applicant, a copy of the applicant's current working with children assessment notice;
- (h) if the applicant is a registered teacher under the education law, proof of the current registration under that law;
- (i) a criminal history record check issued not more than 6 months before the date of the application;

- (j) a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check referred to in paragraph (i) was issued to the date of the application;
- (k) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;
- (l) a disciplinary proceedings statement made by the applicant;
- (m) a bankruptcy declaration made by the applicant.

19 Application by executor other than an individual for provider approval

For the purposes of section 39(6)(b) of the Act, the following information is prescribed for an application for a provider approval made under section 39(5) of the Act by an executor other than an individual—

- (a) the applicant's name and any trading or other name used by the applicant;
- (b) 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;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) in relation to the current approved provider—
 - (i) the approved provider's full name; and
 - (ii) the provider approval number; and
 - (iii) the date of the approved provider's death; and

- (iv) a copy of the death certificate or other evidence of the death of the approved provider;
- (e) the proposed duration of the provider approval;

Note

This period cannot exceed 6 months—see section 41(4)(a) of the Act.

- (f) documentary evidence of the legal status of the applicant and its constitution;

Example

The partnership agreement for a partnership.

- (g) a financial declaration regarding the applicant;
- (h) for each individual who will be a person with management or control of a children's service to be operated by the applicant, the information set out in regulation 18.

20 Application by individual for provider approval on incapacity of approved provider

For the purposes of section 40(3)(b) of the Act, the following information is prescribed for an application for a provider approval made under section 40(2) of the Act by the legal personal representative or guardian of an approved provider, if the applicant is an individual—

- (a) the applicant's full name, and any former or other name the applicant may be known by;
- (b) the applicant's residential address and contact details;
- (c) the applicant's date and place of birth;

- (d) the current approved provider's full name and provider approval number;
- (e) the proposed duration of the provider approval;

Note

This period cannot exceed 6 months—see section 41(4)(a) of the Act.

- (f) proof of the applicant's identity;
- (g) if held by the applicant, a copy of the applicant's current working with children assessment notice;
- (h) if the applicant is a registered teacher under the education law, proof of current registration;
- (i) a criminal history record check issued not more than 6 months before the date of the application;
- (j) a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check referred to in paragraph (i) was issued until the application is made;
- (k) if the applicant lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement made by the applicant;
- (l) a disciplinary proceedings statement made by the applicant;
- (m) a bankruptcy declaration made by the applicant.

21 Application by person other than an individual for provider approval on incapacity of approved provider

For the purposes of section 40(3)(b) of the Act, the following information is prescribed for an application for a provider approval made under section 40(2) of the Act by the legal personal representative or guardian of an approved provider, if the applicant is a person other than an individual—

- (a) the applicant's name and any trading or other name used by the applicant;
- (b) 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;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the current approved provider's full name and provider approval number;
- (e) the proposed duration of the provider approval;

Note

This period cannot exceed 6 months—see section 41(4)(a) of the Act.

- (f) documentary evidence of the legal status of the applicant and its constitution;

Example

The partnership agreement for a partnership.

- (g) a financial declaration regarding the applicant;

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Part 2—Provider approvals

- (h) for each individual who will be a person with management or control of a children's service to be operated by the applicant, the information set out in regulation 20.

Part 3—Service approvals

Division 1—Applications for service approvals

22 Application for service approval

Subject to regulation 24, for the purposes of section 43(c) of the Act, the following information is prescribed for an application under section 42 of the Act for a service approval for a children's service—

- (a) the applicant's full name and—
 - (i) provider approval number; or
 - (ii) if the applicant has applied for a provider approval but the application has not been decided, the applicant's contact details;
- (b) the name of the proposed children's service;
- (c) the proposed date on which the children's service will commence operation;
- (d) if known, the contact details, including an after-hours telephone number, for the proposed children's service;
- (e) the proposed ages of children to be educated and cared for by the children's service;
- (f) the proposed maximum number of children to be educated and cared for by the children's service;
- (g) the proposed hours and days of operation of the children's service;
- (h) the proposed type of children's service being applied for and a description of the nature of the children's service;

- (i) a statement that the applicant has prepared the policies and procedures referred to in regulation 112;
- (j) the full name and contact details, including the after-hours telephone number, of each nominated supervisor.

Note

The application must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 43(e) of the Act.

23 Additional information about proposed children's service premises

- (1) Subject to subregulation (2) and regulation 24, for the purposes of section 43(c) of the Act, the following information about the proposed children's service premises is prescribed for an application for a service approval for a children's service (in addition to the information required under regulation 22)—
 - (a) the location and street address of the proposed children's service premises;
 - (b) plans prepared by a building practitioner of the proposed children's service premises showing the following—
 - (i) the location of all buildings, structures, outdoor play areas and shaded areas;
 - (ii) the location of all entries and exits;
 - (iii) the location of all fences and gates, specifying the type of fence or gate used or to be used;
 - (iv) the location of toilet and washing facilities, nappy changing areas and any food preparation areas;
 - (v) the boundaries of the premises;

- (vi) the landscape of, or landscaping plans for, outdoor spaces that will be used by the children's service, specifying the natural environments that are or will be provided;
 - (vii) a floor plan indicating unencumbered indoor and outdoor spaces suitable for children;
 - (viii) calculations, carried out by a building practitioner, of the areas referred to in regulations 76 and 77 relating to unencumbered indoor and outdoor space;
 - (ix) the elevation plans of the premises;
- (c) if a swimming pool or other water hazard is situated on the proposed children's service premises, a copy of the service's proposed water safety policy;
- (d) one of the following—
- (i) a soil assessment for the site of the proposed children's service premises;
 - (ii) if a soil assessment for the site of the proposed children's service premises has previously been undertaken, a statement to that effect, specifying when the soil assessment was undertaken;
 - (iii) a statement made by the applicant that states that, to the best of the applicant's knowledge the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children;

- (e) a copy of the planning permit for the proposed children's service premises if a planning permit is required under the planning and development law;
- (f) a statement that the applicant has the right to occupy and use the premises and any document evidencing this;

Example

A lease of the premises.

- (g) a copy of any occupancy permit, certificate of final inspection, building certificate, certificate of classification or building surveyor's statement issued or given in respect of the final construction and fit out of the children's service premises;
 - (h) a statement made by a building practitioner that states that the children's service premises complies with the requirements under the building law and planning and development law.
- (2) If the approved provider is seeking to locate the children's service on a school site, the Regulatory Authority may determine that the requirements of subregulation (1)(b), (d), (e), (g) or (h) do not apply to the application for the service approval.

24 Application for service approval for a children's service—relocation of existing children's service

- (1) This regulation applies if—
 - (a) an application for a service approval relates to a children's service that is an approved children's service; and

- (b) the purpose of the application is to change the location of that service.

Note

A service approval cannot be amended to change the location of a children's service—see section 53(8) of the Act.

- (2) If the children's service is to be relocated for less than 12 months, the Regulatory Authority may determine that the requirements of regulation 23(1)(b) or (g) do not apply to the application for the service approval.
- (3) If the children's service is to be relocated due to exceptional circumstances (whether for more or less than 12 months), the Regulatory Authority may determine that any of the following information is not required to be provided in the application for the service approval—
- (a) the information set out in regulation 22(g);
 - (b) the contact details of the nominated supervisor set out in regulation 22(j);
 - (c) any of the information set out in regulation 23(1)(b), (c), (d), (e), (f) or (g).
- (4) If the Regulatory Authority makes a determination under subregulation (3), the approved provider must provide the relevant information to the Regulatory Authority as soon as possible.
- (5) A failure by the approved provider to provide the relevant information to the Regulatory Authority under subregulation (4) does not prevent the Regulatory Authority granting the service approval.

25 Additional matters to have regard to in determining application for service approval

For the purposes of section 46(1)(f) of the Act, the following matters are prescribed matters for the Regulatory Authority to have regard to in determining an application for a service approval under section 42 of the Act—

- (a) any suspension of the applicant's provider approval;
- (b) any conditions of the applicant's provider approval.

26 Additional grounds for refusal to grant service approval

For the purposes of section 48(2) of the Act, the following grounds for refusing to grant a service approval are prescribed—

- (a) the Regulatory Authority is not satisfied that the applicant is capable of operating the proposed service in a way that meets the requirements of the Act or these Regulations;

Example

The Regulatory Authority is not satisfied that the applicant is capable of maintaining premises or equipment or providing staff as required under the Act, whether because of financial or management capacity or another reason.

- (b) the Regulatory Authority is not satisfied that the applicant is entitled to occupy the children's service premises.

27 Condition on service approval—insurance

For the purposes of section 50(3) of the Act, the prescribed insurance in respect of the children's service is—

- (a) a current policy of insurance providing adequate cover for the children's service against public liability with a minimum cover of \$10 000 000; or
- (b) a policy of insurance or an indemnity against public liability provided by the State in respect of the children's service.

Note

See regulation 121 for the requirement to keep evidence of prescribed insurance.

28 Condition on service approval—entitlement to occupy premises

For the purposes of section 50(6) of the Act, the service continuing to be entitled to occupy the children's service premises is a prescribed condition.

29 Prescribed matters included in copy of service approval

For the purposes of section 51(1)(i) of the Act, a copy of the service approval must state the type of children's service for which the service approval has been granted.

Note

Regulation 7 provides that, for the purposes of these Regulations, there are 2 types of children's service—

- (a) occasional care service; and
- (b) limited hours service.

30 Annual fees

- (1) For the purposes of section 52 of the Act, the prescribed annual fee for a service approval is the relevant annual fee set out in Schedule 2.
- (2) The approved provider of a children's service must pay the relevant annual fee in respect of each service approval on or before 1 July each year.

- (3) Despite subregulation (1), the prescribed annual fee for the financial year ending 30 June 2020 is nil.

Division 2—Amendment of service approval and notice of change to nominated supervisor

31 Prescribed information for application to amend service approval

For the purposes of section 53(2)(b) of the Act, the following information is prescribed for an application under section 53(1) of the Act for an amendment of a service approval—

- (a) the name of the children' service;
- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the details of the amendment applied for;
- (e) sufficient information or documentation to support the application for amendment.

32 Notice of addition of new nominated supervisor

For the purposes of section 55(2)(b) of the Act, the following information is prescribed for a notice under section 55(1) of the Act to add a new nominated supervisor of a children's service—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the full name and contact details of the new nominated supervisor;

- (e) the date on which the new nominated supervisor commences or commenced work as a nominated supervisor.

Note

A notice must include a nominated supervisor's written consent to the nomination unless the nominated supervisor is the approved provider—see section 55(2)(a) of the Act.

Division 3—Transfer of service approval

33 Notice of transfer of service approval

For the purposes of section 59(2)(b) of the Act, the following information is prescribed for a notice under section 59(1) of the Act of a transfer of a service approval for a children's service—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the transferring approved provider's—
 - (i) name and contact details; and
 - (ii) provider approval number;
- (d) the receiving approved provider's—
 - (i) name and contact details; and
 - (ii) provider approval number;
- (e) the date on which the transfer is intended to take effect;
- (f) the details of any proposed changes in relation to the information required to be provided under regulations 22 and 23.

34 Notification of decision to intervene in transfer of service approval

For the purposes of section 62(4)(b) of the Act, the following information is prescribed for a notification under section 62(2) of the Act of the

decision to intervene in the transfer of a service approval—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the name of the transferring approved provider;
- (d) the name of the receiving approved provider;
- (e) the matters about which the Regulatory Authority is concerned.

