

Subordinate Legislation Act 1994

(Section 12)

NOTICE OF DECISION

Children's Services Regulations 2020

I, James Merlino, Minister for Education, Minister responsible for administering the **Children's Services Act 1996** (CS Act), give notice under section 12 of the **Subordinate Legislation Act 1994** of my decision to make the proposed Children's Services Regulations 2020 (the proposed Regulations).

Most early childhood education and care services in Victoria are regulated under the National Quality Framework (NQF) (approximately 4,200 long day care, family day care, preschool and outside school hours care services).

The remaining approximately 315 children's services are, by definition, excluded from the NQF and remain regulated under the CS Act and Children's Services Regulations 2009 (current Regulations). Most of these services provide occasional care, where children attend for short periods of time.

The regulatory regimes are similar, but not consistent. Following a national decision to keep occasional care services outside the NQF, the Victorian children's services regulatory regime is being reformed to align it with the NQF, where appropriate, to simplify arrangements for service providers and ensure more consistent minimum standards for all Victorian early childhood services.

The CS Act and the Education and Care Services National Law (National Law) set out the architecture of the licensing frameworks, requirements for provider accountability and oversight of services, principles for the safety, health and wellbeing of children, and the regulator's powers and duties.

The **Children's Services Amendment Act 2019** (Amendment Act) aligns the CS Act, where appropriate, with the National Law. The proposed Regulations complete the alignment of the two regulatory regimes by prescribing various matters to support the new regulatory framework in the CS Act, as amended.

The proposed Regulations must be made and commence by 17 May 2020, to replace the current Regulations, which will expire on 18 May 2020. The Amendment Act will also commence on 17 May 2020, by a Proclamation to be made by the Governor in Council. This will ensure that all changes to the children's services regulatory regime will commence on the same day.

A Regulatory Impact Statement (RIS) was prepared in relation to the proposed Regulations. A copy of the RIS and an Exposure Draft of the proposed Regulations was published on the Engage Victoria platform at <https://engage.vic.gov.au> on 17 February 2020 and notice of the RIS was published in the Government Gazette and The Age newspaper on 17 February 2020 inviting public comment. The consultation period ended on 17 March 2020.

During the consultation period the Department of Education and Training held nine face-to-face information sessions in metropolitan and regional locations, including via videoconference. 97 people participated in the face-to-face sessions and videoconference.

In response to the RIS and proposed Regulations, 28 responses to an online survey on the Engage Victoria platform and two written submissions were received from stakeholders, representing early childhood educators and children's services providers, including local government, not-for-profit entities, and operators of recreational facilities. All responses were carefully considered.

The consultation indicated broad sector support for the alignment, where appropriate, of the children's services regulatory requirements with the NQF. This support is consistent with feedback provided during consultation on the proposed law reform in mid-2019, through web-based information, direct correspondence, state-wide face-to-face information sessions, stakeholder forums and individual meetings with some key stakeholders.

In response to the RIS and proposed Regulations, stakeholders particularly welcomed the streamlining in licensing and regulatory requirements, seeing this as more efficient and less onerous for the provider. They also supported the reduction of seven licence types to two service approval types, and the proposed new fee structure. There was strong support for quality measures that aim to embed best practice into the sector, including the educational program, staff qualifications and staff to child ratios, and outdoor space requirements, as well as the measures to minimise the risks of harm to children in services. Feedback also confirmed support for the requirement in the Amendment Act for the educational program to be based on an approved learning framework.

Other relevant issues or queries raised in the consultation were:

- the impact of staffing requirements and fees on small and rural services
- availability of outdoor space for proposed new services to be operated by local councils
- the need to continue to recognise the historical minimum training requirements for a small number of longstanding educators without qualifications who undertook a specific bridging course instead of a Certificate III. These educators do not hold ‘approved’ qualifications but were recognised under the expiring Regulations
- the sector’s need for support for transition and compliance.

After careful consideration of the submissions and feedback received, I have decided that the proposed Regulations should be made with the following amendments:

- extending the transitional period for existing providers to comply with the new requirements for policies and procedures from 1 January 2021 to 1 January 2022; and
- continuing to recognise the historical minimum training requirement for educators without ‘approved’ qualifications whose training was recognised under the expiring Regulations.

The day before the close of the consultation period, on 16 March 2020, the Premier declared a State of Emergency in Victoria in relation to the Coronavirus pandemic. In making my decision, I have also considered the impact of the pandemic on the sector’s ability to meet the new operational requirements in the proposed Regulations. It is likely that on the commencement date many children’s services will have suspended operation. However, due to the commencement date of the Amendment Act, and the need to replace the expiring Regulations, it is not possible to defer the commencement of the proposed Regulations. The Department of Education and Training will provide support and resources to the children’s services sector to enable a smooth commencement and transition.

The Statement of Reasons for my decision to make the proposed Regulations is located at www.engage.vic.gov.au/childrens-services-regulations-2020

Dated 30 April 2020

THE HON. JAMES MERLINO MP
Minister for Education
