

**Early Childhood Development  
Working Group**

**Information Paper**

**on**

**the Education and Care  
Services National Law**

**and**

**the proposed National  
Regulations**

**December 2010**

## **Providing feedback**

Individuals and organisations are invited to provide feedback on issues raised in this paper. The closing date for feedback is **14 April 2011**.

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## INTRODUCTION

### Purpose

1. The National Quality Framework for Early Childhood Education and Care ('National Quality Framework') is proposed to come into effect from 1 January 2012. The new national quality system will be underpinned by the National Law and National Regulations. Together they will set a new National Quality Standard and a regulatory framework for long day care, family day care, preschool (kindergarten in some jurisdictions) and outside school hours care services in all States and Territories.
2. The National Quality Framework is being developed jointly by all States and Territories working together with the Australian Government, under the auspices of the Council of Australian Governments (COAG). The *Education and Care Services National Law Act 2010* was passed by the Victoria Parliament on 5 October 2010 and the *Children's (Education and Care Services National Law Application) Act 2010* was passed by the New South Wales Parliament on 23 November 2010.
3. This information paper has been developed to assist education and care stakeholders, parents and the wider community to understand the proposed content of the National Regulations and facilitate participation in face-to-face forums when an exposure draft of the National Regulations is released in February 2011.

### Why is a National Quality Framework for early childhood education and care important?

4. Research tells us that the period from birth to eight is a critical period of a child's life. It is the time when children acquire essential foundation skills and knowledge and when brain development proceeds at a pace far greater than that of any subsequent stage of life. Cognitive, verbal, social, physical and emotional skills are all developing at this time.
5. Quality early childhood education and care programs have a profound effect on all children's development; influencing their ability to learn, their acquisition of early literacy and numeracy skills and positive social interaction. They assist children to ease the transition to primary school and have a direct and positive impact on future educational, employment and health outcomes.
6. Quality early childhood education and care programs also support parents and families in their role as the key carers and educators of their children during this important time in their child's development, as well as supporting their choices with respect to workforce participation.
7. Currently, State and Territory regulatory agencies have responsibility for licensing early childhood education and care services. The National Childcare Accreditation Council, funded by the Australian Government, has responsibility for accrediting long day care, family day care and outside school hours care services.
8. This creates substantial administrative and regulatory duplication, resulting in an unnecessary regulatory burden on service providers.
9. Information that is available for parents is also variable across education and care settings. The new system will provide a rating for services, which will assist families in understanding the quality of services, and may also assist them in making choices. The system will also provide more information to parents when compliance action is taken by Regulatory Authorities.
10. To ensure that consistent quality standards are met across Australia, and to reduce the regulatory burden on service providers, all governments in Australia agreed in December 2009 to collaboratively

implement the National Quality Framework, with continuing due consideration being given to both improvements to quality and child care affordability for families.

### **Legislative framework for the National Quality Framework**

11. The National Quality Framework is being developed cooperatively through the process of national applied laws legislation, whereby one jurisdiction (the 'host' State) enacts the enabling legislation which is then adopted by other States and Territories.
12. The *Education and Care Services National Law Act 2010* (Vic) was developed by all jurisdictions and enacted by the Victorian Parliament as the host jurisdiction. The National Law, which is a schedule to the Victorian Act, can now be adopted by the Parliaments of other States and Territories by reference to the Victorian legislation, except in Western Australia, where it will be adopted by corresponding legislation.
13. The National Law Act (the 'National Law') can be found at <http://www.legislation.vic.gov.au>

### **Overview of the National Quality Framework**

14. Under the National Quality Framework, from 1 January 2012 long day care, family day care, preschool (kindergarten in some jurisdictions) and outside school hours care services in all States and Territories (other than Western Australia) will be required to comply with the new National Law, which gives effect to the National Quality Framework. In Western Australia, these services will need to comply with corresponding Western Australian legislation. For pre-schools in Western Australia, the National Quality Framework may be reflected in changes to education laws.
15. The National Quality Framework is defined in the National Law as comprising the National Law, the Regulations, the National Quality Standard and the prescribed rating system. In practical terms this means having:
  - a single, uniform national regulatory system that will reduce the regulatory burden for most services and improve the efficiency and cost effectiveness of the regulatory framework;
  - a new National Quality Standard that will ensure the safety, health and wellbeing of children attending long day care, family day care, preschool and outside school hours care services, as well as improving their educational and developmental outcomes;
  - a new national quality assessment and rating system that will provide families with better information for making choices about their children's education and care as well as driving quality improvement. There will no longer be separate accreditation assessments by the National Childcare Accreditation Council;
  - State and Territory Regulatory Authorities who will have primary responsibility for approval, monitoring and quality assessment of services;
  - a new, joint national body – the Australian Children's Education and Care Quality Authority – to oversee the National Quality Framework and guide the consistent and effective implementation of the new system across Australia.
16. In designing the National Quality Framework, one of the new concepts underpinning approval to operate a service is providing for on-going approval. In addition, Provider Approval operates on a national basis. Both of these approaches assist to minimise regulatory burden on service providers.
17. Another new concept underpinning the assessment and rating of services is the concept of 'earned autonomy' whereby the length of time between assessments is determined by the current rating

level. For example, a rating level of National Quality Standard would mean the next assessment would occur in two years time. A rating level of High Quality/Advanced would mean assessment in three years time. This will enable State and Territory Regulatory Authorities to focus on services that need the most support.

18. The framework is comprehensive and care has been taken to structure the National Law and, subsequently, the proposed Regulations for ease of use for the reader as well as for regulatory clarity. For example, where possible regulated matters directly relating to service provision are at the front of the National Law and those provisions that are more administrative in nature are to the rear.
19. Where services operate that are not included within the National Quality Framework, a State or Territory may continue to regulate those services. If a service is covered by the National Law, for example a kindergarten, and it operates an occasional care service, the National Law provides for the approvals process to be under the National Law and for the occasional care service to be described as an ancillary service, which for the ancillary (occasional care) component of the service, must comply with relevant State or Territory legislation.

### Progress to date

20. Since December 2009, all Governments have been working together to implement the National Quality Framework focused on three broad areas of work:
  - Development of a national legislative framework, including the National Law and the National Regulations (which will include the National Quality Standards).
  - Development of documentation to assess and rate services against the National Quality Standard. The following documents were released in November 2010 for comment:
    - Draft Assessment and Rating Instrument;
    - Draft Guide to the National Quality Standard (Phase Two);
    - Draft Self Assessment and Quality Improvement Planning Process (Phase Two).
      - This work includes the *Early Years Learning Framework Educators' Guide* and *My Time, Our Place: Framework for School Age Care in Australia*, which were also released for comment in November 2010.

More information about the assessment and rating process can be found at [www.deewr.gov.au/EarlyChildhood](http://www.deewr.gov.au/EarlyChildhood).

- Establishment of the Australian Children's Education and Care Quality Authority, including:
  - appointment of the Board and Chief Executive Officer;
  - winding down of the National Childcare Accreditation Council and the Accreditation Decisions Review Committee; and
  - the design and build of the national information technology system to support the national regulatory system.

### What is covered by the proposed National Regulations?

21. The proposed National Regulations set out detail concerning administrative process (e.g. applications for approval), assessment and rating, minimum requirements for the National Quality Standard and other matters such as enforcement and fees.

22. The development of the Regulations has been a collaborative process drawing on the experience and knowledge of all States and Territories and the Australian Government. This work has also been informed by the National Stakeholder Reference Group and the feedback received at public forums. The resulting draft is intended to reflect both a continuing focus on outcomes for children and to minimise regulatory burden, while recognising the different starting points across jurisdictions.
23. In developing the National Quality Framework, all Governments strongly support extensive consultation with the sector to enable their views to be taken into account in shaping its implementation.
24. This information paper is designed to provide a comprehensive description of the intent of the National Law and the content of the proposed National Regulations ahead of the release of an exposure draft of the National Regulations in February 2011. It will allow all stakeholders and interested parties the opportunity to consider and contribute to the final content of the National Regulations.
25. The proposed National Regulations align with the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* (December 2009, 'National Partnership Agreement') and the process agreed to consult prior to finalisation. However, all jurisdictions have agreed that the consultation process is not a mechanism for considering changes to the structural components of quality included in the standards, particularly in relation to educator-to-child ratios and staff qualifications. The Ministerial Council will consider any refinements to the standards in line with the National Partnership Agreement.
26. To assist in this process, this information paper is structured to provide summary information about each key segment of the National Law as well as the proposed Regulations. This is accompanied by answers to anticipated common questions for services. In addition, at the end of some sections are issues for discussion. The information, and the questions and answers and issues for discussion, are not intended to be comprehensive but aim to highlight the particular areas for which feedback is sought.
27. The host legislation for the National Law has been enacted and reference legislation has been passed by one other jurisdiction and therefore cannot be changed. However, the proposed Regulations are still being drafted and therefore comment and feedback is welcome about any aspect of their content and not just about the identified issues for discussion.
28. To assist the reader, the information in this paper relating to the proposed Regulations is highlighted in blue.

### Next steps

29. It is expected that an exposure draft of the National Regulations will be released in February 2011, followed by national face-to-face forums in March 2011.
30. All governments are working together to develop Service Guidelines to assist services to understand the National Law and Regulations. A national Regulators' Operating Manual is also being developed to ensure national consistency, which is proposed to be available to those stakeholders with web access. It is also intended that systems processes may include template forms and 'smart forms' available on-line to make applications easier.
31. Governments will continue to work to ensure the reforms give due consideration to both quality improvements and affordability of child care for families.

## How you can provide feedback

32. You can provide feedback by:
  - email or making a written submission;
  - at the face-to-face consultations in March 2011; or
  - via your representative organisation.
  
33. Feedback can be provided now, prior to the release of the proposed Regulations, and/or through any of the above mechanisms after the release of the proposed Regulations in February 2011. The closing date for feedback is **14 April 2011**.

## PRELIMINARY

### Objective

34. This part of the proposed Regulations sets out the name and commencement date of the National Regulations, and most importantly the defined terms referred to in the Regulations.

### Outline

35. This part of the proposed Regulations sets out the title– the Education and Care Services National Regulations – and the day or days on which the Regulations commence. It will also define a range of terms used in the proposed Regulations. These include definitions related to the scope of the National Law (that is, what services are not included in the National Quality Framework at this time, as agreed by the Council of Australian Governments), and other definitions such as terms related to qualification requirements.

### When do the National Regulations come into operation?

36. The proposed Regulations are intended to come into operation on 1 January 2012 (the same day as the National Law).

### What services are covered by the National Law?

37. The National Partnership Agreement states that the National Quality Framework would initially cover long day care, family day care, preschool and outside school hours care. Given the range and diversity of education and care services, an all-encompassing national system will take a number of years to achieve. The National Quality Framework starts with the largest services in terms of numbers of children. Further work will be undertaken in the future to assess how and when other services may be incorporated, including cost benefit analyses for inclusion of these services.
38. Given that additional types of education and care services may be brought into the National Quality Framework later, the National Law adopts a broad definition of ‘education and care service’ as ‘any service providing or intending to provide education and care on a regular basis to children under 13 years of age’ except those services that are specifically excluded.
39. This approach allows additional classes of services to be brought into the National Quality Framework in the future by amending the Regulations.

### What services are excluded by the National Law?

40. The following services are expressly excluded by the National Law and are unlikely to be brought within the scope of the National Quality Framework:
  - a school providing full-time education to children, including children in the year before Grade 1, but not including a preschool program delivered in a school or a preschool that is registered as a school (as these are within scope);
  - a preschool program delivered in a school if the program is delivered in a class or classes where a full-time education program is also being delivered to school children and the program is delivered to fewer than six children in the school (a composite class);
  - a personal arrangement (e.g. a nanny);
  - a service principally conducted to provide instruction in a particular activity (e.g. a language class or ballet class);

- a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; or
- care provided under a child protection law of a participating jurisdiction.

41. The National Law also excludes a ‘prescribed class of disability service’ and a ‘service of a prescribed class’. These services are to be excluded by the proposed Regulations.

#### What services are excluded by the proposed National Regulations?

42. The proposed Regulations provide that the following services will be initially excluded:

- care in a child’s home;
- occasional care services (e.g. offered at short notice or on a casual basis);
- a service provided by a hotel or resort to children of short-term guests at the hotel or resort;
- care that is provided on an ad-hoc basis in conjunction with specific meetings, functions or short-term events being attended by the person who is responsible for the child at those same premises;
- care provided in shopping centres or sports and leisure centres to the children of patrons;
- playgroups, Gymborees and library story telling times, where the care and supervision of children is primarily provided by parents;
- playschools and playcentres licensed in the Australian Capital Territory and South Australia;
- services licensed as a centre-based Class 4 or 5 service under the *Child Care Act 2001* (Tas);
- all education and care provided by budget based funded services, other than education and care for which the service receives Child Care Benefit;
- mobile services;
- transition to school programs provided by a school to orient children to that school;
- disability services managed or governed by other agencies or legislative schemes;
- early intervention services provided for the principal purpose of intervention or support for children with a disability, additional needs or developmental delay.

43. The above are based on common characteristics for each class of service in all States and Territories. The aim is to provide clear boundaries to ensure that services that should be covered are not inadvertently excluded.

44. The proposed Regulations do not expressly exclude a range of services, for example discos or movie nights, Scouts and Guides, homework clubs, breakfast clubs, tutoring programs and youth community centres, as these fall outside the definition of ‘education and care service’.

45. The following services will be covered by the National Law:

- three-year old preschools or other preschool programs or activity groups where the service meets requirements related to delivering preschool programs or the service meets the requirements for an early childhood teacher for some of the time as proposed in the draft Regulations;
- services in Tasmania providing innovative family day care.

### **Possible issues for discussion**

1. Are there any other types of education and care that are captured by the definition in the National Law which should be excluded by the proposed regulations (refer to paragraph 42)?

## PROVIDER APPROVAL

### Objective

46. The National Law sets out a national system to approve new education and care services to replace current State and Territory licensing systems. The process comprises three inter-related approvals:
  - Provider Approval;
  - Service Approval;
  - approval to hold a Supervisor Certificate.
47. Under the National Law, becoming an approved provider is a pre-condition to operating one or more education and care services. The proposed Regulations set out more detailed requirements for Provider Approval. To reduce regulatory burden these approvals are all ongoing approvals.

### Outline

48. Under the provisions of the National Law, one or more persons may apply for a national Provider Approval. The person must:
  - apply in the jurisdiction in which s/he is ordinarily resident (or in the case of a entity, the principal office);
  - provide the information set out in the Regulations;
  - pay the fee set out in the Regulations (refer to Fees).
49. Each applicant (and in the case of entities, each person with management or control responsibility) must demonstrate that they are 'fit and proper'.

### *Determining fitness and propriety*

50. The National Law provides that in determining whether a person is 'fit and proper', a Regulatory Authority must have regard to a range of matters, including the applicant's:
  - compliance with the National Law and the Regulations, previous education and care services law, children's service law or education law (each of which are defined terms);
  - working with children check, or if in a jurisdiction that does not have a working with children check, the person's criminal history;
  - whether the person is bankrupt or insolvent.
51. The proposed Regulations also provide that a range of information must be provided with an application for Provider Approval.
52. The National Law sets out that the Regulatory Authority may request any other relevant information to assist in making a determination to grant Provider Approval, including but not limited to medical history or financial circumstances that may impact on the person's ability to operate a service. It may also undertake other inquiries (e.g. seek information from other State or Territory agencies).
53. The National Law allows for the Regulatory Authority to re-assess the fitness and propriety of an approved provider or a person with management and control of an education and care service at any time.

### ***Conditions on Provider Approval***

54. The National Law allows a Regulatory Authority to grant Provider Approval subject to any mandatory conditions imposed by the National Law or the Regulations or any conditions determined by the Regulatory Authority. The National Law imposes a mandatory condition that an approved provider must comply with the National Law.
55. The proposed Regulations also impose a mandatory condition that an approved provider must respond to any communication received from the Regulatory Authority within a reasonable period.

### ***Amendment of Provider Approval***

56. The National Law allows an approved provider to apply to amend their Provider Approval. The proposed Regulations set out information that must be included with the application (e.g. details of any amendments sought and supporting information).
57. The National Law also allows a Regulatory Authority to amend a Provider Approval at any time. This would usually occur when varying a condition of Provider Approval or to place a new condition on a Provider Approval. The Regulatory Authority must advise the approved provider in writing of the proposed amendment to their Provider Approval.

### ***Suspension or cancellation of Provider Approval***

58. Under the National Law, a Regulatory Authority can suspend or cancel a Provider Approval for various reasons, such as:
- the approved provider is no longer considered fit and proper;
  - there is an unacceptable risk to the health, safety or wellbeing of a child being cared for by the approved provider;
  - the approved provider has failed to comply with a condition of Provider Approval, or has been found guilty of an offence; or
  - the approved provider has not provided an education and care service for 12 months.
59. The Regulatory Authority must notify the approved provider of its intention to suspend or cancel a Provider Approval (by issuing a 'show cause' notice) and provide information as to the reasons for the proposed action. An approved provider is entitled to respond to this notification and any information that is provided must be considered by the Regulatory Authority in making a final decision.
60. After considering any response, the Regulatory Authority may:
- in relation to a notice to suspend – issue a written notice suspending the approval for up to the period prescribed in the National Regulations and advise the date of effect;
  - in relation to a notice to cancel – issue a written notice either cancelling the Provider Approval or suspending the approval for up to the period prescribed in the National Regulations and advise the date of effect.
61. The Regulatory Authority can also require the approved provider to notify parents in writing of the suspension or cancellation, or can obtain contact details of parents to notify them of the suspension or cancellation.