Division 4—Suspension of service approval

35 Maximum period of suspension of service approval

For the purposes of sections 72(b)(i) and 78(1)(a)(ii) of the Act, the prescribed maximum period of suspension of a service approval is 12 months.

36 Application for voluntary suspension of service approval

For the purposes of section 83(2)(b) of the Act, the following information is prescribed for an application under section 83(1) of the Act for the suspension of a service approval—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) the reasons for the suspension;
- (e) the date on which the suspension is proposed to take effect and the duration of the suspension;

- (f) a statement indicating that the approved provider has notified the parents of children enrolled at the children's service in accordance with section 83(4) of the Act.

Division 5—Service waiver

37 Service waiver—prescribed requirements

For the purposes of section 85(1) of the Act, the requirements of regulations 73, 75, 76, 79 to 84, 88, 90, 91, 92 and 93 are prescribed.

38 Prescribed information—application for service waiver

For the purposes of section 86(b) of the Act, the following information is prescribed for an application under section 85 of the Act for a service waiver—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) a statement that specifies—
 - (i) the regulations in relation to which a service waiver is sought; and
 - (ii) the way in which the children's service does not or will not comply with the specified regulations;
- (e) if the children's service is unable to comply with the specified regulations—
 - (i) the reasons that the children's service is unable to comply; and
 - (ii) details and evidence of any attempts made to comply with the specified regulations;

- (f) the reasons that the children's service seeks the service waiver;
- (g) the measures being 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.

39 Prescribed period—revocation of service waiver

- (1) For the purposes of section 90(3) of the Act, the prescribed period in relation to a revocation of a service waiver under section 90(1) of the Act is—
 - (a) 14 days after the Regulatory Authority notifies the approved provider of the decision to revoke; or
 - (b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.
- (2) For the purposes of section 90(3) of the Act, the prescribed period in relation to a revocation of a service waiver under section 90(2) of the Act, is—
 - (a) 14 days after the Regulatory Authority notifies the approved provider of the approval of the application; or
 - (b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.

Division 6—Temporary waiver

40 Temporary waiver—prescribed requirements

For the purposes of section 92 of the Act, the requirements of regulations 73, 75, 76, 79 to 84, 88, 90, 91, 92, 93 and 95 are prescribed.

41 Application for temporary waiver

For the purposes of section 93(b) of the Act, the following information is prescribed for an

application under section 92 of the Act for a temporary waiver—

- (a) the name of the children's service;
- (b) the service approval number;
- (c) the name and contact details of the contact person for the purposes of the application;
- (d) a statement that specifies—
 - (i) the regulations in relation to which a temporary waiver is sought; and
 - (ii) the way in which the children's service does not or will not comply with the regulations;
- (e) the reasons that the children's service is unable to comply with the specified regulations;
- (f) details and evidence of any attempts made to comply with the specified regulations;
- (g) the period for which a temporary waiver is sought and the reasons for seeking that period;

Note

This period cannot exceed 12 months—see section 96(2) of the Act.

- (h) details of steps that are being or will be taken in order to comply with the specified regulations;
- (i) the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the temporary waiver is in force.

Part 4—Operational requirements

Division 1—Educational program and practice

42 Educational program

- (1) This Part applies in relation to the program (the *educational program*) that is required to be delivered under section 108 of the Act to a child being educated and cared for by a children's service.
- (2) An educational program is to contribute to the following outcomes for each child—
 - (a) the child will have a strong sense of identity;
 - (b) the child will be connected with and contribute to his or her world;
 - (c) the child will have a strong sense of wellbeing;
 - (d) the child will be a confident and involved learner;
 - (e) the child will be an effective communicator.

43 Documenting of child assessments or evaluations for delivery of educational program

- (1) The approved provider of the children's service must ensure that, for the purposes of the educational program, the following are documented—
 - (a) for a child preschool age or under—
 - (i) assessments of the child's developmental needs, interests, experiences and participation in the educational program; and
 - (ii) assessments of the child's progress against the outcomes of the educational program;

- (b) for a child over preschool age, evaluations of the child's wellbeing, development and learning.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) In preparing the documentation, the approved provider must—
 - (a) consider—
 - (i) the period of time that the child is being educated and cared for by the service; and
 - (ii) how the documentation will be used by the educators at the service; and
 - (b) prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

44 Information about educational program to be kept available

The approved provider of a children's service must ensure that—

- (a) information about the contents and operation of the educational program for the service is displayed at the children's service premises at a place accessible to parents of children being educated and cared for by the service; and
- (b) a copy of the educational program is available at the children's service premises.

Note

A compliance direction may be issued for failure to comply with this regulation.

45 Information about educational program to be given to parents

The approved provider of a children's service must ensure that a parent of a child being educated and cared for by the service is provided with the following information on request—

- (a) information about the content and operation of the educational program so far as it relates to that child;
- (b) information about the child's participation in the program;
- (c) a copy of the documents kept under regulation 43 in respect of the child.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 2—Health, safety and wellbeing of children

46 Health, hygiene and safe food practices

- (1) The approved provider of a children's service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food—

to minimise risks to children being educated and cared for by the service.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

(2) A nominated supervisor of a children's service must implement, and ensure that all staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food—

to minimise risks to children being educated and cared for by the service.

Penalty: 10 penalty units.

47 Food and beverages

(1) The approved provider of a children's service must ensure that children being educated and cared for by the service—

- (a) have access to safe drinking water at all times; and
- (b) are offered food and beverages appropriate to the needs of each child on a regular basis throughout the day.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

(2) A nominated supervisor of a children's service must ensure that children being educated and cared for by the service—

- (a) have access to safe drinking water at all times; and
- (b) are offered food and beverages on a regular basis throughout the day.

Penalty: 10 penalty units.

48 Service providing food and beverages

- (1) The approved provider of a children's service that provides food or a beverage to children being educated and cared for by the service must ensure that—
- (a) the food or beverage provided is nutritious and adequate in quantity; and
 - (b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—
 - (i) each child's growth and development needs; and
 - (ii) any specific cultural, religious or health requirements.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) A nominated supervisor of a children's service that provides food or a beverage to children being educated and cared for by the service must ensure that—
- (a) the food or beverage provided is nutritious and adequate in quantity; and
 - (b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—
 - (i) each child's growth and development needs; and
 - (ii) any specific cultural, religious or health requirements.

Penalty: 10 penalty units.

- (3) To avoid doubt, this regulation does not apply to food or a beverage provided by a parent or family member for consumption by the child.

49 Weekly menu

- (1) The approved provider of a children's service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu—
- (a) is displayed at a place at the children's service premises accessible to parents of children being educated and cared for by the service; and
 - (b) accurately describes the food and beverages to be provided by the service each day.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) A nominated supervisor of a children's service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu—
- (a) is displayed at a place at the children's service premises accessible to parents of children being educated and cared for by the service; and
 - (b) accurately describes the food and beverages to be provided by the service each day.

Penalty: 5 penalty units.

- (3) To avoid doubt, this regulation does not apply to food and beverages provided by a parent or family member for consumption by the child.

50 Sleep and rest

- (1) The approved provider of a children's service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) A nominated supervisor of a children's service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the service are met, having regard to the ages, development stages and individual needs of the children.

Penalty: 5 penalty units.

51 Tobacco, drug and alcohol-free environment

The approved provider of a children's service must ensure that children being educated and cared for by the service are provided with an environment that is free from the use of tobacco, illicit drugs and alcohol.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

52 Staff members not to be affected by alcohol or drugs

- (1) The approved provider of a children's service must ensure that a nominated supervisor or a staff member of, or volunteer at, the service is not affected by alcohol or drugs (including prescription medication) so as to impair the

person's capacity to supervise or provide education and care to children being educated and cared for by the service.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) A nominated supervisor of a children's service must not, while educating and caring for children for the service—
- (a) consume alcohol; or
 - (b) be affected by alcohol or drugs (including prescription medication) so as to impair the supervisor's capacity to supervise or provide education and care to the children.

Penalty: 10 penalty units.

53 Awareness of child protection law

The approved provider of a children's service must ensure that nominated supervisors and staff members at the service who work with children are advised of—

- (a) the existence and application of any child protection law; and
- (b) any obligations that they may have under that law.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 3—Incidents, injury, trauma and illness

54 Incident, injury, trauma and illness policies and procedures

The incident, injury, trauma and illness policies and procedures of a children's service required under regulation 112 must include policies and procedures to be followed by nominated supervisors and staff members of, and volunteers at, the service in the event that a child, while being educated and cared for by the service—

- (a) is injured; or
- (b) becomes ill; or
- (c) suffers a trauma.

55 Notification to parents of incident, injury, trauma and illness

The approved provider of a children's service must ensure that a parent of a child being educated and cared for by the service is notified as soon as practicable, but not later than 24 hours after the occurrence, if the child is involved in any incident, injury, trauma or illness while the child is being educated and cared for by the children's service.

Penalty: 10 penalty units.

56 Incident, injury, trauma and illness record

- (1) The approved provider of a children's service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) The incident, injury, trauma and illness record must include—
 - (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being

- educated and cared for by the children's service, including—
- (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and
 - (iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma; and
- (b) details of any illness which becomes apparent while the child is being educated and cared for by the children's service including—
- (i) the name and age of the child; and
 - (ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and
 - (iii) the time and date of the apparent onset of the illness; and
- (c) details of the action taken by the children's service in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the children's service, including—
- (i) any medication administered or first aid provided; and
 - (ii) any medical personnel contacted; and
- (d) details of any person who witnessed the incident, injury or trauma; and
- (e) the name of any person—
- (i) whom the children's service notified or attempted to notify, of any incident, injury, trauma or illness which a child

- has suffered while being educated and cared for by the children's service; and
- (ii) the time and date of the notifications or attempted notifications; and
- (f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.
- (3) The information referred to in subregulation (2) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

57 Infectious diseases

- (1) If there is an occurrence of an infectious disease at a children's service, the approved provider of the service must ensure that reasonable steps are taken to prevent the spread of the infectious disease at the service.

Penalty: 10 penalty units.

- (2) If there is an occurrence of an infectious disease at a children's service, the approved provider of the service must ensure that a parent or an authorised emergency contact of each child being educated and cared for by the service is notified of the occurrence as soon as practicable.

Penalty: 10 penalty units.

58 First aid kits

The approved provider of a children's service must ensure that, wherever the service is providing education and care to children—

- (a) an appropriate number of first aid kits are kept having regard to the number of children being educated and cared for by the service; and

- (b) the first aid kits are suitably equipped; and
- (c) the first aid kits are easily recognisable and readily accessible to adults, having regard to the design of the children's service premises.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 4—Medical conditions policy

59 Medical conditions policy

- (1) The medical conditions policy of a children's service must set out practices in relation to the following—
 - (a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;
 - (b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;
 - (c) the requirements arising if a child enrolled at the children's service has a specific health care need, allergy or relevant medical condition, including—
 - (i) requiring a parent of the child to provide a medical management plan for the child; and

- (ii) requiring the medical management plan to be followed in the event of an incident relating to the child's specific health care need, allergy or relevant medical condition; and
- (iii) requiring the development of a risk-minimisation plan in consultation with the parents of a child—
 - (A) to ensure that the risks relating to the child's specific health care need, allergy or relevant medical condition are assessed and minimised; and
 - (B) if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented; and
 - (C) if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and
 - (D) to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child's medical management plan and the location of the child's medication are developed and implemented; and

- (E) if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child's registered medical practitioner in relation to the child's specific health care need, allergy or relevant medical condition are developed and implemented; and
- (iv) requiring the development of a communications plan to ensure that—
 - (A) relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and
 - (B) a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.
- (2) The medical conditions policy of the children's service must set out practices in relation to self-administration of medication by children over preschool age if the service permits that self-administration.
- (3) In subregulation (2), the practices must include any practices relating to recording in the medication record for a child of notifications from the child that medication has been self-administered.

60 Medical conditions policy to be provided to parents

The approved provider of a children's service must ensure that a copy of the medical conditions policy document is provided to the parent of a child enrolled at a children's service if the provider is aware that the child has a specific health care need, allergy or other relevant medical condition.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 5—Administration of medication

61 Medication record

- (1) The approved provider of a children's service must ensure that a medication record is kept that includes the details set out in subregulation (2) for each child to whom medication is or is to be administered while being educated and cared for by the service (including, if applicable, self-administration).
- (2) The details to be recorded are—
 - (a) the name of the child; and
 - (b) the authorisation to administer medication, signed by a parent or a person named in the child's enrolment record as authorised to consent to administration of medication; and
 - (c) the name of the medication to be administered; and
 - (d) the time and date the medication was last administered; and
 - (e) the time and date, or the circumstances under which, the medication should be next administered; and

- (f) the dosage of the medication to be administered; and
- (g) the manner in which the medication is to be administered; and
- (h) if the medication is administered to the child—
 - (i) the dosage that was administered; and
 - (ii) the manner in which the medication was administered; and
 - (iii) the time and date the medication was administered; and
 - (iv) the name and signature of the person who administered the medication; and
 - (v) if another person is required under regulation 64 to check the dosage and administration, the name and signature of that person.

62 Administration of medication

- (1) The approved provider of a children's service must ensure that medication is not administered to a child being educated and cared for by the service unless—
 - (a) that administration is authorised; and
 - (b) the medication is administered in accordance with regulation 64 or 65.

Penalty: 10 penalty units.

- (2) The approved provider of a children's service must ensure that written notice is given to a parent or other family member of a child as soon as practicable if medication is administered to the child under an authorisation referred to in subregulation (4)(b).

Penalty: 5 penalty units.

- (3) A nominated supervisor of a children's service must ensure that medication is not administered to a child being educated and cared for by the service unless—
- (a) that administration is authorised; and
 - (b) the medication is administered in accordance with regulation 64 or 65.

Penalty: 10 penalty units.

- (4) In this regulation the administration of medication to a child is authorised if an authorisation to administer the medication—
- (a) is recorded in the medication record for that child under regulation 61; or
 - (b) in the case of an emergency, is given verbally by—
 - (i) a parent or a person named in the child's enrolment record as authorised to consent to administration of medication; or
 - (ii) if a parent or person named in the enrolment record cannot reasonably be contacted in the circumstances, a registered medical practitioner or emergency service personnel.

**63 Exception to authorisation requirement—
anaphylaxis or asthma emergency**

- (1) Despite regulation 62, medication may be administered to a child without an authorisation in case of an anaphylaxis or asthma emergency.
- (2) If medication is administered under this regulation, the approved provider or a nominated supervisor of the children's service must ensure that the following are notified as soon as practicable—

- (a) a parent of the child;
- (b) emergency services.

64 Procedure for administration of medication

Subject to regulation 65, if medication is administered to a child being educated and cared for by a children's service—

- (a) the medication must be administered—
 - (i) if the medication has been prescribed by a registered medical practitioner, from its original container, bearing the original label with the name of the child to whom the medication is to be administered, and before the expiry or use by date; or
 - (ii) from its original container, bearing the original label and instructions and before the expiry or use by date; and
- (b) the medication must be administered in accordance with any instructions—
 - (i) attached to the medication; or
 - (ii) any written or verbal instructions provided by a registered medical practitioner; and
- (c) except in the case of a children's service that is permitted to have only one educator to educate and care for children, the following must be checked by a person other than the person administering the medication—
 - (i) the dosage of the medication to be administered;
 - (ii) the identity of the child to whom the medication is to be administered.

65 Self-administration of medication

The approved provider of a children's service may permit a child over preschool age to self-administer medication if an authorisation for the child to self-administer medication is recorded in the medication record for the child under regulation 61.

Division 6—Emergencies and communication

66 Emergency and evacuation procedures

- (1) The emergency and evacuation procedures required under regulation 112 must set out—
 - (a) instructions for what must be done in the event of an emergency; and
 - (b) an emergency and evacuation floor plan.
- (2) For the purposes of preparing the emergency and evacuation procedures, the approved provider of a children's service must ensure that a risk assessment is conducted to identify potential emergencies that are relevant to the service.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (3) The approved provider of a children's service must ensure that—
 - (a) the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present at the service on the day of the rehearsal and the responsible person in relation to the service who is present at the time of the rehearsal; and

- (b) the rehearsals of the emergency and evacuation procedures are documented.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (4) The approved provider of a children's service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the children's service premises.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

67 Telephone or other communication equipment

The approved provider of a children's service must ensure that, when educating or caring for children as part of the service, nominated supervisors and staff members of the service have ready access to an operating telephone or other similar means of communication to enable immediate communication to and from parents and emergency services.

Penalty: 5 penalty units.

Example

Fixed-line telephone, mobile phone, satellite phone, 2-way radio, video conferencing equipment.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 7—Collection of children from premises and excursions

68 Children leaving the children's service premises

- (1) The approved provider of a children's service must ensure that a child who is being educated and cared for by the children's service does not leave the children's service premises except in accordance with subregulation (3).

Penalty: 10 penalty units.

- (2) A nominated supervisor of a children's service must ensure that a child who is being educated and cared for by the children's service does not leave the children's service premises except in accordance with subregulation (3).

Penalty: 10 penalty units.

- (3) The child may only leave the relevant premises if the child—

(a) is given into the care of—

- (i) a parent of the child; or
- (ii) an authorised nominee named in the child's enrolment record; or
- (iii) a person authorised by a parent or authorised nominee named in the child's enrolment record to collect the child from the premises; or

(b) leaves the premises in accordance with the written authorisation of the child's parent or authorised nominee named in the child's enrolment record; or

(c) is taken on an excursion in accordance with this Division; or

- (d) is given into the care of a person or taken outside the premises—
 - (i) because the child requires medical, hospital or ambulance care or treatment; or
 - (ii) because of another emergency.
- (4) Nothing in this regulation affects the operation of any court order that prohibits a parent from—
 - (a) collecting a child from the children's service premises; or
 - (b) authorising a child to leave the children's service premises.

69 Risk assessment must be conducted before excursion

- (1) The approved provider of a children's service must ensure a risk assessment is carried out in accordance with regulation 70 before an authorisation is sought under regulation 71 for an excursion.

Penalty: 10 penalty units.

- (2) A nominated supervisor of a children's service must ensure a risk assessment is carried out in accordance with regulation 70 before an authorisation is sought under regulation 71 for an excursion.

Penalty: 10 penalty units.

- (3) A risk assessment is not required under this regulation for an excursion if—
 - (a) the excursion is a regular outing; and
 - (b) a risk assessment has been conducted for the excursion not more than 12 months before the excursion is to occur.

70 Conduct of risk assessment for excursion

- (1) A risk assessment for an excursion must—
 - (a) identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion; and
 - (b) specify how the identified risks will be managed and minimised.
- (2) Without limiting subregulation (1), a risk assessment must consider—
 - (a) the proposed route and destination for the excursion; and
 - (b) any water hazards; and
 - (c) any risks associated with water-based activities; and
 - (d) the transport to and from the proposed destination for the excursion; and
 - (e) the number of adults and children involved in the excursion; and
 - (f) given the risks posed by the excursion, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and

Example

Specialised skills could include life-saving skills.

- (g) the proposed activities; and
- (h) the proposed duration of the excursion; and

- (i) the items that should be taken on the excursion.

Example

A mobile phone and a list of emergency contact numbers for children on the excursion.

71 Authorisation for excursions

- (1) The approved provider of a children's service must ensure that a child being educated and cared for by the service is not taken outside the children's service premises on an excursion unless written authorisation has been given under subregulation (3).

Penalty: 5 penalty units.

- (2) A nominated supervisor of a children's service must ensure that a child being educated and cared for by the service is not taken outside the children's service premises on an excursion unless written authorisation has been given under subregulation (3).

Penalty: 5 penalty units.

- (3) The authorisation must be given by a parent or other person named in the child's enrolment record as having authority to authorise the taking of the child outside the children's service premises by an educator and must state—
- (a) the child's name; and
 - (b) the reason the child is to be taken outside the premises; and
 - (c) the date the child is to be taken on the excursion (unless the authorisation is for a regular outing); and
 - (d) a description of the proposed destination for the excursion; and

- (e) the method of transport to be used for the excursion; and
 - (f) the proposed activities to be undertaken by the child during the excursion; and
 - (g) the period the child will be away from the premises; and
 - (h) the anticipated number of children likely to be attending the excursion; and
 - (i) the anticipated ratio of educators attending the excursion to the anticipated number of children attending the excursion; and
 - (j) the anticipated number of staff members and any other adults who will accompany and supervise the children on the excursion; and
 - (k) that a risk assessment has been prepared and is available at the service.
- (4) If the excursion is a regular outing, the authorisation is only required to be obtained once in a 12-month period.

Division 8—Physical environment

72 Premises, furniture and equipment to be safe, clean and in good repair

The approved provider of a children's service must ensure that the children's service premises and all equipment and furniture used in providing the children's service are safe, clean and in good repair.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

73 Fencing

- (1) The approved provider of a children's service must ensure that any outdoor space used by children at the children's service premises is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) This regulation does not apply to a children's service that primarily provides education and care to children over preschool age.

74 Furniture, materials and equipment

The approved provider of a children's service must ensure that each child being educated and cared for by the children's service has access to sufficient furniture, materials and developmentally appropriate equipment suitable for the education and care of that child.

Note

A compliance direction may be issued for failure to comply with this regulation.

75 Laundry and hygiene facilities

- (1) The approved provider of a children's service must ensure that the service has—
 - (a) laundry facilities or access to laundry facilities; or
 - (b) other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering—

that are adequate and appropriate for the needs of the service.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) The approved provider of the service must ensure that laundry and hygienic facilities are located and maintained in a way that does not pose a risk to children.

Note

A compliance direction may be issued for failure to comply with this subregulation.

76 Space requirements—indoor space

- (1) The approved provider of a children's service must ensure that, for each child being educated and cared for by the service, the children's service premises has at least 3.25 square metres of unencumbered indoor space.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) In calculating the area of unencumbered indoor space—
- (a) the following areas are to be excluded—
- (i) any passageway or thoroughfare (including door swings);
 - (ii) any toilet and hygiene facilities;
 - (iii) any nappy changing area or area for preparing bottles;
 - (iv) any area permanently set aside for the use or storage of cots;

- (v) any area permanently set aside for storage;
 - (vi) any area or room for staff or administration;
 - (vii) any other space that is not suitable for children; and
- (b) the area of a kitchen is to be excluded, unless the kitchen is primarily to be used by children as part of an educational program provided by the service.
- (3) The area of a verandah may be included in calculating the area of indoor space only with the written approval of the Regulatory Authority.
- (4) A verandah that is included in calculating the area of outdoor space cannot be included in calculating the area of indoor space.
- (5) In this regulation a reference to a child does not include a child being educated or cared for in an emergency in the circumstances set out in regulation 90(4).