62. If a Provider Approval is suspended or cancelled, the suspension or cancellation applies to any service managed by the approved provider. However, the National Law provides for a service to be transferred to another approved provider.
63. If the Regulatory Authority is satisfied that there is immediate risk to the health and safety of a child being cared for, the National Law also allows for a Regulatory Authority to suspend a Provider Approval without issuing a show cause notice.
64. The National Law also allows for an approved provider to apply to voluntarily suspend their Provider Approval.
65. The proposed Regulations prescribe the information required to be included in an application (e.g. the reason for the suspension and what will happen to each service managed by the approved provider).
66. The proposed Regulations allow for a maximum period of suspension of 12 months.
67. Where there is a death or incapacity of an approved provider, the National Law allows for a nominated executor or legal personal representative or guardian to be appointed where an approved provider can no longer fulfil the role due to death or incapacity, subject to meeting the requirements to be an approved provider.
68. The proposed Regulations set out the information that must be provided in an application.

#### **What kind of information is needed for an application for Provider Approval?**

69. The proposed Regulations set out the information to be provided with an application for Provider Approval, including:
  - if relevant, evidence of the legal nature of an entity and how it is constituted (e.g. certificate of incorporation);
  - evidence to determine whether a person is 'fit and proper' (refer to paragraphs 50-53);
  - a statement indicating previous involvement in an education and care service.

#### **How long will a decision take?**

70. The National Law requires the Regulatory Authority to make a decision to grant or refuse an application for Provider Approval within 60 days after receipt of the application. If the applicant agrees, an extension of no more than 30 days can be approved.

#### **Do Provider Approvals need to be renewed each year?**

71. No. A Provider Approval is ongoing unless it is suspended, surrendered or cancelled.

#### **Is Provider Approval required in each jurisdiction?**

72. No. A Provider Approval is valid in all jurisdictions and you will not have to apply for separate approval in each jurisdiction in which you manage a service (as is currently the case).

#### **What is the fee for Provider Approval?**

73. The proposed Regulations set a fee of \$200 payable at the time of application. There is no annual renewal fee.

### **What can I do if I am refused a Provider Approval?**

74. The National Law sets out that all decisions by Regulatory Authorities in relation to the approvals process are reviewable (refer to Review of Regulatory Authority Decisions).

### **What if I already own an education and care service? How do I get Provider Approval?**

75. Processes are currently being developed to identify education and care services that will transition into the new National Quality Framework. In most cases, these will be services that are currently licensed or approved under State or Territory legislation.

### **I am a resident in one jurisdiction and wish to open a childcare service in another jurisdiction. In which jurisdiction do I apply for Provider Approval?**

76. An applicant for Provider Approval applies in the jurisdiction in which they are a resident.
77. For example, a resident of Queensland would apply to the Queensland Regulatory Authority for Provider Approval. The Queensland Regulatory Authority could seek information from any other Regulatory Authority or other government agency in relation to the application.

### **What do I need to do if my circumstances change?**

78. You must notify the Regulatory Authority if any circumstances change, including changes to your legal entity such as governance arrangements or ownership, name and address or contact details or your financial or legal situation.
79. This will require an application for an amendment to Provider Approval to be submitted to the Regulatory Authority. It is expected that you will be able to do so on-line.

### **What conditions can be placed on the Provider Approval?**

80. Under the National Law a Regulatory Authority can grant Provider Approval subject to conditions, including that an approved provider must comply with the conditions of the Provider Approval and comply with the National Law.
81. The proposed Regulations also set out a standard condition that an approved provider must respond to any communication from the Regulatory Authority within a reasonable period.
82. Any conditions placed on an approved provider will appear on the copy of the Provider Approval.

### **On what grounds can my Provider Approval be suspended or cancelled?**

83. The National Law provides for a Regulatory Authority to suspend a Provider Approval in certain circumstances, including if the approved provider:
- has been charged with an indictable offence;
  - may not be a fit and proper person;
  - has failed to comply with a condition on Provider Approval or has failed to comply with the National Law;
  - is subject to certain compliance action being taken in respect of more than one education and care service operated by the approved provider;
  - has not operated any education and care service for a period of more than 12 months (including any period of suspension); or

- has not paid any outstanding prescribed fees.
84. Similarly the National Law allows a Regulatory Authority to cancel a Provider Approval after notifying the approved provider of its intention. A Provider Approval may be cancelled if the approved provider:
- is found to no longer be a fit and proper person;
  - poses an unacceptable risk to the safety, health or wellbeing of any child;
  - is found guilty of an indictable offence or an offence under this Act;
  - has breached any condition of Provider Approval; or
  - has not provided an education and care service for 12 months.
85. If a Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by a service operated by the provider, a Provider Approval can be suspended or cancelled without notice.
86. If suspended without notice, the suspension may not be for a period of more than six months.

#### **What does it mean if my Provider Approval is suspended or cancelled?**

87. Under the National Law, if a Provider Approval is cancelled all Service Approvals held by the former approved provider are also cancelled. However, the National Law allows for the approved provider to apply to the Regulatory Authority to transfer a Service Approval to another approved provider.
88. The application to transfer a Service Approval must be made within 14 days after the date of the decision to cancel the Provider Approval is made.
89. The proposed Regulations set out the information that is required to transfer a Service Approval.
90. If an application for consent to transfer is made, the Service Approval is suspended until the Regulatory Authority determines the application.
- If the transfer is approved – the suspension of the Service Approval ceases once the transfer takes effect (unless a later date is specified).
  - If the transfer is not approved – the Service Approval is cancelled on the date of the decision to refuse consent.
91. Note that a transfer can also occur unrelated to any proposal to suspend a Provider Approval or a Service Approval (refer to paragraphs 120-129).

#### **Can I voluntarily suspend my Provider Approval?**

92. Yes. An approved provider can apply to have their Provider Approval voluntarily suspended.
93. The proposed Regulations require certain information to be provided in an application to voluntarily suspend, including:
- details of what is to happen to each service managed by the approved provider;
  - the reasons for seeking the suspension and the proposed date of suspension;
  - information about any proposed transfers of a Service Approval.

### **For how long can my Provider Approval be suspended?**

94. The proposed Regulations provide that a Provider Approval can be suspended for a maximum period of 12 months.
95. Where a Provider Approval is suspended without a show cause notice (because there is an immediate risk to the safety, health or wellbeing of children at the service operated by the provider) – the National Law provides that the maximum period of suspension is six months.
96. A shorter timeframe can be requested in the case of an application for voluntary suspension. An approved provider may also apply to the Regulatory Authority to revoke the suspension before the suspension timeframe.

### **Possible issues for discussion**

1. Are the proposed documents to be submitted with an application relating to Provider Approval appropriate (refer to paragraph 69)?
2. Are there any other factors that should be taken into account in determining fitness and propriety (refer to paragraph 50)?

## SERVICE APPROVAL

### Objective

97. The National Law and the proposed Regulations set out the process for approval to operate an education and care service to help ensure quality education and care is provided to children.

### Outline

98. Under the National Law, an approved provider can apply to the Regulatory Authority for a Service Approval for an education and care service if the provider will be the operator of the service or will be responsible for the management of the staff and nominated supervisor of the service.
99. It is proposed that there are two types of Services Approval:
- centre-based services – where an assessment of premises and policies is required;
  - services that offer family day care – where an assessment of the policies is required.
100. The National Law also allows for an ancillary children’s service (i.e. a service not regulated by the National Law, but regulated under separate State or Territory child care legislation) to be concurrently applied for and approved. This is designed to minimise the need for an approved provider to have two separate approvals or licences (i.e. one under the National Law and one under the State or Territory law).

### *Application for Service Approval*

101. The National Law provides that the approved provider must:
- apply in the jurisdiction in which the service is to be located;
  - provide the information set out in the Regulations;
  - nominate a certified supervisor to be the nominated supervisor;
  - pay the fee set out in the Regulations (refer to Fees).
102. The proposed Regulations set out the process and information required when applying for Service Approval, including those things that a Regulatory Authority must have regard in determining whether or not to grant a Service Approval.
103. The proposed Regulations set out the information that must be included in an application.
104. In addition to the required information set out in the proposed Regulations, the application for Service Approval must also include the name of a person who holds a Supervisor Certificate and who has consented to be the nominated supervisor for the service.
105. In order to determine whether or not to grant Service Approval, the National Law also enables the Regulatory Authority to:
- seek further information from an applicant;
  - undertake inquiries or investigations, including an inspection of the education and care premises.

### ***Determining an application for Service Approval***

106. In determining an application by an approved provider for Service Approval, the National Law requires the Regulatory Authority to have regard to a range of criteria, including:
- the requirements of the National Quality Framework, including the National Quality Standard;
  - the adequacy of the policies and procedures for the service;
  - whether the nominated supervisor holds a Supervisor Certificate.
107. In the case of a family day care service, it will be the regulated responsibility of the family day care service (or scheme as it is currently known) to register and assess individual family day care educators. The family day care service will also be required to provide adequate numbers of family day care coordinators to support the family day care educators.
108. The proposed Regulations also require the Regulatory Authority to take into account:
- any suspension of the Provider Approval;
  - any conditions on the Provider Approval.
109. The National Law also provides that the Regulatory Authority may have regard to whether the applicant is capable of operating the service, having regard to its financial capacity and management capability, and the applicant's history of compliance with the national legislation.

### ***Conditions on Service Approval***

110. The National Law makes Service Approval subject to any mandatory conditions imposed by the National Law, the Regulations or the Regulatory Authority.
111. The National Law requires all Service Approvals to be subject to the condition that the service:
- ensures the safety, health and wellbeing of the children being educated and cared for at the service;
  - meets the educational and developmental needs of children attending the service;
  - commences operation within six months of being granted approval;
  - holds the insurance set out the Regulations – which is proposed to be public liability insurance to the value of \$10 million, with evidence of this to be kept at the service premises and provided if requested.
112. Under the National Law, Service Approval to operate a family day care service is granted subject to the following two conditions that the approved provider must ensure are met:
- sufficient persons are appointed as coordinators to monitor and support the family day care educators engaged by the service;
  - each family day care educator is adequately monitored and supported by a family day care coordinator.
113. The proposed Regulations also propose that Service Approvals be subject to the standard conditions including that the approved provider must ensure that:
- the Quality Improvement Plan\* is updated annually;

- the most recent version of the Quality Improvement Plan is provided to the Regulatory Authority on request;
- a copy is available for inspection by parents of a child enrolled at the service, authorised officers and the Regulatory Authority.

\*More information on the Quality Improvement Plan can be found under the Assessment and Rating and Operating an Education and Care Service parts of this paper.

### ***Refusal to grant Service Approval***

114. Under the National Law, a Regulatory Authority may refuse to grant a Service Approval where:

- the operation of the proposed service would constitute an unacceptable risk to the safety, health or wellbeing of children; or
- the applicant does not have a Provider Approval.

115. The proposed Regulations state that a Regulatory Authority may also refuse to grant a Service Approval on other grounds, for example:

- failure to demonstrate that the proposed service can be provided in a way that meets the requirements of the National Law, including the National Quality Standard; or
- if the application is for a centre-based service – failure to demonstrate that the approved provider is entitled to occupy the premises; or
- if the application is for a family day care service – failure to provide evidence that the applicant has appropriate measures to ensure family day care educators are complying with relevant requirements in the National Law and the National Quality Standard.

116. The proposed Regulations provide that for the avoidance of doubt, a Regulatory Authority may have regard to the approved provider’s financial capacity and management capability in determining whether or not to grant a Service Approval.

### ***Amendment of a Service Approval***

117. The National Law allows an approved provider to apply to amend the Service Approval (e.g. to amend a condition imposed by a Regulatory Authority because the circumstances for imposing the conditions have changed).

118. The proposed Regulations set out information that must be included with the application to amend a Service Approval (e.g. details of any amendments sought and supporting information).

119. The National Law also allows the Regulatory Authority to amend a Service Approval at any time. This would usually occur when varying, imposing or removing a condition on the Service Approval. The Regulatory Authority must advise the approved provider in writing of the proposed amendment to a Service Approval.

### ***Transfer of Service Approval***

120. The National Law also allows for a Service Approval to be transferred from one approved provider to another approved provider.

121. The transferring and receiving approved providers must jointly notify the Regulatory Authority of the transfer at least 42 days before the transfer is intended to take effect (or within a lesser period if the Regulatory Authority considers there are exceptional circumstances).

122. The proposed Regulations set out the information to be provided jointly by the transferring and receiving approved providers when notifying the Regulatory Authority of the transfer.
123. The receiving approved provider must give written notice of the transfer to the parents of children enrolled at the education and care service at least two days before the date of the transfer.
124. The National Law also provides that both parties must notify the Regulatory Authority within two days after the actual transfer takes effect. The Regulatory Authority must then amend the Service Approval and provide an amended copy to the receiving approved provider.
125. The National Law does not require the transferring Service Approval to be reassessed or reapproved.
126. However, a Regulatory Authority may intervene in a transfer of a Service Approval if it is concerned as to any of the following matters:
- the capability of the receiving approved provider to operate the education and care service including its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
  - the receiving approved provider's history of compliance with the National Law or the Regulations as applying in a participating jurisdiction, including in relation to any other education and care service it operates.
127. If a Regulatory Authority intends to intervene in a transfer of a service, the National Law requires that it must notify both parties of this decision, in writing, at least 28 days before the date on which the transfer is intended to occur. As well as the details of both the transferring and receiving approved provider, the notice must include the reason or concerns the Regulatory Authority has about the transfer.
128. Following an intervention, the Regulatory Authority may decide to consent to the transfer or refuse the proposed transfer. In deciding to consent to a transfer the Regulatory Authority may impose conditions on the consent. The Regulatory Authority must notify both parties at least 7 days before the date on which the transfer is intended to take effect of its decision.
129. If the Regulatory Authority intervenes and then refuses to consent to the transfer, the Regulatory Authority must notify the parties and provide reasons.

### **Waivers**

130. The National Law provides for two types of 'exemptions' from meeting a prescribed element or elements of the National Quality Standard or the Regulations:
- Temporary Waiver – which permits a service to operate for a fixed period (of no longer than 12 months at a time);
  - Service Waiver – this provides a waiver on an ongoing basis.
131. The National Law provides that:
- If a Service Waiver is granted the service is taken to comply with a prescribed element or elements of the National Quality Standard (refer to Assessment and Rating).
  - If a Temporary Waiver is granted, the service is not required to comply with a prescribed element or elements of the National Quality Standard (refer to Assessment and Rating). This

means that the highest possible rating that can be given in relation to that quality area is Foundation/Operating Level during the period the Temporary Waiver applies.

132. The proposed Regulations provide that an approved provider could apply for a waiver of some elements of the Physical Environment and Staffing Arrangements quality areas.
133. If a waiver is granted by the Regulatory Authority, the Service Approval must set out details of the element or elements of the National Quality Standard and the Regulations to which the waiver applies.
134. An application for a Service Waiver or Temporary Waiver can be made at the same time as an application for Service Approval.
135. The proposed Regulations set out the information that must be provided in an application for Service Waiver or Temporary Waiver.
136. The National Law provides that a Service Waiver can be revoked by the Regulatory Authority or through application by the approved provider.
137. Providing the flexibility for a service to apply for a waiver was considered particularly important for rural and remote communities. However the proposed Regulations make it clear that the health, safety and wellbeing of the child remain paramount; in particular the application will need to show that the children at those services will still receive quality education and care.

#### ***Suspension or cancellation of Service Approval***

138. Under the National Law, a Regulatory Authority can suspend or cancel a Service Approval on a number of grounds, including if:
  - there is a reasonable belief that there is an unacceptable risk to the health, safety or wellbeing of a child being cared for at a service managed by the approved provider;
  - the approved provider has failed to comply with a condition of the Service Approval or the service is not being managed in accordance with the National Law and Regulations;
  - the service has operated at a rating level as not meeting the National Quality Standard and a Service Waiver or Temporary Waiver does not apply to the service in respect of that non-compliance and there has been no improvement in the rating level;
  - the approved provider has contravened the National Law;
  - the approved provider has failed to comply with a direction, compliance notice or emergency order under the National Law in any participating jurisdiction in relation to the service;
  - the approved provider has ceased to operate the service and within six months has not transferred the service to another approved provider;
  - the approved provider has not, within six months after being granted a Service Approval, commenced ongoing operation of the service;
  - the approved provider has not paid the annual fee for the Service Approval.
139. Under the National Law the Regulatory Authority must notify the approved provider of its intention to suspend (through issuing a 'show cause' notice) and provide information as to the reasons for this action. An approved provider is entitled to respond to this notification and the Regulatory Authority must consider this information when making its final decision.