77 Space requirements—outdoor space

- (1) This regulation applies to an occasional care service other than an occasional care service that—
- (a) is a former limited hours Type 2 service; and
 - (b) does not provide education and care to any child who attends the service for more than—
 - (i) 5 hours per day; and
 - (ii) 15 hours per week.
- (2) The approved provider of an occasional care service must ensure that, for each child being educated and cared for by the service, the

children's service premises has at least 7 square metres of unencumbered outdoor space.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (3) In calculating the area of unencumbered outdoor space required, the following areas are to be excluded—
- (a) any pathway or thoroughfare, except where used by children as part of the education and care program;
 - (b) any car parking area;
 - (c) any storage shed or other storage area;
 - (d) any other space that is not suitable for children.
- (4) A verandah that is included in calculating the area of indoor space cannot be included in calculating the area of outdoor space.
- (5) An area of unencumbered indoor space may be included in calculating the outdoor space of a service that provides education and care to children over preschool age if—
- (a) the Regulatory Authority has given written approval; and
 - (b) that indoor space has not been included in calculating the indoor space under regulation 76.
- (6) In this regulation a reference to a child does not include a child being educated or cared for in an emergency in the circumstances set out in regulation 90(4).

- (7) In this regulation, a *former limited hours Type 2 service* means a children's service in respect of which a licence to operate a limited hours Type 2 service was issued and in force immediately before the commencement day.

78 Toilet and hygiene facilities

The approved provider of a children's service must ensure that—

- (a) adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and
- (b) the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.

79 Ventilation and natural light

The approved provider of a children's service must ensure that the indoor spaces used by children at the children's service premises—

- (a) are well ventilated; and
- (b) have adequate natural light; and
- (c) are maintained at a temperature that ensures the safety and wellbeing of children.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 9—Other space requirements

80 Administrative space

The approved provider of a children's service must ensure that an adequate area or areas are available at the children's service premises for the purposes of—

- (a) conducting the administrative functions of the service; and
- (b) consulting with parents of children; and
- (c) conducting private conversations.

Note

A compliance direction may be issued for failure to comply with this regulation.

81 Nappy change facilities

- (1) This regulation applies if a children's service educates and cares for children who wear nappies.
- (2) The approved provider of the children's service must ensure that adequate and appropriate hygienic facilities are provided for nappy changing.
- (3) Without limiting subregulation (2), the approved provider must ensure that the following are provided—
 - (a) if any of the children are under 3 years of age, at least one properly constructed nappy changing bench;
 - (b) hand cleansing facilities for adults in the immediate vicinity of the nappy change area.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (4) The approved provider of the children's service must ensure that nappy change facilities are designed, located and maintained in a way that prevents unsupervised access by children.

82 Outdoor space—natural environment

The approved provider of an occasional care service must ensure that any outdoor spaces provided at the children's service premises allow children to explore and experience the natural environment.

Example

The use of natural features such as trees, sand and natural vegetation.

Note

A compliance direction may be issued for failure to comply with this regulation.

83 Outdoor space—shade

The approved provider of an occasional care service must ensure that any outdoor spaces provided at the children's service premises include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

84 Premises designed to facilitate supervision

The approved provider of a children's service must ensure that the children's service premises (including toilets and nappy change facilities) are designed and maintained in a way that facilitates supervision of children at all times that they are being educated and cared for by the service,

having regard to the need to maintain the rights and dignity of the children.

Note

A compliance direction may be issued for failure to comply with this regulation.

Division 10—Minimum requirements for persons in day-to-day charge and nominated supervisors

85 Placing a person in day-to-day charge

For the purposes of the definition of a *person in day-to-day charge* in section 3(1) of the Act, a person is in day-to-day charge of a children's service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the children's service; and
- (b) the person consents to the placement in writing.

86 Minimum requirements for a person in day-to-day charge

- (1) An approved provider or a nominated supervisor of a children's service must not place a person in day-to-day charge unless—
 - (a) the person has attained the age of 18 years; and
 - (b) the approved provider or nominated supervisor (as the case requires)—
 - (i) has had regard to the matters set out in subregulation (2); and
 - (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an

ability to effectively supervise and manage a children's service.

- (2) For the purposes of subregulation (1)(b)(i), the matters are—
- (a) the person's history of compliance with—
 - (i) the Act; and
 - (ii) the National Law as applying in any participating jurisdiction; and
 - (iii) a former education and care services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (iv) a children's services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (v) an education law or an equivalent law of a participating jurisdiction; and
 - (b) any decision to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Act; and
 - (ii) the National Law as applying in any participating jurisdiction; and
 - (iii) a former education and care services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (iv) a children's services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (v) an education law or an equivalent law of a participating jurisdiction.

87 Minimum requirements for a nominated supervisor

- (1) For the purposes of section 102 of the Act, the following minimum requirements are prescribed—
 - (a) the person nominated must have attained the age of 18 years;
 - (b) the person nominated must have adequate knowledge and understanding of the provision of education and care to children;
 - (c) the person nominated must have the ability to effectively supervise and manage a children's service.
- (2) In determining whether to nominate a person as a nominated supervisor, an approved provider of a children's service must have regard to the following matters—
 - (a) the history of the person's compliance with—
 - (i) the Act; and
 - (ii) the National Law as applying in any participating jurisdiction; and
 - (iii) a former education and care services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (iv) a children's services law, within the meaning of the National Law, of a participating jurisdiction; and
 - (v) an education law or an equivalent law of a participating jurisdiction;
 - (b) any decision to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—

- (i) the Act; and
- (ii) the National Law as applying in any participating jurisdiction; and
- (iii) a former education and care services law, within the meaning of the National Law, of a participating jurisdiction; and
- (iv) a children's services law, within the meaning of the National Law, of a participating jurisdiction; and
- (v) an education law or an equivalent law of a participating jurisdiction.

Division 11—Staffing arrangements

Subdivision 1—Age and supervision requirements

88 Educators who are under 18 to be supervised

The approved provider of a children's service must ensure that any educator at the service who is under 18 years of age—

- (a) does not work alone at the service; and
- (b) is adequately supervised at all times by an educator who has attained the age of 18 years.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

Subdivision 2—Minimum number of educators required

89 Educators must be working directly with children to be included in ratios

- (1) An educator cannot be included in calculating the educator to child ratio of a children's service unless the educator is working directly with children at the service.
- (2) In this regulation, a reference to an educator includes an early childhood teacher who is counted as an educator under regulation 90(3).

90 Educator to child ratios

- (1) For the purposes of section 109(1) and (3) of the Act, the prescribed minimum number of educators educating and caring for children at a children's service is to be calculated in accordance with the following ratios—
 - (a) for children from birth to under 36 months of age—one educator to 4 children;
 - (b) for children aged 36 months of age or over (not including children over preschool age)—one educator to 11 children;
 - (c) for children over preschool age—one educator to 15 children.
- (2) If children being educated and cared for at an occasional care service are of mixed ages, the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.
- (3) If an early childhood teacher is required under Subdivision 4 of this Division to be in attendance at a children's service, subject to regulation 89, that early childhood teacher is counted as an

educator at the service for the purposes of this regulation.

- (4) In subregulations (1) and (2), a reference to children does not include a child who is, or 2 or more children from the same family who are, educated and cared for at a children's service in an emergency for a period of not more than 2 consecutive days on which the service operates.

Example

- 1 A child is determined to be in need of protection under a child protection order.
 - 2 The parent of a child needs urgent health care that prevents them caring for the child.
- (5) An approved provider of a children's service must not permit an additional child or additional children to be educated and cared for at the service in an emergency in the circumstances set out in subregulation (4) unless the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of all the children attending the service.

Subdivision 3—Requirements for educators

91 Occasional care services—educator qualifications

- (1) For the purposes of section 109(2) and (4) of the Act, educators educating and caring for children at an occasional care service must satisfy the following prescribed qualification requirements—
- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification;

- (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (2) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more occasional care services operated by the approved provider.
- (3) If Subdivision 4 of this Division requires an early childhood teacher to be in attendance at an occasional care service, that early childhood teacher, or a person taken to be an early childhood teacher under regulation 94(1), is to be counted as meeting the requirements of subregulation (1)(a).

Note

Meaning of *actively working towards*—see regulation 8.

92 Limited hours services—educator qualifications

For the purposes of section 109(2) and (4) of the Act, the prescribed qualification requirement for educators educating and caring for children at a limited hours service is at least an approved certificate III level education and care qualification.

Subdivision 4—Requirements for educators who are early childhood teachers

93 Occasional care services—early childhood teacher requirements and qualifications

- (1) This regulation applies to an occasional care service that, on average over any given 4-week period, educates and cares for any child for more than 30 hours per week.

- (2) For the purposes of section 109(1) and (3) of the Act, the prescribed number of educators educating and caring for children at an occasional care service is at least one educator who is an early childhood teacher who holds a qualification referred to in subregulation (3) in attendance at the occasional care service for, whichever is the lower of—
- (a) at least 50 per cent of the time the service is operating; or
 - (b) at least 20 hours per week.
- (3) For the purposes of section 109(2) and (4) of the Act, the prescribed qualification requirement for an educator who is required to be in attendance at an occasional care service under subregulation (2) is an approved early childhood teaching qualification within the meaning of the national regulations.

Note

The **Education and Training Reform Act 2006** requires that an early childhood teacher must be registered under Division 3A of Part 2.6 of that Act.

94 Illness or absence of early childhood teacher

- (1) If an early childhood teacher who is required under regulation 93(2) to be in attendance at an occasional care service is absent because of short-term illness or leave, the following persons may be taken to be an early childhood teacher during that absence—
- (a) a person who holds an approved diploma level education and care qualification;
 - (b) a person who holds a qualification in primary teaching;
 - (c) a suitably qualified person.

- (2) An early childhood teacher required to be in attendance under regulation 93(2) may be replaced in accordance with subregulation (1) for a maximum of 60 days in any 12-month period.
- (3) For the purposes of subregulation (2), in relation to a part-time early childhood teacher, 60 days is to be calculated on a pro rata basis.

Subdivision 5—First aid qualifications

95 First aid qualifications

- (1) The approved provider of a children's service must ensure that each of the following persons are in attendance at any place where children are being educated and cared for by the service, and immediately available in an emergency, at all times that children are being educated and cared for by the service—
 - (a) at least one staff member or one nominated supervisor of the service who holds a current approved first aid qualification;
 - (b) at least one staff member or one nominated supervisor of the service who has undertaken current approved anaphylaxis management training;
 - (c) at least one staff member or one nominated supervisor of the service who has undertaken current approved emergency asthma management training.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) If children are being educated and cared for at children's service premises on the site of a school, it is sufficient for the purposes of subregulation

- (1) if the following are in attendance at the school site and immediately available in an emergency—
- (a) for the purposes of subregulation (1)(a), at least one staff member of the school who holds a current approved first aid qualification;
 - (b) for the purposes of subregulation (1)(b), at least one staff member of the school who has undertaken current approved anaphylaxis management training;
 - (c) for the purposes of subregulation (1)(c), at least one staff member of the school who has undertaken current approved emergency asthma management training.
- (3) The same person may hold one or more of the qualifications set out in subregulation (1).
- (4) In this regulation—

approved anaphylaxis management training

means anaphylaxis management training approved by the National Authority in accordance with Division 7 of Part 4.4 of the national regulations;

approved emergency asthma management training

means emergency asthma management training approved by the National Authority in accordance with Division 7 of Part 4.4 of the national regulations;

approved first aid qualification means a qualification that—

- (a) includes training in the following that relates to and is appropriate to children—
 - (i) emergency life support and cardio-pulmonary resuscitation;

- (ii) convulsions;
 - (iii) poisoning;
 - (iv) respiratory difficulties;
 - (v) management of severe bleeding;
 - (vi) injury and basic wound care;
 - (vii) administration of an auto-immune adrenalin device; and
- (b) has been approved by the National Authority in accordance with Division 7 of Part 4.4 of the national regulations.