140. Similarly, the National Law allows a Regulatory Authority to cancel a Service Approval after notifying the approved provider of its intention. A Regulatory Authority may cancel a Service Approval if:
- there is a reasonable belief that there is an unacceptable risk to the health, safety or wellbeing of a child being cared for at a service managed by the approved provider;
  - the service has been suspended non-voluntarily and the reason for the suspension has not been rectified in the timeframe;
  - the Service Approval was obtained improperly;
  - a condition placed on the Service Approval has not been complied with.
141. The National Law allows an approved provider to apply to voluntarily suspend a Service Approval. The proposed Regulations prescribe the information required to be provided by the approved provider, including the reasons for the voluntary suspension, and sets out a maximum suspension period of 12 months.
142. The National Law also provides that Service Approval will be automatically revoked or suspended if the relevant Provider Approval is revoked or suspended. However, the National Law allows for the transfer of a service before the suspension or cancellation takes effect.

#### ***Notice of change to nominated supervisor***

143. Under the National Law an approved provider must advise the Regulatory Authority in writing if the nominated supervisor is going to change, at least seven days before a new nominated supervisor is to commence. The Regulatory Authority must be provided with details of the new nominated supervisor, including the Supervisor Certificate number, the nominated supervisor's written consent and the date the change is to take effect.

#### **What needs to be submitted with an application for Service Approval?**

##### ***Centre-based services***

144. The proposed Regulations outline that an application for a Service Approval for a centre-based service should include a range of information including:
- the proposed name, commencement date, location and operating days/hours and contact details (if available) of the service;
  - proposed maximum number and ages of children to be educated and cared for;
  - details of any ancillary children's service to be provided at the service (i.e. a service not regulated by the National Law, but regulated under separate State or Territory child care legislation);
  - copies of plans prepared by a building practitioner that provide a clear indication of the location of buildings and structures on the premises, the floor plan that shows unencumbered space and the rooms to be used by children, indoor and outdoor spaces, boundaries, entries and exits and any fences and gates including heights or materials;
  - availability at the service of the required policies and procedures.

## **Family Day Care**

145. The proposed Regulations indicate that much of the information required to be provided for an application for Service Approval for a family day care service is the same as for a centre-based service.
146. There are, however, some specific differences relating to the educators to be engaged or registered by the family day care service and a requirement to provide details of policies and procedures with the application including for example in relation to:
- the recruitment of educators;
  - the assessment and approval of residences;
  - the monitoring, support and supervision of educators;
  - the provision of information, assistance and access to training for educators;
  - ensuring educators are complying with the requirements in the National Quality Standard, the National Law and the National Regulations.
147. The proposed Regulations require that, when determining an application for a Service Approval (in addition to the requirements set out above), the Regulatory Authority must take into account:
- any suspension of the Provider Approval;
  - any conditions on the Provider Approval.
148. The National Law also enables the Regulatory Authority to seek further information from an applicant to assist in assessing an application for Service Approval. In addition to requesting further information the Regulatory Authority may also undertake inquiries or investigations, including inspecting the education and care premises, in order to make a determination for Service Approval.

### **How long will a decision take?**

149. The National Law requires the Regulatory Authority to make a decision to grant or refuse an application for Service Approval within 90 days after receipt of the application. The period may be extended with the agreement of the applicant.
150. Decisions on Service Approval will be provided in writing.

### **What can I do if I am refused a Service Approval**

151. All decisions by Regulatory Authorities in relation to the Approvals process are reviewable (refer to Review of Regulatory Authority Decisions).

### **Do I need to reapply for a Service Approval each year?**

152. No. Once granted, Service Approval is ongoing unless it is suspended or cancelled.
153. The proposed Regulations require the payment of an annual Service Fee (refer to Fees).

### **If I already operate a service, how do I get a Service Approval?**

154. Processes are currently being developed to identify education and care services that will transition into the new National Quality Framework without having to apply for Service Approval. In most cases, these will be services that are currently licensed or approved under State or Territory legislation.

### **If my Provider Approval is granted in one jurisdiction and I am applying for a Service Approval in another jurisdiction, where do I apply?**

155. You will apply for the Service Approval in the jurisdiction in which the service will be located. As this is a national system, the process will be the same, irrespective of the jurisdiction in which the application is made. However, you do not need to apply for a Provider Approval in that jurisdiction as Provider Approval operates nationally.

### **How do I apply to run a long day care service when the National Law and Regulations say there will only be centre-based or family day care types?**

156. The centre-based service type includes long day care type services, preschool or kindergarten services and outside school hours care. The premises or site of where you are offering the education and care service now determines your type of Service Approval application.

- On some sites there may be a part of the premises that offers long day care, another part that offers preschool and another part that offers outside school hours care.

### **Do preschools on school sites have to get Service Approval?**

157. Yes. Preschools that operate on school sites will be required to operate under the National Quality Framework, including meeting the National Quality Standards.

158. The proposed Regulations allow current preschools (and other services) operating before 1 January 2012 to transition into the new system without having to apply for Service Approval. Existing registration processes for schools under education legislation or administrative processes may be changed to incorporate obligations under the National Law or proposed Regulations.

### **What is the fee for a Service Approval?**

159. The proposed Regulations provide that an annual fee based on the size of the service is paid (refer to Fees).

### **How much public liability insurance is required?**

160. The proposed Regulations specify that the prescribed insurance is either:

- a current policy of insurance that adequately meets the approved provider's public liability, providing for not less than \$10 million cover; or
- public liability cover under an insurance policy provided by a government department.

### **For what parts of my service can I apply for a waiver?**

161. The proposed Regulations specify that Service Waivers and Temporary Waivers may be sought in relation to the regulation of the 'Physical Environment' and 'Staffing Arrangements' quality areas of the National Quality Standard and the National Regulations.

162. In an example where a service was unable to meet the staffing requirements as prescribed but was actively recruiting, an application for a Temporary Waiver could be made to cover the period that the service may be without the required staff. This would mean that the service would not be required to comply with the relevant part of the National Quality Standard while the Temporary Waiver was in place.

### **What is the process to apply for a waiver?**

163. Waivers are made by application. An application for a Service Waiver or Temporary Waiver can be made at the same time as an application for Service Approval.

164. The proposed Regulations outline the information that must be included with an application for a Service Waiver, including:

- a statement detailing the nature of the Service Waiver sought, including:
  - aspects of the National Quality Standard to which the request for a Service Waiver relates;
  - specific provisions of the National Regulations with which the service does not or will not comply;
- a summary of the reasons why a service cannot or will not comply with the National Quality Standard or National Regulations, or why the approved provider considers it appropriate for cultural or contextual reasons that the specified aspects or provisions are not met;
- details and evidence of any attempts to comply;
- measures taken to protect the health, safety and wellbeing of children if a Service Waiver is granted.

165. If a Waiver is granted the Regulatory Authority must issue or reissue the Service Approval, including details of the element or elements of the National Quality Standard and the Regulations to which the Waiver applies.

#### **Is the process for a Temporary Waiver the same as for a Service Waiver?**

166. Yes. However in the case of an application for a Temporary Waiver it is proposed that, in addition to the information outlined above, the proposed Regulations provide that an application for a Temporary Waiver must include:

- the time period for which the Temporary Waiver is sought and reasons for this period;
- an action plan describing the actions that have been taken or will be taken to address the non-compliance issues and bring about compliance.

167. The National Law allows for a Temporary Waiver to be granted for a period of not more than 12 months. A Temporary Waiver can be extended for a further period of 12 months.

#### **Must a service be approved to be transferred?**

168. No. The National Law enables an approved provider who has a Service Approval (transferee) to transfer the Service Approval to another approved provider (receiver).

169. The National Law requires that both parties (transferee and receiver) notify the Regulatory Authority of the transfer at least 42 days prior to the intended transfer. A service cannot transfer without the consent of the Regulatory Authority. However, consent is taken to be given if the parties have complied with the notification requirements and the Regulatory Authority has not notified them of its intention to intervene.

#### **Can I voluntarily suspend my Service Approval?**

170. Yes. An approved provider can apply to the Regulatory Authority to suspend a Service Approval.

171. The proposed Regulations provide that the following information be included in an application:

- details of the service, including the number of children educated and cared for, and whether alternative arrangements have been made for children;
- a statement indicating reasons for seeking a suspension, and the proposed duration, including a commencement date (including any support information or documents);

- confirmation of advice being provided to parents about the proposed suspension.

#### **Can I transfer my Service Approval if it is suspended?**

172. Yes. An approved provider can transfer a Service Approval that is suspended.

#### **For how long can my Service Approval be suspended?**

173. The proposed Regulations set the maximum period for suspension of 12 months.

#### **What do I need to do if my circumstances change?**

174. You must notify the Regulatory Authority if any circumstances change, including changes to name and address or contact details, the nominated supervisor, or number of children to be cared for. This will require an application for an Amendment to Service Approval to be submitted to the Regulatory Authority.

175. If an amendment is made to a Service Approval the Regulatory Authority must provide a copy of the amended Service Approval to the approved provider.

#### **Possible issues for discussion**

1. Does the range of information required for an application for Service Approval allow a Regulatory Authority to make an appropriate initial assessment of whether a service will provide quality education and care for children (e.g. management and operation of a service, physical premises etc, refer to paragraphs 144-146)?
2. Is there any other information you consider should be provided with the application for Service Approval (refer to paragraphs 144-146)?

## SUPERVISOR CERTIFICATES

### Objective

176. The National Law requires that at all times approved providers must have a responsible person in day to day charge of a service.
  - A responsible person is defined in the Act as an approved provider (if an individual or person with management or control); the nominated supervisor of the service; or a certified supervisor who has been placed in day to day charge of the service.
177. The purpose of a Supervisor Certificate is to identify those persons who can be put in day to day charge of an approved education and care service.
178. The Supervisor Certificate is ongoing and moves with the person. It is not related to a service.
179. To ensure that from the outset there is someone in day to day charge of a service, when applying for Service Approval the National Law requires an approved provider to nominate a person with a Supervisor Certificate to be the nominated supervisor for the proposed service.
180. For example, if within the service there were two educators who applied for and were granted a Supervisor Certificate, either of them could consent to be the nominated supervisor, or the acting nominated supervisor when the nominated supervisor is not on duty.

### Outline

181. The National Law specifies that in order to be granted a Supervisor Certificate, a person must:
  - be 18 years or above;
  - satisfy the Regulatory Authority that they are a fit and proper person;
  - meet the minimum requirements for qualifications, experience and management capability set out in the Regulations.
182. The proposed Regulations set out what information must be included in an application for a Supervisor Certificate.
183. The National Law provides that a Regulatory Authority may request additional information.

### *Determining fitness and propriety*

184. The National Law provides that in determining whether a person is fit and proper a Regulatory Authority must have regard to the applicant's:
  - compliance with the National Law and the Regulations, previous education and care services law, children's services law or education law (each of which are defined terms) and any decisions under those laws to refuse, not renew, suspend or cancel a licence, approval, registration, certificate or other authorisation;
  - working with children check (card or relevant check), or if in a jurisdiction that does not have a working with children check, the person's criminal history.
185. The National Law also allows for the following classes of person to be taken as being fit and proper:
  - a person who is a registered teacher under an education law of a State or Territory;

- a person who holds a current working with children card under a law of a State or Territory.
186. This recognises that these persons have already undergone an equivalent ‘fit and proper’ assessment’ and is designed to reduce unnecessary regulatory burden.
187. The National Law allows a Regulatory Authority to reassess the fitness and propriety of a certified supervisor at any time.
188. In addition, the National Law allows for a Regulatory Authority to grant a Supervisor Certificate to certain classes of persons, without those persons having to make an application.
189. The proposed Regulations prescribe the following classes of persons that can be automatically granted Supervisor Certificates:
- a principal of a school providing an education and care service;
  - the person in charge of a campus of a school providing an education and care service;
  - a preschool director for an education and care service that is provided by a school;
  - a registered teacher delivering a pre-preparatory learning program at a school under the *Education (General Provisions) Act 2006* (Qld).

#### ***Minimum requirements for qualification, experience and management capability***

190. The proposed Regulations state the minimum requirements for qualification, experience and management capability of a certified supervisor, namely:
- sufficient capacity and skills to be placed in day to day charge of an education and care service; and
  - one of:
    - at least three years experience working as an educator in an education and care service, a children’s service, a service regulated under former law or a school; or
    - an approved Diploma level early childhood education and care qualification or equivalent; or
    - a teacher qualification.

#### ***Conditions on Supervisor Certificates***

191. The National Law allows a Regulatory Authority to grant a Supervisor Certificate subject to any mandatory conditions imposed by the National Law or the Regulations or any conditions determined by the Regulatory Authority. The National Law imposes a mandatory condition that a Supervisor Certificate is granted subject to the requirement that the person must comply with the National Law.
192. The proposed Regulations also impose mandatory conditions on a Supervisor Certificate granted to a person in a prescribed class. This would require the person to notify the Regulatory Authority if they are no longer a person in that prescribed class (e.g. the person is no longer a principal of a school).

#### ***Amendment of a Supervisor Certificate***

193. The National Law allows a certified supervisor to apply to the Regulatory Authority to amend the Supervisor Certificate.
194. The proposed Regulations set out what information must be included with the application (e.g. details of the amendment sought and supporting information).

195. A Regulatory Authority may also amend a Supervisor Certificate at any time.

### ***Suspension or cancellation of a Supervisor Certificate***

196. Under the National Law, a Regulatory Authority can suspend or cancel a Supervisor Certificate if the certified supervisor:

- is found to no longer be fit and proper;
- has failed to comply with a condition of the Supervisor Certificate or a requirement under the National Law or the Regulations.

197. The Regulatory Authority must notify the certified supervisor of its intention to suspend or cancel a Supervisor Certificate (by issuing a 'show cause' notice) and provide information as to the reasons for the proposed action. A certified supervisor is entitled to respond to this notification and any information that is provided must be considered by the Regulatory Authority in making a final decision.

### **What kind of information is needed for an application for a Supervisor Certificate?**

198. The proposed Regulations set out the information required to be provided with an application for a Supervisor Certificate, including:

- details of relevant experience, training and qualifications;
- documentation and evidence to determine fitness and propriety (refer to paragraphs 184-186).

### **How long will a decision take?**

199. The National Law requires the Regulatory Authority to make a decision to grant or refuse an application for a Supervisor Certificate within 60 days after receipt of the application. If the applicant agrees, an extension of no more than 30 days can also be approved.

### **Do I have to apply for a Supervisor Certificate if I am an approved provider?**

200. No. However if an individual or a person in management and control of an entity that is the approved provider wishes to be the nominated supervisor, then they would need to apply for a Supervisor Certificate. This can be done concurrently with an application for Provider Approval (e.g. so that the approved provider can be the nominated supervisor).

### **Do I need to apply for or renew my Supervisor Certificate each year?**

201. No. Once granted, a Supervisor Certificate is ongoing unless it is suspended, surrendered or cancelled.

### **Is the grant of a Supervisor Certificate dependent on currently working at a service?**

202. No. The grant of a Supervisor Certificate is independent of employment or engagement at an approved service. You can apply even if you are currently not working at an approved service.

### **What is the fee for a Supervisor Certificate?**

203. The proposed Regulations set a fee of \$30 for an application for a Supervisor Certificate, payable at the time of application. There is no annual renewal fee (refer to Fees).

### **What can I do if I am refused a Supervisor Certificate?**

204. All decisions by Regulatory Authorities in relation to the approvals process are reviewable (refer to Review of Regulatory Authority Decisions).

### **Is the Supervisor Certificate a qualification?**

205. No. The issue of a Supervisor Certificate is an administrative approval process undertaken by a Regulatory Authority to determine whether the person can be placed in day to day charge of a service.

### **If I want a Supervisor Certificate and I am a teacher, do I have to apply?**

206. Yes. However, some persons including registered teachers automatically meet the requirements of a fit and proper person (refer to paragraph 185).

207. The proposed Regulations also prescribe classes of persons who can be issued a Supervisor Certificate without application (refer to paragraph 189).

### **What conditions can be placed on a Supervisor Certificate?**

208. The National Law provides that a Supervisor Certificate is granted subject to the condition that a certified supervisor:

- complies with the National Law or the proposed Regulations or conditions on a Supervisor Certificate;
- notifies the Regulatory Authority of a change in his or her name or mailing address.

209. In addition, the proposed Regulations provide that a Supervisor Certificate would be subject to the following standard conditions:

- the certified supervisor must notify the Regulatory Authority of any change in circumstances relevant to fitness and propriety;
- if the Supervisor Certificate was granted on the basis of the person being in a prescribed class, the certified supervisor must notify the Regulatory Authority if he or she is no longer a member of the prescribed class.

### **Can there be more than one certified supervisor at a service?**

210. Yes. It is appropriate to have more than one certified supervisor at a service.

### **If I am a certified supervisor am I in charge of a service?**

211. No. A person who holds a Supervisor Certificate is only in charge of a service if they have consented to act as the nominated supervisor.

### **What if I am asked by an approved provider or nominated supervisor to be in charge of the service?**

212. The National Law provides for a certified supervisor to be placed in day to day charge of a service in the absence of the approved provider or nominated supervisor, to act in the position of, and assume, the nominated supervisor's duties and responsibilities. The certified supervisor must agree to take on this responsibility.

213. While acting in this position, the certified supervisor as the nominated supervisor consents to take on all of the responsibilities and obligations of the nominated supervisor.

### **Does the Regulatory Authority need to be advised of a certified supervisor being placed in charge?**

214. No. It is not proposed that the Regulatory Authority be advised of when a certified supervisor is placed in charge of a service, as such arrangements are likely to be made on an as-needed basis (e.g. on any given day or period of time) and in some cases as a longer-term governance arrangement (e.g.

a document identifying the individual or order of individuals who are designated to be in charge in the absence of the approved provider and nominated supervisor). However, the National Law requires that the name of the certified supervisor who has consented to be in charge of the service is displayed at the premises.

215. However, if the change was to become a permanent arrangement (i.e. a different person consents to be the nominated supervisor), the approved provider must notify the Regulatory Authority and would need to apply to amend the Service Approval.

#### **On what grounds can a Supervisor Certificate be suspended or cancelled?**

216. A Regulatory Authority may suspend or cancel a Supervisor Certificate if the certified supervisor is no longer fit and proper, fails to comply with a condition placed on the Supervisor Certificate or fails to comply with the National Law or the Regulations.

#### **What is the process for suspension or cancellation of a Supervisor Certificate?**

217. Before any suspension or cancellation the Regulatory Authority must first notify the certified supervisor (using the show cause process in the National Law) that it intends to suspend or cancel the Supervisor Certificate, the reasons for the proposed suspension or cancellation and advise that the certified supervisor may, within 30 days after the notice, provide a written response to the proposed suspension or cancellation.
218. After consideration of any written response provided by the certified supervisor, the Regulatory Authority must give the certified supervisor notice of its decision. The decision may be to suspend the Supervisor Certificate, cancel the Supervisor Certificate or to not to cancel or suspend the Supervisor Certificate.
219. If the decision is to suspend the Supervisor Certificate, the Regulatory Authority must advise the certified supervisor in writing of the period of suspension and the date on which it commences.

220. The proposed Regulations set a maximum period for suspension of 12 months.

221. If a Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of children they may suspend a Supervisor Certificate without notice.

#### **What happens to my Supervisor Certificate if my teacher registration is suspended or cancelled?**

222. Under the National Law, any teacher whose registration is suspended or cancelled will also have their Supervisor Certificate suspended or cancelled at the end of 14 days after the suspension or cancellation of the teacher registration, or until such a time as the Regulatory Authority has assessed the person as being fit and proper.

#### **Can I apply to voluntarily suspend a Supervisor Certificate?**

223. Yes. A holder of a Supervisor Certificate may voluntarily suspend their Supervisor Certificate by application. The proposed Regulations indicate that an application to voluntarily suspend a Supervisor Certificate must include:
- a statement indicating the reasons for seeking the suspension and the proposed duration of suspension;
  - sufficient information or documentation to support the suspension request.

224. The proposed Regulations indicate that the maximum period for suspension is 12 months.

**What is the relationship between the nominated supervisor and the educational leader required under the National Quality Standard?**

225. The nominated supervisor may be the person designated as the educational leader. A service could, however, choose another person with suitable qualifications and experience to lead the development of the program at the service.

**Possible issues for Discussion**

1. Are the minimum requirements for certified supervisors that are proposed to be set out in the draft Regulations appropriate (refer to paragraph 190)?

## ASSESSMENT AND RATINGS

### Objective

226. Having a national assessment and rating process for all education and care services is designed to promote continuous improvement in the provision of education and care across the seven quality areas in the National Quality Standard. The quality areas are:
- Education Program and Practice;
  - Children’s Health and Safety;
  - Physical Environment;
  - Staffing Arrangements;
  - Relationships with Children;
  - Collaborative Partnerships with Families and Communities;
  - Leadership and Service Management.
227. The assessment and publication of ratings for services also promotes greater transparency and accountability and provides families with information about the quality of education and care provided at each service. This enables families to make informed decisions about the services providing education and care to their child.
228. The assessment and rating process should contribute to a service’s continuous improvement and highlight its strengths and weaknesses with respect to the seven quality areas.

### Outline

#### *Assessment and rating*

229. Under the National Law, each State and Territory Regulatory Authority has the responsibility for assessing and rating education and care services in that jurisdiction against the National Quality Standard and the National Regulations. The National Law provides that each service will receive a rating for each quality area and an overall rating of the service.
230. The assessment and rating process will focus on typical practice to inform the rating level and consider observation of practice in the context of all evidence with respect to that quality area, standard or element.

## Rating Levels

231. The proposed Regulations prescribe the rating levels and explain how the overall rating is determined:

| <b>Name of Rating Level</b>                                                          | <b>How overall rating level for a service is determined</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Unsatisfactory</i>                                                                | <i>Where a service receives a rating of Unsatisfactory for one or more Quality Areas and this poses a risk to the safety, welfare or wellbeing of children.</i>                                                                                                                                                                                                                                                                                                                                                                |
| <i>Foundation/Operating</i><br><br><i>Foundation/Operating - Awaiting Assessment</i> | <i>Where a service receives a rating of Foundation/Operating for one or more Quality Areas (but does not receive any rating of Unsatisfactory) and the service is working towards a rating of National Quality Standard.</i><br><br><i>Where a service has not yet been assessed under Part 5 of the National Law.</i>                                                                                                                                                                                                         |
| <i>National Quality Standard</i>                                                     | <i>The service receives at least National Quality Standard against each Quality Area.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <i>High Quality/Advanced</i>                                                         | <i>The service receives at least National Quality Standard against each Quality Area and receives High Quality/Advanced in at least four Quality Areas including a rating of High Quality/Advanced in at least two of the following Quality Areas:</i> <ul style="list-style-type: none"> <li>• <i>Education Program and Practice</i></li> <li>• <i>Relationships with Children</i></li> <li>• <i>Collaborative Partnerships with Families and Communities</i></li> <li>• <i>Leadership and Service Management.</i></li> </ul> |
| <i>Excellent</i>                                                                     | <i>The highest rating can only be conferred by the Australian Children's Education and Care Quality Authority.</i>                                                                                                                                                                                                                                                                                                                                                                                                             |

## Assessment and rating process

232. In determining a rating, the National Law provides that a Regulatory Authority may have regard to:

- information obtained during the assessment and rating process;
- information from monitoring the service;
- the service's history of compliance with the National Quality Framework and any former education and care services law, children's services law or education law;
- any information prescribed in the Regulations.

233. The proposed Regulations set out further detail about the rating and assessment process and the requirements for the Regulatory Authorities.

### ***Determining a rating for Education Program and Practice***

234. Consistent with the National Partnership Agreement, the proposed Regulations provide that where a service has children attending in the preschool year, a High Quality/Advanced rating may only be given if the service provides a preschool program:

- at the service premises (i.e. directly); or
- by facilitating access to another preschool program at nearby premises, by:
  - providing parents of those children with information about one or more preschool programs; and
  - supporting the child's attendance at a preschool program.

235. It should be noted that it is not a requirement that parents choose to send their child to one of those programs.

### ***Notification of rating***

236. The National Law requires that the Regulatory Authority must advise the approved provider in writing of the rating for the service within 60 days of completing the site visit.

### ***Suspension of assessment and rating – identification of potential contravention***

237. If during an assessment, the Regulatory Authority determines a potential contravention and decides to take certain enforcement action, the National Law provides that the assessment will be suspended. The enforcement action could be:

- to suspend or cancel a Provider Approval or Service Approval;
- to issue a compliance notice;
- to issue an emergency action notice; or
- the emergency removal of children.

238. The assessment process will recommence after any review of such action is determined, or after the period within which to bring a review of the decision has expired.

### ***Re-assessment and re-rating***

239. The National Law allows for a Regulatory Authority to re-assess and re-rate an approved education and care service, or any element of an approved service, at any time.

240. The National Law also allows an approved provider to apply to the Regulatory Authority once in every two year period for a re-assessment and re-rating of an approved service, or any aspect or element of the service which is rateable against the National Quality Standard.

241. The proposed Regulations set out information that must be included in an application for a re-assessment and re-rating and the proposed fee must be paid (refer to Fees).

### ***Review of rating decision***

242. If the approved provider is not satisfied with the rating for a service the provider can seek a review of the rating level for one or more quality areas. The National Law provides for an initial internal review by the Regulatory Authority and, if needed, a further review by a Ratings Review Panel established by the Australian Children's Education and Care Quality Authority.

### ***Award of highest rating***

243. It is intended that the highest rating (the Excellent Rating) will recognise services with exemplary practice in the delivery of one or more quality areas. The National Law provides for the Australian Children's Education and Care Quality Authority to determine and publish criteria that must be met in order for a service to be awarded a rating of Excellent.
244. The National Law allows an approved provider to apply to the Australian Children's Education and Care Quality Authority to be assessed for the Excellent rating level if they have a current rating of High Quality/Advanced.
245. The proposed Regulations set out the information that must be provided with an application for the highest rating.
246. The National Law also sets out requirements for the conduct of this assessment and determination of the rating, including taking into account the advice of the Regulatory Authority that conducted the previous assessment.
247. It should be noted that there is no review process for a decision in relation to an application for the Excellent rating. However, an approved provider can reapply for the Excellent rating once every three years unless otherwise determined by the Australian Children's Education and Care Quality Authority.
248. The Australian Children's Education and Care Quality Authority can re-assess a service that has been granted the Excellent rating at any time, and the rating can be revoked if it is determined that the service no longer meets the criteria for the Excellent rating or is assessed by a Regulatory Authority as no longer being a High Quality/Advanced service.

### **How will services be assessed and rated?**

249. The proposed Regulations provide detail on the process the Regulatory Authority must follow when assessing a service for rating purposes. The Regulatory Authority must:
- review service information (this may include compliance history, assessment history, and any other information the Regulatory Authority considers relevant);
  - review the most recent version of the service's Quality Improvement Plan;
  - for a centre-based service – visit the premises of service;
  - for a family day care service – visit the principal office of the service (e.g. to speak with family day care co-ordinators) and visit one or more family day care residence or venue;
  - assess the service utilising the Assessment Instrument (a draft instrument was published on the Australian Government Department of Education, Employment and Workplace Relations website on 5 November 2010 for comment).
250. The service will then be rated against each quality area and also given an overall rating.
251. The proposed Regulations provide that the Regulatory Authority may have regard to a range of information when determining a rating, including:
- any relevant information provided by a government department, public authority or local authority, by a Regulatory Authority in another State or Territory or by a Commonwealth department (for example, provided by the Australian Government Department of Education, Employment and Workplace Relations about any non-compliance with Child Care Benefit requirements);

- information about the assessment history of the service;
- information relating to any other quality assurance or registration process under an education law relating to the service.

#### **How is the Quality Improvement Plan used in the assessment and rating process?**

252. The Quality Improvement Plan is intended to set out key strengths and areas for improvement against the National Quality Standard.

253. The proposed Regulations set out that an approved provider must ensure that:

- a Quality Improvement Plan is prepared and updated annually;
- the most recent version of the Quality Improvement Plan is submitted to the Regulatory Authority on request; and
- is available for inspection at the premises by parents of children enrolled at the service, the Regulatory Authority and authorised officers.

#### **When will a ratings re-assessment take place?**

254. The National Law states that the Regulatory Authority may undertake a re-assessment at any time. Alternatively an approved provider may seek a re-assessment of a service once in every two year period – for example, where an approved provider believes there has been an improvement in the service’s quality.

255. A re-assessment and re-rating can be a partial or full re-assessment, and can relate to particular quality areas or elements.

256. The proposed Regulations set out the processes the Regulatory Authority may follow for the re-assessment which may include (depending on whether the re-assessment is partial or full):

- a review of service information and the most recent version of the service’s Quality Improvement Plan;
- conducting a site visit of the service;
- assessing the service utilising the Assessment Instrument;
- considering any changes since the previous assessment.

#### **What information must be included with an application for rating re-assessment?**

257. The proposed Regulations specify that an application for re-assessment and re-rating must include:

- whether the application is for partial or full re-assessment, and the particular quality areas or standards in relation to which re-assessment is sought;
- a statement indicating the reasons for seeking re-assessment;
- any relevant information or documentation that the applicant wishes to have considered.

#### **How do I seek a review of a rating decision by a Regulatory Authority?**

258. An approved provider who is not satisfied with a rating decision may, within 14 days of receiving notification of the rating, apply to the Regulatory Authority that determined the rating levels to review them.

259. The proposed Regulations provide that the following information must be included in the application:

- the quality areas or standards to which the ground(s) for review relate;
- any relevant information or documentation.

260. The National Law provides that the person who conducts the review for the Regulatory Authority must not have been involved in the original assessment and rating, and the review must be completed with 30 days of receipt of the application.
261. The National Law requires the Regulatory Authority to give the approved provider a written notice of the outcome of the review within 30 days of making the decision, and may:
- confirm the specific rating levels or the overall rating, or both; or
  - amend the specific rating levels or the overall rating, or both.

#### **If I am still not satisfied, how do I seek a further review?**

262. An approved provider may apply to the Australian Children's Education and Care Quality Authority for a further review of rating levels. The National Law sets out that an application for this review can only be made on the grounds that:
- the prescribed processes for determining a rating level were not appropriately applied by the Regulatory Authority; or
  - the Regulatory Authority failed to take into account or give sufficient weight to special circumstances or facts existing at the time of the assessment.
263. The National Law requires an application for a further review to be made in writing within 14 days of a review decision by the Regulatory Authority, containing the prescribed information.
264. The proposed Regulations set out the information that must be provided in an application, including:
- a statement indicating the grounds on which the applicant seeks review of the rating decision, and the quality areas or standards to which the grounds for review relate;
  - any other relevant information or documentation that the applicant would like considered as part of the review.
265. The review will be undertaken by a Ratings Review Panel established by the Board of the Australian Children's Education and Care Quality Authority.
266. The Ratings Review Panel must make a decision on the review within 60 days of receipt of the application (unless the period of time has been extended if there are special circumstances) and, within 14 days of making the decision, give the approved provider written notice setting out its findings on each ground for review. The Ratings Review Panel may:
- confirm the rating levels determined by the Regulatory Authority; or
  - amend the rating levels.
267. The rating level that is confirmed or amended on review by the Ratings Review Panel is the rating level for the service that would be published.

#### **How do I apply for the Excellent rating?**

268. The National Law allows the Australian Children's Education and Care Quality Authority to determine and publish criteria that must be met by approved providers in respect of the award of the Excellent

rating level. The National Law makes it a pre-condition of applying for the Excellent rating that a service holds the second highest rating level (i.e. the proposed High Quality/Advanced rating level).

269. An application must be in writing, and be accompanied by payment of the prescribed fee.

270. The application must also be accompanied by the prescribed information set out in the Regulations, such as:

- a statement indicating, and any evidence demonstrating, how the applicant has met, or is continuing to meet, the assessment criteria.

#### **What will the Excellent rating represent?**

271. The Excellent rating will showcase a service's strengths to the sector and will celebrate examples of best practice by identifying outstanding early childhood education and care services. The Excellent rating will seek to acknowledge a variety of examples of 'leading edge' practice and sector leadership.

#### **What happens if an application for the Excellent rating is successful?**

272. If an application is successful, the rating will be published and the service will hold the Excellent rating for three years. An approved provider may re-apply for the rating within 90 days of its expiry.

#### **What happens if an application for the Excellent rating is unsuccessful?**

273. If an application is unsuccessful, a provider may make a new application to the Australian Children's Education and Care Quality Authority after three years as long as the service holds a current overall rating of High Quality/Advanced.

#### **Possible issues for discussion**

1. Are the proposed names for the rating levels appropriate and meaningful (refer to paragraph 231)?
  - a. The National Partnership proposed that the second highest rating level would be known as High Quality. Would a rating level of 'Advanced' be more meaningful than 'High Quality'?
  - b. Similarly, the National Partnership Agreement proposed that the level below National Quality Standard level would be known as Operating Level. Would the term Foundation be more appropriate?
  - c. Under the National Curriculum, it has been agreed by all State, Territory and Commonwealth governments that the year before Grade 1 will be referred to as the Foundation Year in the National Curriculum. Is there a risk of confusion, if Foundation is also a rating level? If so, what alternative terminology could be used (e.g. Operating Level, Probation)?
  - d. Where a service is yet to be assessed, it is proposed that the service will have a rating of 'Foundation – not yet assessed'. An alternative term that has been discussed is 'Foundation – awaiting assessment'. Would this or another term be preferable?
2. Is there any other information a Regulatory Authority should have regard to in determining a rating (refer to paragraphs 232, and 249-251)?

## REVIEW OF REGULATORY AUTHORITY DECISIONS

### Objective

274. The National Law provides for a right of review of decisions made by a Regulatory Authority to ensure the principles of natural justice apply.

### Outline

275. The National Law sets out two types of review for decisions of the Regulatory Authority:

- internal review conducted by the Regulatory Authority;
- external review conducted by an administrative tribunal or court or, in relation to assessment and rating of services, review by the Australian Children's Education and Care Quality Authority.

276. The National Law sets out what decisions are subject to internal review and external review. For some decisions (e.g. suspension or cancellation of an approval or certificate) the National Law requires the Regulatory Authority to issue a 'show cause' notice before making a decision (refer to paragraphs 58-61, 138-140 and 196-197). If the Regulatory Authority subsequently decides to take particular action the decision is subject to external review by an administrative tribunal or court.