Subdivision 6—Other staffing arrangements

96 Working with children assessment notice to be read

- (1) The approved provider of a children's service must read, or ensure that a nominated supervisor or a person in day-to-day charge of the service has read, a person's working with children assessment notice before the person is—
 - (a) engaged as an educator at the service; or
 - (b) permitted to volunteer at the service; or
 - (c) engaged or employed as a staff member (other than as a person in day-to-day charge) at the service.
- (2) The approved provider of a children's service must read, or ensure that a nominated supervisor has read, a person's working with children assessment notice before the person is placed as a person in day-to-day charge of the service.
- (3) The approved provider of a children's service must read a person's working with children assessment notice before nominating that person as a nominated supervisor of the service.

- (4) Subregulation (1) does not apply in respect of a person if—
 - (a) a working with children assessment notice cannot be issued for the person because of the person's age; and
 - (b) the person educates and cares for children at the children's service only under the immediate supervision of an educator who has attained the age of 18 years.
- (5) Subregulation (1) does not apply to a person who is a volunteer and who provides education and care at the service only under the immediate supervision of an educator who has attained the age of 18 years.
- (6) Subregulations (1), (2) and (3) do not apply in relation to a person who is a registered teacher under the education law and the approved provider, a nominated supervisor or a person in day-to-day charge of the children's service has checked the relevant register kept under the education law to ensure that the person is registered.

Subdivision 7—Staff and educator records

97 Staff record

- (1) The approved provider of a children's service must ensure that a staff record is kept for that service in accordance with this Subdivision.
- (2) The staff record must include—
 - (a) the information about nominated supervisors set out in regulation 98; and
 - (b) the information about staff members set out in regulation 99; and

- (c) the information about volunteers set out in regulation 100(1).

Note

Other records are also required to be kept by the approved provider under this Subdivision.

98 Nominated supervisor

The staff record must include the following information in relation to each nominated supervisor—

- (a) the full name, address and date of birth of the nominated supervisor;
- (b) evidence—
- (i) of any relevant qualifications held by the nominated supervisor; or
 - (ii) if applicable, that the nominated supervisor is actively working towards that qualification as provided under regulation 8;
- (c) evidence of any approved training (including first aid training) completed by the nominated supervisor;
- (d) a record of either—
- (i) if the nominated supervisor has a working with children assessment notice, the identifying number and expiry date of that notice; or
 - (ii) if the nominated supervisor is a registered teacher under the education law and has provided proof of that registration, the identifying number of the teacher registration and the expiry date of that registration.

99 Staff members

The staff record must include the following information in relation to staff members—

- (a) the full name, address and date of birth of the staff member;
- (b) evidence—
 - (i) of any relevant qualifications held by the staff member; or
 - (ii) if applicable, that the staff member is actively working towards that qualification as provided under regulation 8;
- (c) evidence of any approved training (including first aid training) completed by the staff member;
- (d) a record of either—
 - (i) if the staff member has a working with children assessment notice, the identifying number and expiry date of that notice; or
 - (ii) if the staff member is a registered teacher under the education law and has provided proof of that registration, the identifying number of the teacher registration and the expiry date of that registration.

100 Volunteers and students

- (1) The staff record must include the full name, address and date of birth of each student or volunteer who participates in the children's service.

- (2) The approved provider of a children's service must also keep a record for each day on which the student or volunteer participates in the service, the date and the hours of participation.

101 Responsible person

The staff record must include the name of the responsible person at the children's service for each time that children are being educated and cared for by the service.

102 Record of educators working directly with children

The approved provider of a children's service must keep a record of educators working directly with children that includes the following information—

- (a) the name of each educator who works directly with children being educated and cared for by the service;
- (b) the hours that each educator works directly with children being educated and cared for by the service.

Note

The record could be a staff roster or staff time sheet.

103 Record of attendance of early childhood teachers

The approved provider of an occasional care service that, on average over any given 4-week period, educates and cares for any child for more than 30 hours per week must ensure that a record is kept of the following—

- (a) the period that an early childhood teacher is working with the service in accordance with regulation 93;
- (b) the periods that the early childhood teacher is working directly with children and is not working directly with children.

Part 5—Relationships with children

104 Interactions with children

An approved provider must take reasonable steps to ensure that the children's service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

105 Relationships in groups

- (1) The approved provider of a children's service must take reasonable steps to ensure that the service provides children being educated and cared for by the service with opportunities to interact and develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) For the purposes of subregulation (1), the approved provider must have regard to the size and the composition of the groups in which children are being educated and cared for by the service.

Part 6—Collaborative partnerships with families and communities

106 Access for parents

- (1) The approved provider of a children's service must ensure that a parent of a child being educated and cared for by the service may enter the children's service premises at any time that the child is being educated and cared for by the service.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) A nominated supervisor of a children's service must ensure that a parent of a child being educated and cared for by the service may enter the children's service premises at any time that the child is being educated and cared for by the service.

Penalty: 5 penalty units.

- (3) Despite subregulations (1) and (2), the approved provider or nominated supervisor (as the case may be) is not required to allow a parent to enter the children's service premises if—

- (a) permitting the parent's entry would—
- (i) pose a risk to the safety, health or wellbeing of any child or children being educated or cared for by the service; or
 - (ii) pose a risk to the safety of staff of the children's service; or

- (iii) conflict with any duty of the provider or supervisor under the Act; or

Example

Where a direction has been given to an approved provider or nominated supervisor under section 111(1) of the Act to exclude a person whom the Regulatory Authority is satisfied is an 'inappropriate person' from the children's service premises for such time as the Authority considers appropriate.

- (b) the provider or supervisor reasonably believes that permitting the parent's entry would contravene a court or tribunal order.

Note

Other regulations also relate to collaboration with families including requirements to give information about educational programs to parents, for parents to provide enrolment information, for information to be provided or displayed to parents and for administration areas to have adequate space for consulting with parents.

Part 7—Governance and leadership

Division 1—Management of services

Subdivision 1—Attendance and enrolment records

107 Children's attendance record to be kept by approved provider

The approved provider of a children's service must ensure that a record of attendance is kept for the service that—

- (a) records the full name of each child attending the service; and
- (b) records the date and time each child arrives and departs; and
- (c) is signed by one of the following persons at the time that the child arrives and departs—
 - (i) the person who delivers the child to the children's service premises or collects the child from the children's service premises;
 - (ii) a nominated supervisor or an educator.

108 Child enrolment records to be kept by approved provider

- (1) The approved provider of a children's service must ensure that an enrolment record is kept that includes the information set out in subregulation (2) for each child enrolled at the children's service.
- (2) An enrolment record must include the following information for each child—
 - (a) the full name, date of birth and address of the child;

- (b) the name, address and contact details of—
- (i) each known parent of the child; and
 - (ii) any person who is to be notified of an emergency involving the child if any parent of the child cannot be immediately contacted; and
 - (iii) any person who is an authorised nominee within the meaning of section 110(3) of the Act; and
- Note**
- Authorised nominee* means a person who has been given permission by a parent or family member to collect the child from the children's service. See section 110(3) of the Act.
- (iv) any person who is authorised to consent to medical treatment of, or to authorise administration of medication to, the child; and
 - (v) any person who is authorised to authorise an educator to take the child outside the children's service premises;
- (c) details of any court or tribunal orders, parenting orders or parenting plans provided to the approved provider relating to powers, duties, responsibilities or authorities of any person in relation to the child or access to the child;
- (d) details of any other court or tribunal orders provided to the approved provider relating to the child's residence or the child's contact with a parent or other person;
- (e) the gender of the child;
- (f) the language used in the child's home;
- (g) the cultural background of the child and, if applicable, the child's parents;
-

- (h) any special considerations for the child, for example any cultural, religious or dietary requirements or additional needs;
- (i) the relevant authorisations set out in regulation 109;
- (j) the relevant health information set out in regulation 110.

(3) In this regulation—

parenting order means a parenting order within the meaning of section 64B(1) of the Family Law Act 1975 of the Commonwealth;

parenting plan means a parenting plan within the meaning of section 63C(1) of the Family Law Act 1975 of the Commonwealth, and includes a registered parenting plan within the meaning of section 63C(6) of that Act.

109 Authorisations to be kept in enrolment record

The authorisations to be kept in the enrolment record for each child enrolled at a children's service are—

- (a) an authorisation, signed by a parent or a person named in the enrolment record as authorised to consent to the medical treatment of the child, for the approved provider, a nominated supervisor or an educator to seek—
 - (i) medical treatment for the child from a registered medical practitioner, hospital or ambulance service; and
 - (ii) transportation of the child by an ambulance service; and
- (b) if relevant, an authorisation given under regulation 71 for the children's service to take the child on regular outings.

110 Health information to be kept in enrolment record

The health information to be kept in the enrolment record for each child enrolled at the children's service is—

- (a) the name, address and telephone number of the child's registered medical practitioner or medical service; and
- (b) if available, the child's Medicare number; and
- (c) details of any—
 - (i) specific healthcare needs of the child, including any medical condition; and
 - (ii) allergies, including whether the child has been diagnosed as at risk of anaphylaxis; and
- (d) any medical management plan, anaphylaxis medical management plan or risk minimisation plan to be followed with respect to a specific healthcare need, medical condition or allergy referred to in paragraph (c); and
- (e) details of any dietary restrictions for the child; and
- (f) the immunisation status of the child; and
- (g) if the approved provider or a staff member has sighted a child health record for the child, a notation to that effect; and
- (h) in the case of a children's service specified in paragraph (b) of the definition of *early childhood service* in section 3(1) of the **Public Health and Wellbeing Act 2008**—

- (i) an immunisation status certificate within the meaning of section 147 of the **Public Health and Wellbeing Act 2008** that is issued in relation to the child and that is provided under section 143B of that Act; or
- (ii) details of any exemption in relation to the child under section 143C of the **Public Health and Wellbeing Act 2008**.

Subdivision 2—Record of children's service's compliance

111 Record of children's service's compliance

- (1) Subject to subregulations (2) and (3), the record of the children's service's compliance must include the following information—
 - (a) details of any amendment of the service approval made by the Regulatory Authority under section 54 of the Act, including—
 - (i) the reason stated by the Regulatory Authority for the amendment; and
 - (ii) the date on which the amendment took, or takes, effect; and
 - (iii) the date (if any) that the amendment ceases to have effect;
 - (b) details of any suspension of the service approval (other than a voluntary suspension), including—
 - (i) the reason stated by the Regulatory Authority for the suspension; and

- (ii) the date on which the suspension took, or takes, effect; and
 - (iii) the date that the suspension ends;
 - (c) details of any compliance direction or compliance notice issued to the approved provider in respect of the service, including—
 - (i) the reason stated by the Regulatory Authority for issuing the direction or notice; and
 - (ii) the steps specified in the direction or notice; and
 - (iii) the date by which the steps specified must be taken.
- (2) The information set out in subregulation (1) must not include any information that identifies any person other than the approved provider.
- (3) Subregulation (1) does not include an amendment, suspension, compliance notice or compliance direction if—
 - (a) the period for seeking internal or external review under section 133 or 135 of the Act has not yet expired; or
 - (b) an application for internal or external review under section 133 or 135 of the Act has been made but not yet determined; or
 - (c) an application for internal or external review under section 133 or 135 of the Act has been determined, and the amendment, suspension, compliance notice or compliance direction was not confirmed.