277. The National Law sets out the process for internal review by a Regulatory Authority including the timeframe for an application for review and makes it clear that the person who conducts the review must not have been involved in the original decision.

278. The proposed Regulations set out the information required for an application for internal review.

- Note: a separate process applies to a review of assessment and rating decisions, which is discussed in Assessment and Ratings.

279. Applications for an external review by an administrative tribunal or court are governed by the State or Territory law for that tribunal or court.

### What decisions are reviewable decisions that are subject to internal review?

280. The National Law provides that the following decisions are reviewable decisions for internal review by the Regulatory Authority:

- to refuse to grant a Provider Approval, Service Approval or Supervisor Certificate;
- to amend or refuse to amend a Provider Approval, Service Approval or Supervisor Certificate;
- to impose a condition on a Provider Approval, Service Approval or Supervisor Certificate;
- to immediately suspend a Provider Approval, Service Approval or Supervisor Certificate without first issuing a show cause notice;
- to refuse to consent to the transfer of a Service Approval;
- to revoke a Service Waiver;
- to issue a compliance direction or compliance notice.

### What information must accompany an application for internal review of a reviewable decision?

281. The proposed Regulations set out the required information to be provided by an applicant seeking review of a reviewable decision under the National Law, including:

- the details of any Provider Approval, Service Approval and/or Supervisor Certificate in relation to which the application for review relates;
- the details of the decision (or aspect of the decision) with respect to which review is sought;
- how the decision affects the applicant and the grounds on which the applicant seeks review;
- any relevant information or documentation.

#### **Do I have to pay for a review?**

282. There is no fee for an internal review by a Regulatory Authority.
283. Fees relating to an external review by an administrative tribunal or court are governed by the State or Territory law for that tribunal or court.

#### **How long will a review take?**

284. The National Law provides that an internal review must be conducted within 30 days of receipt of the application. This may be extended by up to 30 additional days if a request for further information is made by the person conducting the review, or by agreement with the applicant.
285. An external review is dependent on the procedures for the court or tribunal. However the applicant has only 30 days to apply for an external review from the date of notification of the decision.

#### **What can I do if I am unhappy with the outcome of the internal review?**

286. The National Law provides that all decisions that are subject to internal review by a Regulatory Authority are reviewable by an administrative tribunal or court, except:
- decisions to issue a compliance direction or compliance notice; and
  - decisions made in relation to the rating of a service which are reviewed by the Australian Children’s Early Childhood Quality Authority following internal review by the Regulatory Authority.
287. External review by an administrative tribunal or court also applies to decisions by a Regulatory Authority to:
- suspend or cancel a Provider Approval, Service Approval or a Supervisor Certificate;
  - direct the approved provider of a family day care service to suspend the delivery of education and care by a family day care educator;
  - issue or refuse to cancel a notice prohibiting a person from being involved in the provision of education and care.

#### **What is the status of the decision while it is being reviewed?**

288. Any consequences that may flow from a decision do not occur until the outcome of a review is known, and will depend on whether a decision is confirmed or another decision is made.

## FEES

### Objective

289. The National Law allows for fees to be paid where specified in the Regulations. In setting fees for various transactions under the National Law, the objectives are:

- to set a nationally consistent fee structure that will provide funding for the activities of Regulatory Authorities and the Australian Children’s Education and Care Quality Authority;
- to streamline all fees to make it simpler and easier for services;
- to provide certainty for services with regard to costs;
- to employ a fee structure where those with a greater capacity to pay will bear a greater proportion of the cost.

### Outline

290. The National Law sets out the transactions for which a fee may be prescribed in the Regulations. Not all transactions are subject to fees (e.g. an application for internal review of a decision by the Regulatory Authority). The National Law empowers Regulatory Authorities (section 261) and the Australian Children’s Education and Care Quality Authority (section 227) to collect, waive, reduce, defer and refund fees and enter into agreements in relation to fees.

291. The proposed Regulations set out:

- which transactions are subject to a fee and the proposed fee;
- the annual fee for approved services;
- penalties that apply for late payment of fees; and
- provide for the annual indexation of fees.

292. The following table sets out the fees payable under the proposed Regulations. In some cases, fees are linked to the maximum number of children that may be cared for at a centre-based service (i.e. the approved capacity) or the number of educators at a family day care service.

**Table: Proposed Fees**

| Transaction                                                                                                    | Centre-based Service<br>(max. no of children who can be<br>cared for at any one time) |       |       | Family Day Care Service<br>(no of family day care<br>educators) |       |       |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-------|-------|-----------------------------------------------------------------|-------|-------|
|                                                                                                                | <26                                                                                   | 26-80 | >80   | <6                                                              | 6-20  | >20   |
| Annual Service Fees                                                                                            | \$185                                                                                 | \$275 | \$365 | \$185                                                           | \$275 | \$365 |
| App. for Service Approval                                                                                      | \$400                                                                                 | \$600 | \$800 | \$600                                                           |       |       |
| App. for amendment of Service Approval                                                                         | Nil                                                                                   |       |       |                                                                 |       |       |
| App. for highest rating (Excellent rating)                                                                     | \$200                                                                                 | \$400 | \$600 | \$200                                                           | \$400 | \$600 |
| Re-application for highest rating                                                                              |                                                                                       |       |       |                                                                 |       |       |
| App. for re-assessment and re-rating                                                                           | \$400                                                                                 | \$600 | \$800 | \$400                                                           | \$600 | \$800 |
| App. for review by the Ratings Review Panel of rating level                                                    |                                                                                       |       |       |                                                                 |       |       |
| Notification of transfer of Service Approval                                                                   | \$100                                                                                 |       |       |                                                                 |       |       |
| App. to voluntarily suspend Service Approval                                                                   | Nil                                                                                   |       |       |                                                                 |       |       |
| App. for Service Waiver                                                                                        | \$100                                                                                 |       |       |                                                                 |       |       |
| App. for Temporary Waiver                                                                                      | \$100                                                                                 |       |       |                                                                 |       |       |
| App. for review by Regulatory Authority of rating level                                                        | Nil                                                                                   |       |       |                                                                 |       |       |
| Other Transactions                                                                                             |                                                                                       |       |       |                                                                 |       |       |
| Transaction                                                                                                    | Fee                                                                                   |       |       |                                                                 |       |       |
| App. for Provider Approval                                                                                     | \$200                                                                                 |       |       |                                                                 |       |       |
| App. for amendment of Provider Approval                                                                        | Nil                                                                                   |       |       |                                                                 |       |       |
| App. to voluntarily suspend Provider Approval                                                                  | Nil                                                                                   |       |       |                                                                 |       |       |
| App. to approve executor as approved provider                                                                  | Nil                                                                                   |       |       |                                                                 |       |       |
| App. to approve legal personal representative or guardian as approved provider                                 | Nil                                                                                   |       |       |                                                                 |       |       |
| App. for Supervisor Certificate                                                                                | \$30                                                                                  |       |       |                                                                 |       |       |
| App. for amendment of Supervisor Certificate                                                                   | Nil                                                                                   |       |       |                                                                 |       |       |
| App. to voluntarily suspend Supervisor Certificate                                                             | Nil                                                                                   |       |       |                                                                 |       |       |
| App. for approval of equivalent qualification                                                                  | \$100                                                                                 |       |       |                                                                 |       |       |
| Request for a [customised] copy of or extract from the register of approved providers or certified supervisors | Cost recovery up to maximum of \$400                                                  |       |       |                                                                 |       |       |
| Request for a [customised] copy of or extract from the register of education and care services                 | Cost recovery up to maximum of \$400                                                  |       |       |                                                                 |       |       |
| Request for an assessment of a course                                                                          | Cost recovery up to maximum of \$2 000                                                |       |       |                                                                 |       |       |

**How were the fee amounts determined?**

293. In determining the proposed fees (as set out in the above table), careful consideration was given to minimising the potential impact on the operating budgets of services while ensuring that sufficient revenue is generated to support the activities of State and Territory Regulatory Authorities and the Australian Children’s Education and Care Quality Authority. Jurisdictions considered the National

Child Care Accreditation Council fees that currently apply to many services and the fact that under the National Law these fees would no longer be payable by services.

294. In order to keep the fee arrangements simple and equitable, and to provide certainty for all services, the proposed Regulations set out one level of fees for all services of a given size. This was considered preferable to differentiating between services on the basis of their operating hours, which may not provide an accurate indication of administrative burden associated with processing different types of applications.
295. All proposed fees are linked to transactions which are self-initiated (e.g. application for Provider Approval, Service Approval, Supervisor Certificate), other than the annual fee for continuing Service Approval.

#### **Why are some fees split into service size categories and how was this determined?**

296. To ensure equity in the fee structure, the proposed Regulations split some fees into size categories where it is recognised that regulatory activities (such as assessment and ratings) will generally take longer and require more administrative work for larger services compared to smaller services. A number of jurisdictions currently employ a size split for licensing fees, also in recognition of the additional administrative work involved in assessing larger services. The size category definitions have been carefully designed so as to not present a barrier to small and potentially less financially equipped services, whilst also providing fairness for larger services.

297. For centre-based services, the following service size definitions are proposed:

- small services – where up to 25 children may be cared for at any one time;
- medium services – where between 26 and 80 children may be cared for at any one time;
- large services – where 81 or more children may be cared for at any one time.

298. For family day care services, the fees are based on the number of educators within a service as these services will not have a maximum number of children that can be cared for at any one time determined as part of their approval. The following service size definitions are proposed:

- small – services with less than six educators;
- medium – services with six to 20 educators;
- large – services with more than 20 educators.

299. These categories are designed to align with the categories for centre-based services on a per child basis.

#### **When is the annual service fee due?**

300. It is proposed that the annual service fee is payable by 1 July each year.

#### **If an approved provider runs multiple service types, do fees have to be paid for each service?**

301. No. Fees do not need to be paid for each service type unless the approved provider is operating services at different premises.
302. If a centre-based education and care service operating on a single premises provides a range of education and care (e.g. long day care, outside schools hours care and preschool programs), the

approved provider does not need separate approvals for each type of education and care provided. As such, one single service fee would apply.

303. However, where an approved provider delivers education and care at separate premises, separate approvals are required for each premises and therefore separate fees will apply.

#### **What fees can be waived, reduced, deferred or refunded?**

304. It is planned that only the annual fee for Service Approval will be waived, reduced, deferred or refunded where the applicant can demonstrate that there are exceptional circumstances.

#### **In regard to waiving, reducing, deferring and refunding fees, how will 'exceptional circumstances' be determined?**

305. The proposed Regulations would not define what exceptional circumstances mean. It is intended that its ordinary meaning would operate. In establishing the National Quality Framework, it was considered very important to ensure fairness for services while having a reliable source of revenue to support regulatory activities.

306. Each State and Territory Regulatory Authority has the power to assess whether exceptional circumstances exist to waive, reduce, defer or refund the annual fee for Service Approval. The National Law provides that the Australian Children's Education and Care Quality Authority will guide the implementation and administration of the National Quality Framework and monitor and promote consistency in its implementation, including in relation to fees.

#### **Why is it proposed that the annual fee is the only fee able to be waived, reduced, deferred or refunded?**

307. The annual fee for Service Approval is the only fee that is imposed on services (i.e. one that services do not incur when making an application) and it is therefore important to allow services the opportunity to apply for this fee to be waived, reduced, deferred or refunded if they are facing 'exceptional circumstances'. In contrast, transactional fees occur irregularly and are only charged once a service requests a transaction from a Regulatory Authority or the Australian Children's Education and Care Quality Authority.

#### **How will fees be indexed?**

308. It is proposed that fees will be indexed annually using a national Consumer Price Index, with fees rounded down to the nearest dollar. This ensures that fees keep pace with inflation.

#### **Possible issues for discussion**

1. Do you think the correct balance has been achieved between fairness and equity, and limited cost recovery to support regulatory activities (refer to paragraphs 293-295)?
2. Do you think that fees should be differentiated by service size and if so, do you have any comments on the proposed service size categories (refer to paragraphs 296-299)?
3. The proposed Regulations indicate that the annual fee will be payable on 1 July each year, starting from 1 July 2012. What are your views on this due date (refer to paragraph 300)?
4. Do you have any comments or suggestions on the proposal that only the annual fee for Service Approval can be waived, reduced, deferred or refunded in exceptional circumstances (refer to paragraphs 304-307)?

## OPERATING AN EDUCATION AND CARE SERVICE

### Objective

309. The National Quality Standard is the standard required to be met by all education and care services in Australia that are covered by the National Quality Framework. It includes the seven quality areas that are described by 23 standards and 65 elements of quality practice, which were agreed by the Commonwealth and all States and Territories in December 2009.
310. The majority of standards are outcomes focussed which means that how services demonstrate that they meet a standard and achieve the required outcome can vary widely.
311. This part of the proposed Regulations describes and reinforces the requirements on approved providers, nominated supervisors and staff under the National Quality Standard. The proposed Regulations set out particular practices to be followed, requirements that need to be met, documentation that must be maintained and materials, information and policies that need to be developed in order to meet the National Quality Standard.

### Outline

#### Education Program and Practice

312. The National Law requires the approved provider to ensure that a program is delivered to all children being cared for and educated by the service that is:
- based on and delivered in a manner that accords with an approved learning framework;
  - based on the developmental needs, interests and experiences of each child;
  - designed to take into account the individual differences of each child.
313. The proposed Regulations require the approved provider to ensure that an outline of the education program is appropriately displayed at the service premises. A copy of the education program must be kept at the services and be available for inspection on request.
314. The proposed Regulations also set out requirements in relation to ensuring that there is an assessment of each child's developmental needs, interests and experiences, participation and progress in relation to an education program and this is appropriately documented. Information about a child's progress in relation to the program must be made available to the parent of the child upon request.

#### Why do children need to be assessed in relation to an education program?

315. Assessing children is a critical step in ensuring that the education program is based on the developmental needs, interests and experience of each child and their individual differences.

#### What are the approved learning frameworks?

316. The proposed Regulations specify the *Early Years Learning Framework for Australia* as an approved learning framework for children aged birth to five years (this can be found at [www.deewr.gov.au/EarlyChildhood](http://www.deewr.gov.au/EarlyChildhood)).
317. A draft Learning Framework, *My Time, Our Place – Framework for School Age Care for Australia* is currently subject to consultation and is likely to be finalised in mid 2011 (this can be found at [www.deewr.gov.au/EarlyChildhood](http://www.deewr.gov.au/EarlyChildhood)).

318. Some frameworks will be approved through transitional provisions (refer to paragraph 580).

319. The National Law allows the Ministerial Council to approve other learning frameworks.

### **Children’s Health, Safety and Wellbeing**

320. The National Law requires the approved provider, the nominated supervisor or a family day care educator to ensure that every reasonable precaution is taken to protect children from harm and from hazard likely to cause injury.

321. The proposed Regulations also set minimum requirements to ensure that every child’s health, safety and wellbeing is safeguarded and promoted. It is recognised that high quality learning environments should challenge children. However, services should ensure that children can explore and experiment without risk to health and safety.

322. The proposed Regulations set requirements to ensure a healthy environment for the children attending an education and care service. Each of these are summarised below.

#### ***Health and hygiene practices***

323. An approved provider and nominated supervisor must ensure educators implement good health and hygiene practices. The resource ‘Staying Healthy in Childcare’ is the relevant resource for the sector in this regard.

#### ***Safe food and beverage handling, preparation and storage***

324. Approved providers and nominated supervisors must ensure that safe food and beverage handling, preparation and storage practices are implemented at the service and that educators practice safe food handling, preparation and storage of food.

#### ***Dealing with Infectious Diseases***

325. An approved provider, nominated supervisor and family day care educator must ensure that appropriate action is taken to prevent the spread of infectious diseases at the service and that the parent or authorised emergency contact of the child is notified of the occurrence of an infectious disease as soon as practicable.

#### ***First Aid Kits***

326. An approved provider and family day care educator must ensure that there are an appropriate number of suitably equipped first aid kits at the service (taking into consideration the number of children attending the service) and that these are:

- easily recognisable, readily accessible to adults and inaccessible to children;
- available whenever education and care is being provided, including on excursions.

327. The nominated supervisor or a family day care educator must ensure that the first aid kits are maintained.

- Service Guidelines will set out what is considered best practice in relation to the number of first kits that should be available and what should be included in each first aid kit, depending on the children being educated and cared for at the service (e.g. whether there are any children with particular medical conditions).

### ***Authorisation to administer medicine***

328. The approved provider and nominated supervisor must ensure that medication is not administered to a child at a service without a written authorisation by a person with lawful authority to consent to medical treatment of the child (e.g. parent or person listed on a child's enrolment record), unless:

- in the case of emergency – by oral authorisation by a person with authority or a registered medical practitioner or paramedic;
- in the case of anaphylaxis, asthma or diabetes emergency – without authorisation.

Educators must not administer medication other than in accordance with the Regulations.

329. The approved provider must ensure that the name of the person who has lawful authority to consent to medical treatment of the child is kept in the enrolment record of the child, as well as the written authorisation to administer medication.

330. The medication must be administered properly, including:

- administered from the original container before the expiry date;
- in accordance with any instructions;
- the dosage is checked by another person (except in the case of a family day care service with only one educator).

331. The approved provider must ensure that a record is kept which sets out details relating to the administration of medication to a child, for example:

- the time and date the medication was administered;
- the name of the medication administered;
- the dosage;
- how the medication was administered;
- the name and signature of the person who administered the medication and the person who checked the dosage.

### ***Care for children with medical conditions***

332. An approved provider must ensure that there is a medical conditions policy and procedures that outlines practices for managing children with a specific health care need (including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis), including:

- ensuring all staff and volunteers are aware of the medical condition and can identify the child, the child's medical management plan and the location of the child's medication and are aware of the policies and procedures for managing the risks and communication with parents;
- following the medical management plan obtained from the parent of a child and developing a risk minimisation plan and a communication plan about the child's health care need;
- if relevant – policies and procedures for ensuring that all parents are notified of the known allergens that pose a risk to any child at the service and the strategies for minimising and managing those risks.

333. The approved provider must ensure that the authorisation to follow the medical management plan for a child is kept in the enrolment record for that child.

### ***Smoke, drug and alcohol free environment***

334. The approved provider and nominated supervisor must ensure that children are provided with an environment that is free from smoke, illicit drugs or alcohol. Similarly, educators and staff members must not smoke or consume alcohol or drugs that adversely affect their ability to provide education and care to children during operating hours.

### ***Access to food and beverages***

335. An approved provider and family day care educator must ensure that children attending the service have access to safe drinking water at all times and are regularly offered food and beverages.

- The nominated supervisor must also ensure that children are regularly offered food and beverages.

336. Where a service provides food and beverages (other than where this merely involves offering food provided by the child's parent), the approved provider and family day care educator must ensure that:

- the food and beverages are nutritious, varied, adequate in quantity, and have regard to the dietary needs of individual children based on each child's growth and developmental needs and any cultural, religious or health requirements;
- a detailed weekly menu is displayed and accessible to parents.

### ***Sleep and Rest***

337. An approved provider and nominated supervisor must ensure that the needs of children attending a service for sleep or rest are met, having regard to the ages, development stages and individual needs of the children.

338. To avoid doubt, the proposed Regulations make it clear that a child should not be made to rest against that child's wishes and needs.

### ***Awareness of child protection laws***

339. An approved provider must ensure that the nominated supervisor, staff members and volunteers who work with children are advised of current child protection laws, and any obligations they may have under those laws, and have successfully completed appropriate training about child protection laws, obligations and requirements (or are currently undertaking such training).

### ***Ensuring children's safety***

340. The National Law provides that the approved provider, nominated supervisor and family day care educator must ensure that all children are adequately supervised at all times.

341. The proposed Regulations also set requirements that must be met to ensure a safe environment for children. Each of these are summarised below.

### *Children leaving the service*

342. The approved provider and nominated supervisor must ensure that a child does not leave the premises unless s/he:

- is given into the care of an authorised person (e.g. a parent, a person with lawful authority);
- leaves in accordance with written authorisation from the parent (e.g. an older child may be authorised by their parents to leave on their own);
- is taken on an authorised excursion; or
- is given into the care of a person because the child requires emergency medical treatment or because of another emergency.

An educator must not allow a child to leave the premises other than in accordance with the Regulations.

343. The authorisation to allow a child to leave a service or to be escorted to another education and care service must be kept in the enrolment record of the child.

### *Excursions*

344. The approved provider, nominated supervisor and family day care educator must ensure that a child is only taken on an excursion when accompanied by an educator, following a risk assessment and with written authorisation.

- Excursions include both regular outings and infrequent outings.

345. A risk assessment must be conducted to identify any risks that an excursion may pose to the safety, health and wellbeing of a child and how those risks will be managed and minimised, including consideration of:

- the proposed route, destination and proposed activities;
- the mode of transport (e.g. hiring a bus, walking or being driven), which could also include the experience of the driver;
- the likely length of time of the excursion;
- the number of children and adults likely to be at the destination;
- the educator-to-child ratio to ensure adequate supervision;
- what needs to be taken on the excursion (e.g. first aid kits, medical management plan, mobile phone, contact phone numbers for parents, contact number for ambulance service).

346. If the excursion is a regular excursion (e.g. a weekly visit to the library or playtime in a local park) and a risk assessment has been conducted in relation to that regular excursion in the last 12 months, a further risk assessment would not need to be conducted unless the circumstances have changed (e.g. taking a different route).

347. A written authorisation must be obtained from a person with lawful authority named on the child's enrolment record prior to any excursion, which includes information on:

- the purpose of the excursion and the proposed activities on the excursion;
- the date and length of the excursion;
- the risk assessment that has been conducted and its impact.

348. A copy of the written authorisation must be included in the child's enrolment record.

- It is expected that the Service Guidelines will set out examples of best practice in relation to excursions.

### ***Emergency procedures***

349. An approved provider must ensure that a risk assessment is conducted that identifies potential natural and other emergencies in the vicinity of the service that may pose a risk to the safety, health or wellbeing of a child at the service (e.g. risk of bushfire or flood).

350. An approved provider must also ensure that:

- there are emergency and evacuation procedures which set out what steps must be followed by a nominated supervisor, staff member or volunteer;
- emergency and evacuations procedures are rehearsed and documented;
- a copy of the emergency and evacuation and floor plan with appropriate instructions (e.g. do not carry food or beverages) is displayed in a prominent position near each exit and in each children's room.

### ***Access to a telephone or other communication equipment***

351. The approved provider and family day care educator must ensure there is ready access to an operating telephone or other similar means of communication. This ensures that all staff can contact parents and services (e.g. ambulance, medical practitioners), and that parents can always contact the service.

### ***Incident, injury, trauma and illness policies and procedures***

352. The approved provider must ensure that there are incident, injury, trauma and illness policies and procedures which set out:

- procedures to be followed by the nominated supervisor, educators, staff members and volunteers in the event that a child is injured, becomes sick or suffers trauma (physical or emotional) at the service (i.e. how the child will be cared for);
- requirements for reporting the incident, injury, trauma or illness to the parent(s) of the child as soon as practicable.

353. A record of any incident, injury, trauma or illness involving the child must be kept in the enrolment record of the child, including details of:

- the incident, injury, trauma or illness (i.e. the relevant circumstances, the date and time);
- any action taken (e.g. medical personnel contacted, medication administered);
- any witness;
- anyone who was notified.

### ***Serious incidents***

354. The National Law requires the approved provider to notify the Regulatory Authority of any serious incident at the service.

355. The proposed Regulations define a serious incident as including:

- the death of child while at the service or following an incident while at the service;

- any incident where the attention of a registered medical practitioner or emergency service was sought or should have been sought;
- where a child appears to be missing, has left the premises other than where authorised, or was locked in or out of the premises (or part of the premises – e.g. a shed).

356. Where there is a serious incident the approved provider, nominated supervisor or family day care educator must ensure that the parent of any child involved is notified as soon as practicable, and must notify the Regulatory Authority as soon as possible and within 24 hours.

357. A serious incident involving a child must be recorded in the enrolment record of the child.

#### **Does a service always have to provide food?**

358. A service must always ensure that a child is regularly offered food and beverages, which may have been provided to the service by the child's parent.

359. Where a service does provide food as part of its education and care of a child – the food must be nutritious, varied, adequate in quantity, and have regard to the dietary needs of individual children based on each child's developmental need and any cultural, religious or health requirements.

#### **What is the educator-to-child ratio for excursions?**

360. The proposed Regulations do not set specific educator-to-child ratios for excursions. Instead, minimum educator-to-child ratios must apply at all times and a risk assessment, including the number of educators to ensure adequate supervision on the excursion, must be undertaken.

#### **Physical Environment**

361. This part of the proposed Regulations sets out the minimum requirements for the physical environments of centre-based and family day care services.

362. The proposed Regulations provide a range of requirements that an approved provider must ensure are met for the environmental health and safety needs of children being educated and cared for at the service. These include:

- ensuring that all equipment and premises are maintained in a safe and clean condition and in good repair;
- requiring unencumbered suitable indoor space of at least 3.25sqm per child for centre-based services and family day care venues which:
  - must include a separate space to provide a safe place for children between 0 and 24 months to play;
  - may include a verandah subject to approval by the Regulatory Authority;
  - must exclude certain space (e.g. thoroughfares, storage areas);
- ensuring there is adequate indoor space for centre-based services and family day care venues to conduct administrative functions, consult with parents, conduct private conversations or provide respite facilities for all staff;
- ensuring indoor spaces are well ventilated, have adequate natural light and provide a reasonable temperature to ensure the comfort, safety and wellbeing of children;
- requiring unencumbered suitable outdoor space of at least 7sqm per child for centre-based services and family day care venues which:

- may include unencumbered indoor space if the service primarily provides education and care to school children, and if the space was not included in meeting the required minimum unencumbered indoor space;
  - must exclude certain space (e.g. thoroughfares, storage areas);
  - must exclude a verandah, if the verandah has been used to calculate unencumbered indoor space;
- ensuring that for centre-based services and family day care venues – the outdoor space allows children to explore and experience the natural environment (e.g. there are natural features such as trees, sand and plants);
  - ensuring that the outdoor space includes adequate shaded outdoor play space to protect children from harmful exposure to the sun;
  - ensuring there are toilet and washing facilities that are adequate and developmentally and age appropriate to enable safe use and convenient access by children, and facilitate appropriate supervision while maintaining the dignity and rights of the child;
  - ensuring there are appropriate nappy changing facilities available wherever the service educates or cares for children who wear nappies;
  - ensuring there are laundry facilities that are adequate for the nature of the service and these cannot be accessed by children without supervision;
  - ensuring there are hygienic facilities for the storage of soiled clothes, linen and nappies and these are designed, located and maintained in a way that prevents unsupervised access by children;
  - ensuring each child has access to sufficient furniture, materials and developmentally appropriate equipment suitable for their education and care;
  - ensuring there are food and beverage storage and handling facilities for safe food and beverage handling, preparation, storage and disposal;
  - that the premises for centre-based services and family day care venues are constructed and maintained to allow educators to view or supervise children when they are accessing any spaces (while maintaining the dignity and rights of the child);
  - ensuring the premises:
    - are enclosed by a fence, gate or barrier is of such a height so that children who are preschool age and under cannot go through, over or under it;
    - are sufficiently secure to prevent an unsupervised child from exiting or prevent a person without a legitimate reason to have easy access to the premises;
    - have barriers or enclosures around stairways, ramps and balconies to ensure that a child cannot become trapped, fall through or climb over;
  - that a service cannot have a swimming pool.

### ***Special provisions for family day care services***

363. The proposed Regulations also provide that the approved provider of a family day care service must conduct assessments of all family day care residences and approved venues before any education and care takes place, and regularly and on an ongoing basis. These assessments must consider matters such as the suitability of the residence or venue for the number, ages and abilities of the children attending or likely to attend the service.

364. The approved provider must also ensure that any glazed area that is accessible to children, and is no higher than 0.75m above floor level, uses safety glass or is otherwise treated to prevent the glass from shattering, or has a barrier to prevent a child from striking or falling against the glass.

**Will there continue to be specific requirements on services in relation to the amount of space provided?**

365. Yes. Minimum space requirements will continue. For example, centre-based services and family day care venues will be required to ensure that premises have at least 3.25sqm per child of unencumbered indoor space suitable for children's play. As part of this space, there must be a separate indoor space for the purpose of providing a safe place for children aged from 0 to 2 years to play. There must also be an area of unencumbered outdoor space suitable for children's play of at least 7sqm for each child.

366. There are no minimum space requirements for education and care provided at a family day care residence.

**Do the proposed Regulations specify areas that must not be included in calculating unencumbered indoor and outdoor space?**

367. Yes. In calculating unencumbered indoor space the following areas are proposed to be excluded:

- passageways, thoroughfares, or door swings;
- toilet and hygiene facilities;
- any areas for nappy changing and bottle preparation;
- any area permanently set aside for the use or storage of cots or other items;
- any area or room for staff or administration;
- any kitchen area, unless its primary purpose is for use by children as part of the education program provided at the service.

368. A verandah can be included in calculating the area of indoor space with the approval of the Regulatory Authority, but then cannot be counted towards unencumbered outdoor space. If a verandah is included in calculating indoor space, it must meet all of the requirements that apply to indoor space.

369. In calculating unencumbered outdoor space the following are proposed to be excluded:

- pathways, thoroughfares (other than where used for children as part of an education program) or door swings;
- car parking areas;
- storage areas;
- any swimming pool.

370. In calculating the area of outdoor space, the area of a verandah can be taken into account provided it has not been included in calculating indoor space.

371. Indoor areas can also be included to calculate outdoor space of a service that primarily provides education and care to school age children, with the approval of the Regulatory Authority, and providing the space is not included in calculating unencumbered indoor space.

### What are the requirements on centre-based services for administrative areas? Would the front office of a school or its staff room suffice?

372. The proposed Regulations set out that an approved provider must ensure that an adequate area is provided at, or is accessible from, the service premises for the purposes of conducting administrative functions and private conversations, consulting with parents of children and providing facilities for the respite of staff and volunteers. For example, at a school, the school's front office or staff room could be used to satisfy one or more of these requirements.

### Are swimming pools allowed?

373. No. It is intended that the proposed Regulations provide that swimming pools are prohibited from all services. However, this requirement would not have retrospective application. Therefore, an existing service with a pool would not be affected by this requirement.

## Staffing arrangements

374. The National Quality Standard sets uniform national requirements in relation to educator-to-child ratios and educator qualifications. For some jurisdictions there will be minimal or no changes. For others there will be changes. Where this is the case, new educator-to-child ratios and educator qualifications are being phased in from January 2012 to allow time for education and care services to adjust to the new requirements.

375. The National Quality Standard educator-to-child ratios and educator qualifications apply only where jurisdiction specific ratios or educator qualifications override these requirements. For example:

- in Victoria – a ratio of 1:4 will continue to apply for children aged 25 to 36 months;
- in Western Australia – a ratio of 1:10 will continue to apply for children between the ages of three and six years;
- there are also overriding provision in New South Wales and Queensland.

376. As national outside school hours care educator-to-child ratios and qualifications were not included in the National Partnership Agreement, current arrangements will continue for the time being.

377. The National Law provides that an approved provider must ensure that whenever children are being educated and cared for, the relevant educator-to-child ratio is maintained at all times and that the service meets the qualification requirements as set out in the National Regulations.

378. Accordingly, this part of the proposed Regulations cover regulatory requirements related to educators including:

- minimum age requirements;
- educator-to-child ratios, including for mixed age groups;
- qualifications and training requirements.

### Minimum age requirements

379. The proposed Regulations provide that a family day care educator must be at least 18 years of age.

380. The proposed Regulations also provide that educators in a centre-based service who are under the age of 18 years cannot work alone and must be appropriately supervised by someone who is at least 18 years old and who:

- holds an approved Diploma level education and care qualification; or

- is actively working towards an approved Diploma level education and care qualification and:
  - holds an approved Certificate III level education and care qualification; or
  - has completed units equivalent to an approved Certificate III level qualification.

#### Why can educators under the age of 18 years to be employed in a centre-based service?

381. This is already the case in a number of jurisdictions, while in some jurisdictions educators under the age of 18 years cannot be employed or they must work under supervision. Governments believe that it is important to support current initiatives to provide effective transitions from school to work for young people. In the interests of the children, families, young people entering the workforce and their employers, it is important that this transition occur within a structured and supported work environment, given the responsibilities in educating and caring for children.

#### Why must educators under the age of 18 years be supervised at all times?

382. The National Partnership Agreement made it clear that persons aged less than 18 years must be supervised at all times. This is to ensure that all children are educated and cared for by an adult, reflecting the importance of educators having the experience, judgment and maturity to deal situations that may arise at a service.

#### Educator-to-child ratios

383. The National Law requires that services must maintain the minimum educator-to-child ratios at all times based on the ages of children being educated and cared for at the service.

384. The proposed Regulations set out the minimum educator-to-child ratios for centre-based services based on the ages of the children being educated and cared for at the service and when these ratios come into effect.

| Age Group                                                      | Educator-to-child ratios                                                | Compliance Timeframe |
|----------------------------------------------------------------|-------------------------------------------------------------------------|----------------------|
| Birth to 24 mths                                               | 1:4                                                                     | 1 Jan 2012           |
| 25 to 35 mths                                                  | 1:5                                                                     | 1 Jan 2016           |
| 36 mths up to (but not including over preschool aged children) | 1:11                                                                    | 1 Jan 2016           |
| School aged children                                           | No national standard has been agreed for the National Quality Framework |                      |

385. However, if there is a jurisdiction-specific educator-to-child ratio set out in the proposed Regulations, those ratios would apply.

386. In relation to family day care services, the National Law requires an approved provider to ensure that there is a family day care coordinator to assist with the operation of the service and support, monitor and train the family day care educators of that service.

387. In addition, the National Law provides that the approved provider must ensure that, at all times the service is providing education and care, one of the following is available to provide support to a family day care educator – approved provider, nominated supervisor or a person with a Supervisor Certificate who has been placed in charge of the service.

388. The proposed Regulations also provide that the educator-to-child ratio for family day care services is 1:7, with a maximum of four children not yet attending school (this ratio includes family day care educator’s own children) from 1 January 2014.