Division 2—Policies and procedures

112 Children's service must have policies and procedures

- (1) The approved provider of a children's service must ensure that the service has in place policies and procedures in relation to the matters set out in subregulation (2).

Penalty: 5 penalty units.

Notes

- 1 These may include policies and procedures prepared by the approved provider in accordance with the education law.
 - 2 A compliance direction may be issued for failure to comply with this subregulation.
- (2) Policies and procedures are required in relation to the following—
- (a) health and safety, including matters relating to—
 - (i) nutrition, food and beverages, and dietary requirements; and
 - (ii) sun protection; and
 - (iii) water safety, including safety during any water-based activities; and
 - (iv) the administration of first aid; and
 - (v) sleep and rest for children;
 - (b) incident, injury, trauma and illness policies and procedures complying with regulation 54;
 - (c) dealing with infectious diseases, including procedures complying with regulation 57;
 - (d) dealing with medical conditions in children, including the matters set out in regulation 59;

- (e) emergency and evacuation, including the matters set out in regulation 66;
- (f) delivery of children to, and collection of children from, the children's service premises, including procedures complying with regulation 68;
- (g) excursions, including procedures complying with regulations 69, 70 and 71;
- (h) providing a child safe environment;
- (i) staffing, including—
 - (i) a code of conduct for staff members; and
 - (ii) determining the responsible person present at the service; and
 - (iii) the participation of volunteers and students on practicum placements;
- (j) interactions with children, including the matters set out in regulations 104 and 105;
- (k) enrolment and orientation;
- (l) governance and management of the service, including confidentiality of records;
- (m) the acceptance and refusal of authorisations;
- (n) payment of fees and provision of a statement of fees charged by the children's service;
- (o) dealing with complaints.

113 Policies and procedures to be followed

The approved provider of a children's service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 112.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this regulation.

114 Policies and procedures to be kept available

- (1) The approved provider of a children's service must ensure that copies of the current policies and procedures required under regulation 112 are readily accessible to nominated supervisors and staff members of, and volunteers at, the service.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (2) The approved provider of a children's service must ensure that copies of the current policies and procedures required under regulation 112 are available for inspection at the children's service premises at all times that the service is educating and caring for children or otherwise on request.

Penalty: 5 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

115 Notification of change to policies or procedures

- (1) Subject to subregulation (4), the approved provider of a children's service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change to a policy or procedure referred to in regulation 112 that may have a significant impact on the service's provision of education and care to any child enrolled at the service.
- (2) Subject to subregulation (4), the approved provider of a children's service must ensure that parents of children enrolled at the service are

notified at least 14 days before making any change to a policy or procedure referred to in regulation 112 that may have a significant impact on the family's ability to utilise the service.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (3) The approved provider of a children's service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change that will affect the fees charged or the way in which fees are collected.
- (4) If the approved provider considers that the notice period would pose a risk to the safety, health or wellbeing of any child enrolled at the service, the approved provider must ensure that parents of children enrolled at the service are notified as soon as practicable after making a change referred to in subregulations (1) and (2).

Division 3—Information and record-keeping requirements

Subdivision 1—Display and reporting of prescribed information

116 Prescribed information to be displayed

- (1) For the purposes of section 112 of the Act, the following information is prescribed in respect of the matters in paragraphs (a) to (d) of that section—
 - (a) in relation to the provider approval—
 - (i) the name of the approved provider; and
 - (ii) the provider approval number; and
 - (iii) any conditions on the provider approval;

- (b) in relation to the service approval—
 - (i) the name of the children's service; and
 - (ii) the service approval number; and
 - (iii) any conditions on the service approval;
 - (c) the name of each nominated supervisor;
 - (d) in relation to any service waivers or temporary waivers held by the service, the details of the waivers including—
 - (i) the regulations the requirements of which have been waived; and
 - (ii) the duration of the waiver; and
 - (iii) whether the waiver is a service waiver or a temporary waiver.
- (2) For the purposes of section 112(e) of the Act, the following matters are prescribed—
- (a) the hours and days of operation of the children's service;
 - (b) the name and telephone number of the person at the children's service to whom complaints may be addressed;
 - (c) the name and position of the responsible person in charge of the children's service at any given time;
 - (d) the contact details of the Regulatory Authority;
 - (e) if applicable, a notice stating that a child who has been diagnosed as at risk of anaphylaxis is enrolled at the service;
 - (f) if applicable, a notice stating that there has been an occurrence of an infectious disease at the premises.

117 Time to notify certain circumstances to Regulatory Authority

- (1) For the purposes of section 113(4) of the Act, a notice must be provided within 14 days of the relevant event or within 14 days of the approved provider becoming aware of the relevant event.
- (2) For the purposes of section 113(5) of the Act, a notice must be provided—
 - (a) in the case of a notice under section 113(2)(f), within the period referred to in section 59 of the Act; and
 - (b) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant event.

118 Prescribed information to be notified to Regulatory Authority

- (1) For the purposes of section 114(1)(b) of the Act, the following matters are prescribed—
 - (a) any change to the address of the approved provider or the principal office of the approved provider, or the contact details of the approved provider;
 - (b) the appointment of receivers or liquidators or administrators to the approved provider or any other matters that affect the financial viability and ongoing operation of the children's service.
- (2) For the purposes of section 114(2)(c) of the Act, the following matters are prescribed—
 - (a) any change to the hours and days of operation of the children's service;
 - (b) any incident that requires the approved provider to close, or reduce the number of

children attending, the children's service for a period;

Example

A flood or a fire that requires an approved provider to close the children's service premises (or part of those premises) while repairs are undertaken.

- (c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service;
- (d) the attendance at the approved children's service of any additional child or children being educated and cared for in an emergency in the circumstances set out in regulation 90(4), including—
 - (i) a description of the emergency; and
 - (ii) a statement by the approved provider that the approved provider had taken into account the safety, health and wellbeing of all the children attending the children's service when deciding to provide education and care to the additional child or children;
- (e) any incident where the approved provider reasonably believes that physical abuse or sexual abuse of a child or children has occurred or is occurring while the child is, or the children are, being educated and cared for by the children's service;
- (f) allegations that physical or sexual abuse of a child or children has occurred or is occurring while the child is, or the children are, being educated and cared for by the children's service (other than an allegation that has been notified under section 114(2)(b) of the Act).

119 Time to notify certain information to Regulatory Authority

- (1) For the purposes of section 114(3) of the Act, a notice must be provided within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.
- (2) For the purposes of section 114(4) of the Act, a notice must be provided—
 - (a) in the case of a notice under section 114(2)(a)—
 - (i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or the time that the person becomes aware of the death; and
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident; and
 - (b) in the case of a notice under section 114(2)(b) or a notice of a matter referred to in regulation 118(2)(b), within 24 hours of the complaint or incident; and
 - (c) in the case of a notice under regulation 118(2)(d), within 24 hours of the commencement of the attendance of the child or children at the children's service; and
 - (d) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Subdivision 2—Prescribed records

120 Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 115(1) of the Act, the following documents are prescribed in relation to each children's service operated by the approved provider—
- (a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 43;
 - (b) an incident, injury, trauma and illness record as set out in regulation 56;
 - (c) a medication record as set out in regulation 61;
 - (d) a staff record as set out in regulation 97;
 - (e) a record of volunteers and students as set out in regulation 100;
 - (f) the records of the responsible person at the service as set out in regulation 101;
 - (g) a record of educators working directly with children as set out in regulation 102;
 - (h) a record of attendance of early childhood teachers as set out in regulation 103;
 - (i) a children's attendance record as set out in regulation 107;
 - (j) child enrolment records as set out in regulation 108;
 - (k) a record of the children's service's compliance with the Act as set out in regulation 111;

- (l) a record of each nominated supervisor and any person in day-to-day charge of the children's service under section 103 of the Act.
- (2) The approved provider of the children's service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (3) Subject to Subdivision 4 of this Division, the approved provider of the children's service must ensure that—
- (a) subject to subregulation (4), the documents referred to in subregulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request; and
- (b) the record of compliance referred to in subregulation (1)(k) is able to be accessed on request by any person.

Penalty: 10 penalty units.

Note

A compliance direction may be issued for failure to comply with this subregulation.

- (4) If a parent's access to information of the kind in the documents referred to in subregulation (1) is limited by an order of a court or tribunal that is kept on the child's enrolment record, the approved provider must refer to that order before releasing information concerning the child to that parent.

Subdivision 3—Insurance information

121 Evidence of prescribed insurance

- (1) The approved provider of a children's service must keep evidence of the current prescribed insurance at the children's service premises and must make the evidence available for inspection by the Regulatory Authority or an authorised officer under the Act.
- (2) Subregulation (1) does not apply if the prescribed insurance for the children's service is a policy of insurance or an indemnity provided by the State of Victoria.

Subdivision 4—Confidentiality and storage of records

122 Confidentiality of records kept by approved provider

The approved provider of a children's service must ensure that information kept in a record under these Regulations is not divulged or communicated, directly or indirectly, to another person other than—

- (a) to the extent necessary for the education and care or medical treatment of the child to whom the information relates; or
- (b) a parent of the child to whom the information relates, except in the case of information kept in a staff record; or
- (c) the Regulatory Authority or an authorised officer; or
- (d) as expressly authorised, permitted or required to be given by or under any Act or law; or

- (e) with the written consent of the person who provided the information.

Penalty: 10 penalty units.

123 Storage of records and other documents

- (1) The approved provider of a children's service must ensure that records and documents set out in regulation 120 are stored—
 - (a) in a safe and secure place; and
 - (b) for the relevant period set out in subregulation (2).
- (2) The records must be kept—
 - (a) if the record relates to an incident, illness, injury or trauma suffered by a child while being educated and cared for by the children's service, until the child is aged 25 years; and
 - (b) if the record relates to an incident, illness, injury or trauma suffered by a child that may have occurred following an incident while being educated and cared for by the children's service, until the child is aged 25 years; and
 - (c) if the record relates to the death of a child while being educated and cared for by the children's service or that may have occurred as a result of an incident while being educated and cared for, until the end of 7 years after the death; and
 - (d) in the case of any other record relating to a child enrolled at the children's service, until the end of 3 years after the last date on which the child was educated and cared for by the service; and

- (e) if the record relates to the approved provider, until the end of 3 years after the last date on which the approved provider operated the children's service; and
- (f) if the record relates to a nominated supervisor or staff member of a children's service, until the end of 3 years after the last date on which the nominated supervisor or staff member provided education and care on behalf of the service; and
- (g) in case of any other record, until the end of 3 years after the date on which the record was made.

Note

A compliance direction may be issued for failure to comply with this regulation.

124 Storage of records after service approval transferred

- (1) Subject to subregulation (2), if a service approval is transferred under the Act, the transferring approved provider must transfer the documents referred to in regulation 120 relating to children currently enrolled with the service to the receiving approved provider on the date that the transfer takes effect.
- (2) The transferring approved provider must not transfer the documents relating to a child under subregulation (1) unless a parent of the child has first consented to that transfer.

Subdivision 5—Act and regulations to be available

125 Act and regulations to be available

The approved provider of a children's service must ensure that a copy of the Act and these Regulations is accessible at the children's service

premises at all times for use by nominated supervisors, staff members, volunteers, parents of children enrolled at the service and any person seeking to make use of the service.