**Do ratios need to be maintained during staff rest and meal breaks?**

389. Consideration is still being given to the issue of educator-to-child ratios during staff rest and meal breaks. One approach being explored is to require educator-to-child ratios to be met at all times, including during staff breaks – with a Regulatory Authority having discretion not to take enforcement action during such periods. This approach currently operates in a number of jurisdictions. An alternative approach which is used in some other jurisdictions would be to set out particular requirements for dealing with such breaks.

**Mixed Age Groups**

390. The proposed Regulations provide that where education and care is being provided in a mixed age group, the approved provider must ensure that the educator-to-child ratios for each age range are maintained.

391. Where there are jurisdiction-specific educator-to-child ratios, those must be maintained as a minimum.

392. Maintaining the ratio for each age range of children in the mixed age group would not mean that the educator-to-child ratio for the youngest age range has to be applied to all children in an older age range. In a mixed age group of children, an educator who is caring for one age range of children can be also be counted against another age range of children provided that the ratio for each age range is maintained and the education and care provided to children is appropriate across the seven quality areas.

393. For example, if a service is providing education and care in a mixed age group with the following number and age range of children and, assuming that no jurisdictional specific educator-to-child ratios apply (e.g. Australian Capital Territory and Northern Territory), the minimum number of educators required would be three.

| Age Group                                                      | No of children | Total educators required |
|----------------------------------------------------------------|----------------|--------------------------|
| Birth to 24 mths                                               | 3              |                          |
| 25 to 35 mths                                                  | 6              | 3                        |
| 36 mths up to (but not including over preschool aged children) | 10             |                          |
| Total children                                                 | 19             |                          |

394. This is because the one educator who is caring for the three children aged 0 to 24 months, can also care for one child aged 25 to 35 months without exceeding the ratio of 1:4. This would then require one educator for the remaining five children aged 25 to 36 months and one educator for the ten children aged 36 months to preschool age (1:11).

395. The first step to calculate the number of educators necessary is to determine the number of educators for the lowest age range of children in the group. Once that ratio is met, an educator can also supervise children in another age range provided the lowest age range is still maintained.

- In the above example, the first educator required for children in the 0 to 24 months age range has the capacity to care for one other child in the 25 to 35 months age range without contravening the 1:4 ratio for the 0 to 24 months age range.

396. It also illustrates how applying a proportional formula can be used to deploy an educator across more than one age range, while maintaining the required ratio for each age range.

397. If a proportional formula was not applied, the service would require four educators (instead of three):

| Age Group                                                      | No of children | Staff required where a proportional formula is not applied |
|----------------------------------------------------------------|----------------|------------------------------------------------------------|
| Birth to 24 mths                                               | 3              | 1                                                          |
| 25 to 35 mths                                                  | 6              | 2                                                          |
| 36 mths up to (but not including over preschool aged children) | 10             | 1                                                          |
| Total                                                          | 19             | 4                                                          |

398. Of course, where a service is operating separate rooms or spaces, the requirement under the National Law to ensure adequate supervision at all times means that a staff member in one room or space may not be able to adequately supervise children in another room or space.

399. It is proposed that the Service Guidelines would set out a formula that allows a service to calculate the correct number of educators based on the number and age range of children in the mixed age group taking into account jurisdiction-specific educator-to-child ratios.

### ***Qualification and training***

400. The National Law requires that services must meet the minimum qualification requirements for educators based on the number of children being educated and cared for at the service.

401. The proposed Regulations set out the minimum educator qualification requirements at centre-based services based on the number of children being educated and cared for at the service and when these qualification requirements come into effect.

402. For example, from 1 January 2014:

- in all centre-based services at least 50 percent of educators must have (or be actively working towards) a Diploma level education and care qualification;
- the service must have access to an early childhood teacher for some of the time that the service is being provided to less than 25 children who are preschool aged and under;
- an early childhood teacher must be in attendance at the service whenever the service is being provided to 25 or more children who are preschool aged and under at any point in the given day.

A complete table of requirements is at Attachment A.

403. However, if there is a jurisdiction-specific qualification requirement set out in the proposed Regulations, those qualifications would apply instead (refer to Attachment D).

404. The proposed Regulations also provide that all family day care educators must have (or be actively working towards) a Certificate III level education and care qualification.

#### *Family Day Care co-ordinator qualifications*

405. The proposed Regulations also provide that family day care coordinators must hold an approved family day care coordinator Diploma level qualification.

#### *First aid qualifications and training*

406. The proposed Regulations provide that an approved provider and nominated supervisor must ensure that at a centre-based service there is at least one or more persons with the following qualification or training in attendance at the service and immediately available in an emergency:

- with a current approved child-focussed first aid qualification;
- who has undertaken anaphylaxis management training;
- who has undertaken emergency asthma management training.

407. For centre-based services on a school site, the person must either be in attendance at the service premises or on the school site and immediately available in an emergency.

408. A service could choose to have the same person with all the qualifications/training.

409. For family day care services – the approved provider must ensure that all family day care educators at the service:

- hold a current approved child-focussed first aid qualification;
- have undertaken anaphylaxis management training;
- have undertaken emergency asthma management training.

410. The proposed Regulations also provide that the content of the first aid qualification must include training appropriate for children, including:

- emergency life support and cardio-pulmonary resuscitation;
- convulsions;
- respiratory difficulties;
- management of severe bleeding, and injury and basic wound care;
- administration of an auto-immune adrenaline device.

#### *Approval of qualifications and determination of equivalency*

411. The Australian Children's Education and Care Quality Authority is responsible for approving qualifications and determining equivalent qualifications (e.g. early childhood teacher qualifications or Diploma level education and care qualifications).

412. The proposed Regulations set out information that must be provided in an application to the Australian Children's Education and Care Quality Authority to determine equivalent qualifications.

#### **What does 'actively working towards' mean in relation to the qualification requirements of educators?**

413. The proposed Regulations state that where educators are '**actively working towards**' a qualification, this means that the approved provider must ensure that:

- the educator is enrolled in a course leading to an approved qualification;
- the educator has provided documentary evidence of:
  - enrolment in the qualification;
  - satisfactory progress towards completion of the course; and
  - meeting the requirements for maintaining the enrolment.

Refer to Attachment A.

414. The Service Guidelines would make it clear that best practice would be for the approved provider to retain the above documentary evidence to demonstrate compliance with the qualification requirements.

#### What does 'some of the time' mean in terms of access to an early childhood teacher?

415. The proposed Regulations set out that in order to meet the requirement that a centre-based service with less than 25 children have access to an early childhood teacher '**some of the time**', the service must be able to demonstrate that:

- an early childhood teacher is working with the service for at least 20 per cent of the time children are educated and cared for within the service.

'Working with the service' includes planning of programs, mentoring and coaching educators, facilitating research or working directly with or observing children. Time spent working with the service through the use of interactive information communication technology may also be included.

416. It is proposed that 'some of the time' would be determined on a quarterly basis (for example, two day blocks per fortnight would be acceptable).

417. In a preschool service, education laws or funding requirements may require an early childhood teacher to be there all of the time the service operates. The requirement under the National Quality Standard would not be in addition to the requirement under that law or funding arrangement.

#### What does 'in attendance' mean in terms of access to an early childhood teacher?

418. The proposed Regulations provide that an early childhood teacher must be physically present at the service in order to meet the requirement to be '**in attendance**' at the service. The teacher should be in attendance at the service to work directly with children, co-plan, mentor, facilitate practitioner research, fulfil the role of educational leader or deliver the preschool program.

- If the service operates for 50 or more hours in a week – the early childhood teacher must be physically present for at least six hours on each day the service operates.
- If the service operates for less than 50 hours a week – the early childhood teacher must be physically present for at least 60 percent of each day the service operates.

419. For example, a service that operates 10 hours a day, five days a week would need to have an early childhood teacher physically present at a service each day for at least 6 hours per day. The service would not satisfy the requirement if an early childhood teacher was only physically present for three of the five days, even if the person was there for 10 hours each day.

420. The requirement under the National Quality Standard for an early child teacher to be in attendance for services with more than 25 children does not come into effect until 1 January 2014.

- Refer to Attachment A.

#### What does 'another suitably qualified leader' mean in terms of access to a second early childhood teacher?

421. The National Quality Standard sets out that where a centre-based service provides education and care to 60 or more children, a second early childhood teacher or **'another suitably qualified leader'** must be in attendance (refer to Attachment A).
422. The proposed Regulations set out that this means instead of having a second early childhood teacher, the approved provider can ensure that there is a second person with a degree qualification approved by the Australian Children's Education and Care Quality Authority and included on the list of approved qualifications, or an equivalent qualification. This provision does not come into effect until 1 January 2020.

#### When will an early childhood teacher be counted towards the educator-to-child ratios?

423. An early childhood teacher can be counted in the educator-to-child ratios while he or she is **'working directly with children'**. The proposed Regulations indicate that this occurs when the person is physically present with the children and engaged in directly providing education and care to the children.
424. The teacher may not be counted in the educator-to-child ratio when undertaking other activities such as planning programs, but these activities may contribute towards meeting the 'some of the time' requirement.

#### What educator-to-child ratios or qualification requirements will apply to my service, and when?

425. The proposed Regulations set out the prescribed educator-to-child ratios and educator qualifications for centre-based and family day care services and when these requirements take effect.
426. The proposed Regulations set out the State and Territory educator-to-child ratios and qualifications requirements that will override the National Quality Standard requirements. These may be ongoing (e.g. Victoria will retain a ratio of 1:4 for children aged 25 to 36 months).
427. The proposed Regulations also provide that except in the event of an excursion, a maximum of seven children may be educated and cared for at a single family day care residence or approved family day care venue at any one time.
428. The proposed Regulations state that in most cases the educator-to-child ratios in the new National Quality Standard will apply across centre-based (long day care and preschool) services from 1 January 2012, and in family day care services from 1 January 2014. There is some further flexibility in these arrangements to enable the early childhood education and care sector to adjust. For example, services will have until 1 January 2016 to adjust to the new educator-to-child ratio of 1:5 for children aged 25 to 35 months (and services in Queensland will maintain a ratio of 1:5 for children aged 15 to 36 months until 31 December 2017, after which time the National Quality Standard ratios will apply).
429. Many services already operate with the educator-to-child ratios set out in the National Quality Standard, either because that is the current requirement in their State or Territory, or the service has chosen to operate with a better educator-to-child ratio. There would be no change for those services.

#### How will I know that the qualification I or a staff member holds (or is currently completing) will be acceptable?

430. The Australian Children's Education and Care Quality Authority will be responsible for approving and publishing a list of approved educator qualifications.
431. The proposed Regulations set out that the list of approved qualifications will include:

- approved early childhood teacher degree qualifications;
- approved Diploma level education and care qualifications, including those approved for family day care coordinator purposes;
- approved Certificate III level education and care qualifications;
- approved first aid qualifications and training programs.

432. An individual holding a qualification that is not on the list of approved qualifications can apply to the Australian Children’s Education and Care Quality Authority to have their qualifications assessed as being equivalent.

433. The proposed Regulations will also set out transitional arrangements for existing qualified staff in education and care services.

**What information must be included with an application for approval of an equivalent qualification?**

434. The proposed Regulations set out that applications to the Australian Children’s Education and Care Quality Authority for approval of an equivalent qualification must include a range of prescribed information, including:

- the name of the qualification to be assessed for equivalency, and information about the educational institution that awarded the qualification;
- the year the applicant commenced and completed study for the qualification;
- a summary of the major areas of study in the qualification and the areas of study that relate to the early childhood years;
- details of any course or study undertaken as a pre-requisite to the qualification;
- primary documentation of any supervised or unsupervised practical placements.

435. If the qualification was obtained outside Australia, then the individual will be required to obtain a certificate stating the equivalent Australian Qualification Framework level of the qualification.

- This certificate can be obtained through the National Office of Overseas Skills Recognition (NOOSR), through State or Territory Overseas Qualification Units (not applicable in New South Wales) or through Trades Recognition Australia.

436. Please note there are transitional provisions for staff currently working within the education and care sector. These are outlined at paragraphs 589-592.

**Relationships with Children**

437. The National Law provides that approved providers must ensure that:

- all children are adequately supervised at all times that they are in the care of the service;
- no child is subjected to any form of corporal punishment or any discipline that is unreasonable in the circumstances.

438. The proposed Regulations require an approved provider to have a policy that sets out strategies and procedures for interactions with children to ensure that the dignity and rights of each child is maintained at all times and that children:

- are encouraged to express themselves and their opinions;

- have opportunities to become self-reliant and develop self-esteem;
- are given positive guidance and encouragement towards acceptable behaviour.

439. The proposed Regulations also provide that an approved provider, nominated supervisor and family day care educator must ensure that children are educated and cared for in a way that ensures that children are not:

- required to undertake inappropriate activities, having regard to each child's cultural values and physical and intellectual development;
- physically, verbally or emotionally punished, humiliated or frightened;
- isolated (other than because of illness).

440. The proposed Regulations also provide that an approved provider, nominated supervisor and family day care educator must ensure that the service provides opportunities for children to interact and develop positive relationships with other children and staff members.

#### **Are there restrictions on the number of children allowed in each group?**

441. The proposed Regulations do not place any specific restrictions on group size. However, the proposed Regulations require approved providers (and nominated supervisors and family day care educators) to consider what would be the most appropriate size and composition of groups in order to promote the development of positive relationships between children and between children and staff members. In addition, children will need to be grouped in ways which enable the service to meet the standards across the seven quality areas.

### **Collaborative Partnerships with Families and Communities**

442. The proposed Regulations provide that an approved provider and nominated supervisor must allow the parent of a child being educated and cared for to enter when the child is present at the service.

443. Other provisions also support collaborative partnerships with families; for example, proposed Regulations relating to:

- providing information on the child's progress in relation to an education program being delivered at the service;
- working with parents to ensure the safety and wellbeing of children with a medical condition;
- ensuring a parent authorises excursions for their child.

### **Leadership and Management**

#### ***Fit and proper***

444. A high quality service requires effective leadership and management underpinned by sound policy and practice, particularly in relation to staffing and operational issues. These policies and procedures must be developed in consultation with educators and families.

445. The National Law sets out requirements to ensure that all persons, including volunteers, in an education and care service (in either a centre-based or a family day care setting) are fit and proper. The National Law requires the approved provider and certified supervisors to be fit and proper.

446. The proposed Regulations require an approved provider to ensure that all staff members are fit and proper.

447. In relation to family day care in a residence, the proposed Regulations require the approved provider to ensure that all persons over the age of 18 who reside or frequently visit the residence while education and care is being provided are fit and proper.

#### ***Educational Leader***

448. The proposed Regulations require the approved provider to designate a suitably qualified and experienced person to lead the implementation of the education program at the service. This is to ensure that educational programs are tailored to take into account the needs of each child and provide a stimulating and engaging program designed to enhance children's learning and development.

#### ***Policies and Procedures***

449. The proposed Regulations set out the policies and procedures that must be in place at a service. The proposed Regulations also specify additional policies and procedures in relation to family day care services. Each of these policies and procedures go to the quality of the education and care being provided at the service.

450. The proposed Regulations require the approved provider to ensure that all policies and procedures required to be kept are:

- regularly reviewed and, if necessary, revised;
- readily available to, and followed by, the nominated supervisor and all staff members and volunteers;
- readily available for inspection at the service, including by parents.

451. It is proposed that any significant changes to the policies and procedures must be notified to the parents of children being educated and cared for at least 14 days before the changes take effect, including any changes in fees payable by the parent or to the way fees are collected.

452. This notice period would not be required if the health, safety and wellbeing of any children at the service would be compromised.

#### ***Obligations to display information***

453. Ensuring transparency and accountability is an underlying principle of the National Quality Framework, as is ensuring parents are able to make informed decisions. This is why the National Law requires an approved provider to ensure that certain information is displayed in a way that is visible from the main entrance of the service premises, for example:

- Provider and Service Approval;
- the nominated supervisor;
- the rating of the service;
- any Temporary or Service Waivers.

454. In addition the proposed Regulations require additional information to be displayed, including:

- any conditions on the Provider Approval or Service Approval;
- the hours of operation;
- the name of the person in charge at any given time.

455. Other than the requirement that the information is visible from the main entrance of the service premises, the proposed Regulations do not specify how this information is to be displayed. For example, some of the information could be displayed on a white board (e.g. person in charge on a particular day, given that this may change), while other information that is unlikely to change could be permanently displayed.

### ***Notifiable events***

456. The National Law requires an approved provider to notify the Regulatory Authority of certain events, such as ceasing to operate a service.

457. The proposed Regulations also set out prescribed information to be notified to the Regulatory Authority and set the time period within which a Regulatory Authority must be notified.

### ***Records***

458. Good record keeping ensures there is a level of transparency and accountability for services, Regulatory Authorities and parents and families and assists in the management of the service. The proposed Regulations set out what records must be kept (e.g. included in the enrolment record or attendance records).

459. To avoid doubt, the proposed Regulations make it clear that records required to be kept under an education law in relation to a preschool within a school may be used to satisfy the record-keeping requirements of the National Law or the proposed Regulations, providing all matters to be recorded are kept.