Note

A compliance direction may be issued for failure to comply with this regulation.

Part 8—Review, enforcement and compliance

Division 1—Internal review

126 Application for internal review of reviewable decision

An application for internal review under section 133(1) of the Act must include the following information—

- (a) the name of the applicant;
- (b) contact details for the applicant, including an address for service of the decision;
- (c) the provider approval number or service approval number to which the reviewable decision relates;
- (d) the full name of the person to whom the provider approval or service approval was granted;
- (e) a statement setting out—
 - (i) the details of the decision or the part of the decision with respect to which review is sought; and
 - (ii) how the decision affects the applicant; and
 - (iii) the grounds for seeking a review of the decision;
- (f) any information that the applicant considers relevant to the review.

Division 2—Enforcement and compliance

127 Prescribed form of identity card

- (1) For the purposes of section 137(1) of the Act, an identity card is in the prescribed form if it—
 - (a) states the full name of the authorised officer; and
 - (b) states that the officer is authorised under section 136 of the Act; and
 - (c) is issued by the Regulatory Authority; and
 - (d) states the date of the officer's authorisation.
- (2) An identity card may contain a photograph of the authorised officer.
- (3) If an identity card does not contain a photograph of the authorised officer, the authorised officer must carry the following and produce it when showing the identity card under the Act or these Regulations—
 - (a) another form of photographic identification of the authorised officer;
 - (b) a letter from the Regulatory Authority authorising the use of that form of photographic identification.

Penalty: 5 penalty units.

128 Compliance directions

The regulations set out in Schedule 4 are prescribed for the purposes of section 116 of the Act.

129 Application to cancel prohibition notice

For the purposes of section 127(3)(b) of the Act, the following information is prescribed—

- (a) the applicant's name;

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- (b) contact details for the applicant, including an address for service of the decision;
- (c) a statement setting out the grounds for the application to cancel the prohibition notice.

Note

Section 127(4), (5) and (6) of the Act set out additional statements that may be included in the application.

Part 9—Information, records and privacy— Regulatory Authority

Division 1—Publication of information

130 Publication of information

For the purposes of section 165(1)(c) of the Act, the following matters are prescribed—

- (a) the contact details for the service;
- (b) the hours and days of operation of the service;
- (c) the conditions to which the service approval is subject;
- (d) the approved number of places of the service.

131 Compliance and enforcement information

- (1) For the purposes of section 165(3)(a) of the Act, the information set out in subregulation (3) in relation to any enforcement action set out in subregulation (2) is prescribed.
- (2) The enforcement actions are—
 - (a) a prosecution for an offence against the Act or these Regulations leading to a conviction or finding of guilt or a plea of guilty; and
 - (b) the acceptance by the Regulatory Authority of an enforceable undertaking; and
 - (c) the giving of a compliance notice; and
 - (d) the suspension or cancellation (other than a voluntary suspension or surrender) of a provider approval or service approval; and
 - (e) an amendment made to a provider approval or service approval for purposes of enforcement; and

- (f) the giving of an emergency action notice under section 118 of the Act.
- (3) The following information may be published—
- (a) the nature of the enforcement action;
 - (b) where enforcement action has been taken against the approved provider and if the Regulatory Authority is satisfied that it is in the public interest to do so, information which identifies a person with management or control of a children's service;
 - (c) the details of the person in relation to whom the enforcement action was taken, including—
 - (i) the name and provider approval number of the approved provider; and
 - (ii) the address of the service; and
 - (iii) the name by which the service is known; and
 - (iv) for an individual, the name of the individual;
 - (d) the reason for taking the enforcement action, including details of the contravention or alleged contravention by the person of the Act or these Regulations and the provision that was contravened or alleged to be contravened;
 - (e) details of the enforcement action taken, including—
 - (i) for a prosecution leading to a conviction or finding of guilt or a plea of guilty—
 - (A) the provision of the Act or these Regulations that the person was convicted or found guilty of, or

- pleaded guilty to, contravening;
and
 - (B) the date of the conviction, finding of guilt or the making of the plea of guilty for the offence; and
 - (C) any penalty imposed for the offence; and
 - (D) information about any steps taken to remedy the subject of the prosecution and the date the steps were taken; and
- (ii) for an enforceable undertaking—
- (A) the terms of the enforceable undertaking; and
 - (B) the date of the enforceable undertaking; and
 - (C) information about any steps taken to remedy the subject of the enforceable undertaking and the date the steps were taken; and
- (iii) for a compliance notice—
- (A) the steps specified in the compliance notice that the person must take to comply with the provision of the Act or these Regulations; and
 - (B) the date specified in the notice by which the steps must be taken; and
 - (C) information about any steps taken to remedy the subject of the compliance notice and the date the steps were taken; and

- (iv) for the amendment of a provider approval or service approval—
 - (A) the details of the amendment; and
 - (B) the date on which the amendment took effect; and
 - (v) for a suspension of a provider approval or service approval—
 - (A) the date on which the suspension took effect; and
 - (B) the date on which the suspension ends; and
 - (vi) for a cancellation of a provider approval or service approval, the date on which the cancellation took effect.
- (4) In this regulation, a reference to information does not include information that could identify or lead to the identification of a child.

Note

Section 165(4) of the Act further restricts the publication of identifying information.

132 Timing of publication where internal or external review of enforcement action is available

- (1) If the Regulatory Authority publishes information about an enforcement action for which an application for internal review or external review can be made under section 133 or 135 of the Act, it must publish the information in accordance with this regulation.
- (2) If an application for internal review can be made under section 133(1) of the Act, the Regulatory Authority may publish the information after the end of the period specified in section 133(2) of the Act if no application for internal review is received in that period.

- (3) If an application for external review can be made under section 135(1) of the Act, the Regulatory Authority may publish the information after the end of the period specified in section 135(2) of the Act if no application for external review is received in that period.
- (4) If an application for internal or external review is made and withdrawn before a decision is made on the review, the Regulatory Authority may publish the information on or after the day on which the application is withdrawn.
- (5) If an application is made for an external review, the Regulatory Authority may publish the information on or after the day on which the decision with respect to the review is made if the enforcement action is confirmed or amended on review, or if another enforcement action is substituted on review.

Division 2—Registers

133 Register of approved providers

For the purposes of section 163(2)(b) of the Act, the following information is prescribed—

- (a) the postal address of the approved provider;
- (b) any conditions to which the provider approval is subject;
- (c) the date the provider approval was granted;
- (d) the provider approval number;
- (e) the service approval numbers of all children's services provided by the approved provider.

134 Register of approved children's services

For the purposes of section 164(2)(d) of the Act, the following information is prescribed—

- (a) the contact details for the service;

- (b) the hours of operation of the service;
- (c) any conditions to which the service approval is subject;
- (d) the approved number of places;
- (e) the date the approved provider was granted the service approval;
- (f) the service approval number;
- (g) the provider approval number.

Part 10—Administration

135 Prescribed fees

For the purposes of the Act, the fees set out in Schedule 3 are prescribed.

136 Late payment fees (annual fees)

- (1) If the annual fee for a service approval is not paid on or before 1 July, the Regulatory Authority may charge the approved provider a late payment fee, in addition to the annual fee, for every 30 days (or part of every 30 days) that the annual fee is overdue.
- (2) The late payment fee is 15 per cent of the relevant annual fee prescribed for the purposes of section 52 of the Act.

137 Waiver, reduction, deferral and refund of fees

The Regulatory Authority may waive, reduce, defer or refund any fee payable or paid to it under the Act or these Regulations if there are exceptional circumstances.

138 Publication of fees

For the purposes of section 165(3)(b) of the Act, the fees applicable for the following financial year is a prescribed matter about which the Regulatory Authority may publish information.

Part 11—Transitional and saving provisions

Division 1—Definitions

139 Definitions

In this Part—

former licensed children's service means a children's service in respect of which any of the following licence types were issued and in force immediately before the commencement day—

- (a) a licence to operate a standard service;
- (b) a licence to operate a school holidays care service;
- (c) a licence to operate a limited hours Type 1 service;
- (d) a licence to operate a limited hours Type 2 service;
- (e) a licence to operate a short term Type 1 service;
- (f) a licence to operate a short term Type 2 service;

old regulations means the Children's Services Regulations 2009¹ as in force immediately before the commencement day;

qualified staff member, in relation to a former licensed children's service, has the same meaning as in regulation 5 of the old regulations; and

staff member, in relation to a former licensed children's service, has the same meaning as in regulation 5 of the old regulations.

Division 2—Conversion of old licence types to new types of children's service

140 Conversion of old licence types to new types of children's service

- (1) On and from the commencement day, each of the following children's services is taken to be an occasional care service—
 - (a) a children's service in respect of which a licence to operate a standard service was issued and in force immediately before the commencement day;
 - (b) a children's service in respect of which a licence to operate a school holidays care service was issued and in force immediately before the commencement day;
 - (c) a children's service in respect of which a licence to operate a limited hours Type 2 service was issued and in force immediately before the commencement day;
 - (d) a children's service in respect of which a licence to operate a short term Type 1 service was issued and in force immediately before the commencement day.
- (2) On and from the commencement day, each of the following children's services is taken to be a limited hours service—
 - (a) a children's service in respect of which a licence to operate a limited hours Type 1 service was issued and in force immediately before the commencement day;
 - (b) a children's service in respect of which a licence to operate a short term Type 2 service was issued and in force immediately before the commencement day.

141 Saving provision—references to old licence types

- (1) On and from the commencement day, a reference to a children's service or a licence type referred to in regulation 140(1) is taken to be a reference to an occasional care service.
- (2) On and from the commencement day, a reference to a children's service or a licence type referred to in regulation 140(2) is taken to be a reference to a limited hours service.

Division 3—Educator to child ratios and educator qualification requirements

142 Application of staffing requirements to former licensed children's services

- (1) This Division applies to a former licensed children's service until 31 December 2021.
- (2) Subdivisions 2 and 3 of Division 11 of Part 4 do not apply to a former licensed children's service until 1 January 2022.

143 Requirements for former standard services

- (1) This regulation applies to a children's service in respect of which a licence to operate a standard service was issued and in force immediately before the commencement day.
- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and minimum qualification requirements of educators are—
 - (a) for children from birth to under 36 months of age—
 - (i) one educator to 4 children or fraction of that number of children; and

- (ii) one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification, to every 12 children or fraction of that number of children; and
- (b) for children aged 36 months of age or over—
 - (i) one educator to every 15 children or fraction of that number of children; and
 - (ii) one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification, to every 30 children or fraction of that number of children.
- (3) It is a prescribed qualification requirement that the educators, other than the educators referred to in subregulations (2)(a)(ii) and (2)(b)(ii), hold, or be actively working towards, at least an approved certificate III level education and care qualification.

144 Requirements for former school holidays care services

- (1) This regulation applies to a children's service in respect of which a licence to operate a school holidays care service was issued and in force immediately before the commencement day.
- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and minimum qualification requirements of educators are—
 - (a) one educator to 15 children or fraction of that number of children; and
 - (b) one educator who holds, or is actively working towards, at least an approved diploma level education and care

qualification, to every 30 children or fraction of that number of children.

- (3) It is a prescribed qualification requirement that the educators, other than the educator referred to in subregulation (2)(b), hold, or be actively working towards, at least an approved certificate III level education and care qualification.

145 Requirements for former limited hours Type 1 services

- (1) This regulation applies to a children's service in respect of which a licence to operate a limited hours Type 1 service was issued and in force immediately before the commencement day.
- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and minimum qualification requirements of educators are—
- (a) for children from birth to under 36 months of age, one educator to 5 children or fraction of that number of children; and
 - (b) for children aged 36 months of age or over (excluding children over preschool age), one educator to 15 children or fraction of that number of children; and
 - (c) all educators used to meet the ratios in paragraphs (a) and (b) hold at least an approved certificate III level education and care qualification.

146 Requirements for former limited hours Type 2 services

- (1) This regulation applies to a children's service in respect of which a licence to operate a limited hours Type 2 service was issued and in force immediately before the commencement day.

- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and minimum qualification requirements of educators are—
- (a) for children from birth to under 36 months of age—
 - (i) one educator to 5 children or fraction of that number of children; and
 - (ii) one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification to 12 children or fraction of that number of children; and
 - (b) for children aged 36 months of age or over—
 - (i) one educator to 15 children or fraction of that number of children; and
 - (ii) one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification to 30 children or fraction of that number of children.
- (3) It is a prescribed qualification requirement that the educators, other than the educators referred to in subregulations (2)(a)(ii) and (2)(b)(ii), hold, or be actively working towards, at least an approved certificate III level education and care qualification.

147 Requirements for former short term Type 1 services

- (1) This regulation applies to a children's service in respect of which a licence to operate a short term Type 1 service was issued and in force immediately before the commencement day.

- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and minimum qualification requirements of educators are—
- (a) for children from birth to under 36 months of age—
 - (i) one educator to 5 children or fraction of that number of children; and
 - (ii) one educator who holds, or is actively working towards, an approved diploma level education and care qualification to 12 children or fraction of that number of children; and
 - (b) for children aged 36 months of age or over—
 - (i) one educator to 15 children or fraction of that number of children; and
 - (ii) one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification to 30 children or fraction of that number of children.
- (3) It is a prescribed qualification requirement that the educators, other than the educators referred to in subregulations (2)(a)(ii) and (2)(b)(ii), hold, or be actively working towards, at least an approved certificate III level education and care qualification.

148 Requirements for former short term Type 2 services

- (1) This regulation applies to a children's service in respect of which a licence to operate a short term Type 2 service was issued and in force immediately before the commencement day.
- (2) For the purposes of section 109(1), (2), (3) and (4) of the Act, the prescribed minimum number and

minimum qualification requirements of educators are—

- (a) for children from birth to under 36 months of age, one educator to 5 children or fraction of that number of children; and
 - (b) for children aged 36 months of age or over, one educator for every 15 children or fraction of that number of children; and
 - (c) if the service educates or cares for 16 children or more, one educator who holds, or is actively working towards, at least an approved diploma level education and care qualification, to every 30 children or fraction of that number of children.
- (3) It is a prescribed qualification requirement that the educators, other than the educator referred to in subregulation (2)(c), hold, or be actively working towards, at least an approved certificate III level education and care qualification.

149 Service waiver for transitional ratios and qualification requirements

- (1) For the purposes of section 85(1) of the Act, the requirements of regulations 143, 144, 145, 146, 147 and 148 are prescribed.
- (2) Regulations 38 and 39 apply to a waiver from the requirements of a regulation specified in subregulation (1).

150 Temporary waiver for transitional ratios and qualification requirements

- (1) For the purposes of section 92 of the Act, the requirements of regulations 143, 144, 145, 146, 147 and 148 are prescribed.
- (2) Regulation 41 applies to an application for a waiver from the requirements of a regulation specified in subregulation (1).

Division 4—Saving of existing experience and qualifications

151 Saving provision—education experience and qualifications

- (1) This regulation applies to an educator who immediately before the commencement day—
 - (a) was employed as a staff member at a former licensed children's service; and
 - (b) met the requirements of regulation 130(1) of the old regulations.
- (2) The educator is taken to hold an approved certificate III level education and care qualification for the purposes of the educator qualification requirements in these regulations.

Division 5—Other operational requirements

152 Non-application of certain operational requirements to former licensed children's services

The following regulations do not apply to a former licensed children's service until 1 January 2022—

- (a) regulation 54;
- (b) regulation 59;
- (c) regulation 60;
- (d) regulation 79(a) and (c);
- (e) regulation 81(3);
- (f) regulation 84;
- (g) regulation 95(1)(c) and (2)(c);
- (h) regulation 108;
- (i) regulation 109;
- (j) regulation 110;

- (k) regulation 112;
- (l) regulation 113;
- (m) regulation 114;
- (n) regulation 115.

Division 6—Information, policies, procedures to be made available and other matters

153 Application of Division

This Division applies to a former licensed children's service until 31 December 2021.

154 Saving provision—information to be made available or displayed at former licensed children's services

- (1) The approved provider of a former licensed children's service must ensure information about the following matters is available for inspection at the service at all times the service is open for the care or education of children—
 - (a) admission requirements and enrolment procedures;
 - (b) arrangements for the payment of fees;
 - (c) the policy of the service with respect to the employment of qualified staff members;
 - (d) the policy of the service with respect to behaviour management;
 - (e) arrangements for the delivery and collection of children;
 - (f) procedures for dealing with infectious disease;
 - (g) provision for dealing with complaints;
 - (h) an anaphylaxis management policy.

- (2) The approved provider of a former licensed children's service must ensure that a schedule of fees charged by the service is displayed prominently at the main entrance to the premises where the children's service operates.

155 Policies, procedures etc. to be followed

The approved provider of a former licensed children's service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies, and procedures, arrangements and provision referred to in regulation 154(1).

156 Notification of change to policies, procedures etc.

- (1) Subject to subregulation (2), the approved provider of a children's service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change to—
- (a) the information referred to in regulation 154(1), if the change may have a significant impact on—
 - (i) the service's provision of education and care to any child enrolled at the service; or
 - (ii) the family's ability to utilise the service; or
 - (b) the schedule of fees referred to in regulation 154(2).
- (2) If the approved provider considers that the notice period would pose a risk to the safety, health or wellbeing of any child enrolled at the service, the approved provider must ensure that parents of children enrolled at the service are notified as soon as practicable after making a change referred to in subregulation (1).

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Part 11—Transitional and saving provisions

- (3) The approved provider of a children's service must ensure that parents of children enrolled at the service are notified at least 14 days before making any change that will affect the fees charged or the arrangements for the payment of fees.

Schedule 1—Revocation of Regulations

Regulation 4

1. Children's Services Regulations 2009, S.R. No 53/2009.
2. Children's Services Amendment Regulations 2010,
S.R. No. 96/2010.
3. Children's Services Amendment Regulations 2011,
S.R. No. 162/2011.
4. Children's Services Amendment Regulations 2016,
S.R. No. 2/2016.
5. Children's Services Amendment Regulations 2017,
S.R. No. 96/2017.

Schedule 2—Prescribed annual fee for service approval

**Schedule 2—Prescribed annual fee for
service approval**

Regulation 30

<i>Item no.</i>	<i>Section of the Act</i>	<i>Description</i>	<i>Occasional care services</i>	<i>Limited hours services</i>
1	Section 52	Annual fee for service approval	1 to 15 approved places—3 fee units 16 to 30 approved places—6 fee units 31 to 60 approved places—10 fee units 61 or more approved places—14 fee units	1 to 15 approved places—3 fee units 16 to 30 approved places—6 fee units 31 or more approved places—10 fee units

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Schedule 3—Other prescribed fees

Schedule 3—Other prescribed fees

Regulation 135

<i>Item no.</i>	<i>Section of the Act</i>	<i>Description</i>	<i>Occasional care services</i>	<i>Limited hours services</i>
1	Section 11(d)	Application for provider approval	15 fee units	15 fee units
2	Section 22(2)(c)	Application to amend provider approval	Nil	Nil
3	Section 37(2)(c)	Application to voluntarily suspend provider approval	Nil	Nil
4	Section 39(6)(c)	Application by executor for provider approval	Nil	Nil
5	Section 40(3)(c)	Application by legal personal representative or guardian for provider approval	Nil	Nil
6	Section 43(f)	Application for service approval	1 to 15 approved places—7 fee units 16 to 30 approved places—14 fee units 31 to 60 approved places—21 fee units	1 to 15 approved places—5 fee units 16 to 30 approved places—10 fee units 31 or more approved places—15 fee units

Authorised by the Chief Parliamentary Counsel

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Schedule 3—Other prescribed fees

<i>Item no.</i>	<i>Section of the Act</i>	<i>Description</i>	<i>Occasional care services</i>	<i>Limited hours services</i>
			61 or more approved places—28 fee units	
7	Section 53(2)(c)	Application to amend service approval	Nil	Nil
8	Section 59(2)(c)	Notification of intended transfer of service approval	7 fee units	7 fee units
9	Section 83(2)(c)	Application to voluntarily suspend service approval	Nil	Nil
10	Section 86(c)	Application for service waiver	7 fee units	7 fee units
11	Section 93(c)	Application for temporary waiver	7 fee units	7 fee units
12	Section 96(4)	Application for extension of temporary waiver	7 fee units	7 fee units

Schedule 4—Compliance directions— prescribed provisions

Regulation 128

<i>Regulation</i>	<i>Description</i>
Regulation 43(1)	Documenting of child assessments or evaluations for delivery of educational programs
Regulation 44	Information about educational program to be kept available
Regulation 45	Information about educational program to be given to parents
Regulation 46(1)	Health, hygiene and safe food practices
Regulation 47(1)	Food and beverages
Regulation 48(1)	Service providing food and beverages
Regulation 49(1)	Weekly menu
Regulation 50(1)	Sleep and rest
Regulation 51	Tobacco, drug and alcohol-free environment
Regulation 52(1)	Staff members not to be affected by alcohol or drugs
Regulation 53	Awareness of child protection law
Regulation 58	First aid kits
Regulation 60	Medical conditions policy to be provided to parents
Regulation 66(2), (3), (4)	Emergency and evacuation procedures
Regulation 67	Telephone or other communication equipment
Regulation 72	Premises, furniture and equipment to be safe, clean and in good repair
Regulation 73(1)	Fencing
Regulation 74	Furniture, materials and equipment

Children's Services Regulations 2020
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Schedule 4—Compliance directions—prescribed provisions

<i>Regulation</i>	<i>Description</i>
Regulation 75(1), (2)	Laundry and hygiene facilities
Regulation 76(1)	Space requirements—indoor space
Regulation 77(2)	Space requirements—outdoor space
Regulation 79	Ventilation and natural light
Regulation 80	Administrative space
Regulation 81(3)	Nappy change facilities
Regulation 82	Outdoor space—natural environment
Regulation 83	Outdoor space—shade
Regulation 84	Premises designed to facilitate supervision
Regulation 88	Educators who are under 18 to be supervised
Regulation 95(1)	First aid qualifications
Regulation 105(1)	Relationships in groups
Regulation 106(1)	Access for parents
Regulation 112(1)	Children's service must have policies and procedures
Regulation 113	Policies and procedures to be followed
Regulation 114(1), (2)	Policies and procedures to be kept available
Regulation 115(2)	Notification of change to policies or procedures affecting ability of family to utilise service
Regulation 120(2), (3)	Prescribed enrolment and other documents to be kept by approved provider
Regulation 123	Storage of records and other documents
Regulation 125	Act and regulations to be available

Endnotes

¹ Reg. 139: S.R. No. 53/2009 as amended by S.R. Nos 96/2010, 162/2011, 2/2016 and 96/2017.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2019 is \$14.81. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2019 is \$165.22.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.