460. The proposed Regulations also require an approved provider to ensure:

- there is a record of all educators working directly with children, including the name of the educator and the hours that the educator worked directly with children;
- that information kept on a record is not divulged other than:
  - where necessary for the education and care or medical treatment of a child;
  - to a person with lawful authority to obtain the information (e.g. a parent);
  - to a Regulatory Authority or authorised officer;
- the record is stored in a safe and secure place for the following periods:
  - in relation to a record about illness, injury or trauma suffered while at the service or following an incident at the service – until the child is aged 25 years;
  - in relation to the death of a child while at the service or following an incident at the service – seven years after the child’s death;
  - in the case of any other record relating to a child – three years after the child was last enrolled at the service;
  - in the case of a record relating to a Provider Approval – three years from when the service last operated;
  - in the case of a record relating to a supervisor or staff member – three years from when the supervisor or staff members provided education and care at the service;
  - for any other record – three years after the record was made.

461. The above storage periods are proposed to provide certainty for the sector and are designed to correlate with statutes of limitations to bring actions for death (seven years) or injury (seven years from when the child turns 18 and can bring proceedings on their own behalf). The proposed Regulations also outline arrangements for record storage when a service ceases to operate.

#### **Do all staff members working in a service have to undergo a fitness and propriety assessment?**

462. Yes. The proposed Regulations require that an approved provider must ensure that all staff members recruited or otherwise engaged are fit and proper to be involved in the provision of an education and care service. It is also proposed that other adults who usually occupy or frequently visit a family day care residence during the time that education and care is provided must be fit and proper.

463. It is also intended that approved providers ensure the fitness and propriety of staff members on an on-going basis.

#### **What is involved in a fitness and propriety assessment?**

464. The proposed Regulations provide that in determining whether a staff member is fit and proper, an approved provider must have regard to:

- a criminal history record check issued not more than six months before the date of consideration; or
- a current working with children check, working with children card or working with vulnerable people check that was granted based on review of a criminal history record check; or
- a current teacher registration for which a criminal history record check was reviewed.

#### **What are the fit and proper requirements for a family day care residence?**

465. For family day care educators, one issue under consideration is whether a criminal history check should be required, even where the person has a current working with children check. This is being examined because family day care educators are often responsible for the daily transportation of children. A criminal history check may provide information regarding dangerous driving offences, which is likely to be a very important factor in a parent's choice of family day care educator.

466. It is proposed that the approved provider must ensure the fitness and propriety of individuals who are aged 18 years or over that usually occupy or frequently visit a family day care residence while education and care is provided to children as part of a family day care service.

467. The proposed Regulations also require the approved provider of a family day care service to ensure the fitness and propriety of such individuals on an on-going basis and family day care educators to notify the approved provider of any new adult who intends to occupy or frequently visit the residence while children are present.

#### **What qualifications does an educational leader require?**

468. It is not proposed that the Regulations would set out specific qualification requirements for the educational leader. However, in many cases the most highly experienced and/or qualified person in the service would undertake this role; for example, in a centre-based service it could be a person with an early childhood teacher qualification.

#### **Are there specific policies, procedures or information that a service must have or keep?**

469. The proposed Regulations set out that an approved provider must ensure that policies and procedures that assist in ensuring the management of the service and the safety and care of children

are regularly reviewed, available for inspection at the service whenever the service is operating or upon request, and readily accessible and followed by staff and volunteers.

470. It is proposed that the following information, policies and procedures would be required:

- staffing policies (e.g. procedures for identifying the certified supervisor who is responsible for the management of the service in the absence of the nominated supervisor, and procedures for participation of volunteers and students on practicum at the service);
- enrolment policies and enrolment and orientation procedures;
- family participation policies and procedures;
- arrangements for the drop-off and collection of children;
- an excursions policy, and procedures for safe excursions, including procedures for risk assessment and management;
- children's interactions;
- dealing with infectious diseases;
- dealing with medical conditions (e.g. anaphylaxis or asthma);
- emergency and evacuation procedures;
- health, safety and wellbeing policies, including those in relation to:
  - a child safe environment;
  - nutrition, food and beverages, including accommodation of children's special dietary requirements;
  - administration of first aid;
  - sun protection and water safety;
- incident, injury, trauma and illness procedures;
- dealing with complaints.

471. In addition to the above policies and procedures, approved providers of family day care services must keep the following specific policies and procedures:

- the recruitment of educators;
- the assessment of educators and usual occupants of residences prior to engagement or registration and on an ongoing basis (including insurance requirements);
- the assessment and approval of residences and venues where a service is to be carried on, at the time of recruitment of an educator and on an ongoing basis (including the assessment of space for children);
- the maintenance of a register of educators;
- the monitoring, support and supervision of educators, including how the service will manage any geographically remote educators;
- the provision of information, assistance and access to training for educators;
- the means by which the approved provider will ensure that educators are complying with the requirements in the National Quality Standard, the National Law and the National Regulations.

### Is there specific information that must be displayed at an education and care service?

472. Yes. The National Law requires certain information to be displayed (refer to paragraph 453).

473. To provide maximum transparency, the proposed Regulations set out the information that must be displayed (refer to paragraphs 454-455).

474. The proposed Regulations set out that a range of operational information that assists parents, families and communities to engage with a service, is also required to be displayed, including:

- the hours of operation;
- the name of the person to whom complaints can be addressed;
- the name of the person in charge of the service at any given time;
- the contact details for the Regulatory Authority;
- the list of policies and procedures available at the service for inspection;
- where a child who is at risk of anaphylaxis attends a service, a notice indicating there is;
- notice of any occurrence of modifiable/vaccine-preventable infectious disease;
- an outline of the education program;
- a weekly menu (at any service which provides food to attending children);
- an emergency and evacuation plan.

### What specific information must be reported to a Regulatory Authority?

475. The National Law requires the approved provider to notify the Regulatory Authority of the following information:

- any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;
- any serious incident at the service;
- complaints alleging that the safety, health or wellbeing of a child or children was or is being compromised while being educated and cared for at a service;
- complaints alleging contravention of the National Law;
- any other prescribed matters.

476. The proposed Regulations state that the following additional matters must also be reported to the Regulatory Authority:

- where a family day care service engages or registers an educator who will provide education and care in a State or Territory in which the service has not previously operated, the new State or Territory;
- any change of address and/or contact details for the approved provider;
- any change to the standard hours and days of operation;
- if the approved provider becomes aware that a staff member at any service operated by the approved provider has been charged with an 'offence against the person' (e.g. assault);

- any interruption to the operation of a service (i.e. incidents leading to the closure of a service for a period of time or the need to reduce the number of children attending the service for a period of time, such as fire, flood or collapse of a wall);
- any appointment of receivers or liquidators to the approved provider or any matters which affect the financial viability of the service and its ongoing operation.

**Is there a specific timeframe in which this information must be reported?**

477. The National Law requires certain information to be reported to the Regulatory Authority.

478. The proposed Regulations specify the timeframe for reporting information. In most cases the approved provider should report within seven days of the event or becoming aware of the relevant information.

479. It is proposed that in the case of a serious incident at the approved service, or any complaint alleging that the safety, health or wellbeing of a child or children was, or is, being compromised while that child or children is, or are, being educated and cared for, or that the National Law or the proposed Regulations has been broken, the timeframe is “as soon as practicable” and within 24 hours of the event.

**What records must be kept by a centre-based or family day care service?**

480. The National Law provides that an approved provider of an education and care service must keep prescribed documents available for inspection by an authorised officer of the Regulatory Authority. The National Law requires that the documents relating to the operation of the service, any staff member employed or engaged by the service or any child educated and cared for at those premises in the previous 12 months must, to the extent practicable, be kept at the premises of the service. In other cases, they should be kept in a place so they can be readily accessible by an authorised officer. In the case of family day care, the educator must keep the prescribed documents available for inspection at the residence or venue.

481. The proposed Regulations set out a range of records that must be kept by an approved provider and a family day care educator.

482. These required records must be made available for inspection by an authorised officer. Both an approved provider and family day care educator must take reasonable steps to ensure the records are kept up to date, stored in a safe and secure location and readily accessible by the parents of enrolled children on request.

483. The following table outlines the documents that must be kept by an approved provider or a family day care educator:

| Approved Provider                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Family Day Care Educator                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• a record of the ongoing assessments of each child;</li> <li>• an attendance record;</li> <li>• child enrolment records – including relevant health information and authorisations to administer medication or collect the child from the service;</li> <li>• a medication record;</li> <li>• an incident, injury, trauma and illness record;</li> <li>• a record of the service’s performance under and compliance with the National Law;</li> <li>• a staff record;</li> <li>• a record of all educators who are certified supervisors placed in day to day charge of the service, including details of the dates and times during which they performed that role.</li> </ul> | <ul style="list-style-type: none"> <li>• a record of the ongoing assessments of each child;</li> <li>• an attendance record;</li> <li>• child enrolment records – including relevant health information and authorisations to administer medication or collect the child from the service;</li> <li>• a medication record;</li> <li>• an incident, injury, trauma and illness record;</li> <li>• a record of the service’s performance under and compliance with the National Law.</li> </ul> |

484. The proposed Regulations identify the type of information that will be required to be included in these records.

**What sort of detail or information is required to be kept on records about the children and staff at a service?**

485. The proposed Regulations provide full details on the information that should be included in a child’s enrolment and other records and kept by the approved provider and family day care educator. The proposed Regulations also set out required information to be kept by the approved provider in the staff record.

486. As a guide, the proposed information for each type of record is set out at Attachment B.

## Possible issues for discussion

1. Some of the obligations in the proposed Regulations apply to the approved provider, nominated supervisor and/or family day care educator. This is on the basis of that person having sufficient control to ensure an obligation is met (e.g. notification of a serious incident). Is this approach easy to understand (refer, for example, to paragraph 320)?
2. The Service Guidelines is likely to set out best practice arrangements in relation to certain matters (for example, the kind of first aid kit that should be taken on excursions). Should these matters be more closely regulated (refer to paragraphs 326-327)?
3. The proposed Regulations do not require a record of every visitor to a service (i.e. sign in/sign out). Should this be regulated or is this best left to best practice guidance?
4. The proposed Regulations allow an educator to sign out a child (e.g. a school age child). Should the Regulations allow school age children to sign themselves out? Should older children be able to sign out younger siblings (refer to paragraph 342)?
5. Are there different requirements or issues associated with excursions in relation to outside school hours or vacation care (i.e. is there a different level of information required) or can the standard excursions provisions be applied (refer to paragraphs 344-348)?
6. Is the need for a risk assessment for every excursion a disincentive to providing children with a varied program of activities and learning experiences (refer to paragraphs 345-346)?
7. If services were required to meet educator-to-child ratios at all times, including during staff and meal breaks, with a Regulatory Authority having discretion whether to take any compliance action should ratios not be met during such periods, does this approach provide sufficient certainty (refer to paragraph 389)?
8. Services need to maintain effective ratios to ensure that all children are adequately supervised and are receiving quality education and care, including for mixed age groups of children. Is the proposed approach easy to understand and implement (refer to paragraphs 390-399)?
9. Family Day Care educators may use 'co-carers'; this may be a spouse or partner of the educator. To what extent should co-carers be regulated beyond being a fit and proper person? Should there be minimum qualification requirements for co-carers, particularly if they are spending a significant amount of time educating and caring for children (refer to paragraph 405 and Attachment A)?
10. In relation to the requirements to have an early childhood teacher in attendance at the service for each day it operates, are there any practical issues that need to be taken into account (refer to paragraphs 418-420)?

## MONITORING AND COMPLIANCE

### Objective

487. State and Territory Regulatory Authorities are responsible for ensuring that education and care services comply with the National Law, including the National Quality Standards.
488. The National Law provides Regulatory Authorities with a broad range of options to enable appropriate and proportionate enforcement responses to non-compliance with requirements.

### Outline

489. The National Law gives the Regulatory Authority a range of compliance tools, including the power to:
  - prosecute for contraventions;
  - issue compliance directions or compliance notices (which may include advising of fines – i.e. infringement notices);
  - require enforceable undertakings;
  - issue prohibition notices;
  - issue a notice to suspend a family day care educator;
  - remove children from an education and care service if there is an immediate danger to their safety, health or wellbeing.
490. These are each explained below.

#### *Compliance directions*

491. The National Law enables a Regulatory Authority to issue a compliance direction. A compliance direction is a lower-order enforcement notice that can only be issued to an approved provider in relation to a provision specified in the Regulations.
492. The provisions that are proposed to be listed in the Regulations generally apply to obligations that are unambiguous; for example, obtaining a first aid kit. The National Law sets out that it is an offence to fail to comply with a compliance direction. The maximum penalty is \$2000 for an individual and \$10 000 in any other case.

#### *Compliance notices*

493. A Regulatory Authority may issue a compliance notice if satisfied that an approved provider is not complying with a provision of the National Law or the proposed Regulations and direct the approved provider to take certain steps to comply with the provision. This is a higher-order enforcement notice. The National Law stipulates that it is an offence to contravene a compliance notice. The penalty for non-compliance is \$6000 for an individual and \$30 000 in any other case.

#### *Enforceable undertaking*

494. The National Law also allows a Regulatory Authority to enter into a written undertaking with a person where there has been an alleged contravention of a provision of National Law or the proposed Regulations. This is called an enforceable undertaking, under which the person agrees to take certain action or refrain from taking certain action to comply with the provision. An enforceable undertaking could be used where strict compliance with the provision may not achieve the desired outcome. For example, where health and hygiene practices are not being followed, rather than

issuing a compliance notice the Regulatory Authority could request an approved provider enter into an enforceable undertaking that requires the training of staff in health and hygiene practices.

495. By agreeing to, and complying with, an enforceable undertaking, proceedings cannot be brought against the person for the prescribed offence. If the person fails to comply with an enforceable undertaking, the Regulatory Authority can apply to a tribunal or court for an order to enforce the undertaking or any other order considered appropriate. If the relevant tribunal or court determines that the undertaking has not been complied with, the Regulatory Authority can bring proceedings for the alleged contravention.

### ***Prohibition notice***

496. The National Law states that a Regulatory Authority may issue a prohibition notice to a person if it considers there is an unacceptable risk of harm to a child if the person was allowed to provide education and care to a child or remain at a service. This is an ongoing prohibition notice and is subject to a maximum penalty of \$20 000. Before issuing a prohibition notice, the Regulatory Authority must issue a show cause notice outlining the intention to issue a prohibition notice and the reasons for issuing one, and giving the person 14 days to respond to the notice.
497. The requirement for a show cause notice does not apply if the Regulatory Authority is satisfied that it is necessary in the interests of a child's safety, health or wellbeing to issue an immediate prohibition notice.
498. The National Law also provides that an approved provider must not engage a person if the approved provider knows or should have known a person has been issued with a prohibition notice.
499. The National Law allows for a person subject to a prohibition notice to apply for it to be cancelled. The proposed Regulations outline the requirements that need to be included when applying for cancellation of a prohibition notice.

### ***Emergency removal of children***

500. Where the Regulatory Authority considers on reasonable grounds that there is immediate danger to a child's safety, health or wellbeing, the National Law allows for the Regulatory Authority (with the assistance of others such as police officers) to take emergency action to remove the child or children.

### ***Notice to suspend a family day care educator***

501. The National Law also enables the Regulatory Authority to issue a notice directing the approved provider of a Family Day Care Service to suspend education and care by a family day care educator where the Regulatory Authority is satisfied there is a risk to the safety, health or wellbeing of the children being cared for.

### ***Authorised officers***

502. To monitor and enforce compliance with the National Quality Framework, the National Law states that the Regulatory Authority can appoint authorised officers. Each authorised officer will be issued with an identity card which must be carried when exercising his/her powers. The National Law provides that authorised officers will have a range of powers, including to:
- enter and inspect education and care service premises (including unapproved premises under warrant);
  - obtain information, documents and evidence;

- inspect and remove documents and other equipment or items from education and care service premises;
- require a person to provide evidence of their age, name and address.

503. In addition, the National Law provides for offences related to the enforcement activities of Regulatory Authorities, such as obstructing authorised officers in exercising their powers under the National Law or refusing to answer questions or provide information.

504. The Regulatory Authority also has the power to seek any information and documents from an approved education and care service for rating purposes. Furthermore, it has the power to obtain any information, documents and evidence that it deems relevant for monitoring purposes.

### ***Infringement notice***

505. The National Law allows for the Regulations to set out offences for which an infringement notice may be issued. An infringement notice operates like a fine similar to a parking infringement notice and provides for ten per cent of the maximum penalty for the offence to be imposed.

506. There are three offences in the National Law that are subject to an infringement notice (failure to display prescribed information, failure to notify the Regulatory Authority, and failure to keep enrolment or other documents).

507. The use of infringement notices reduces enforcement costs by providing better targeted fine payment and mitigation options. Offences that are suitable for applying an infringement notice are typically minor offences (i.e. do not warrant court action) and are clear and unambiguous. They also provide an immediate sanction for a contravention.

### ***Offences under the National Law and proposed Regulations***

508. The National Law sets out a range of higher-order offences such as:

- failure to ensure the program delivered to children is based on an approved learning framework and responds to each individual child's needs and abilities;
- failing to ensure that children are adequately supervised at all times;
- failing to ensure that reasonable steps are taken to ensure that children are protected from harms and hazards;
- failing to ensure children are cared for in accordance with staffing arrangements set out in the regulations.

The table at Attachment C provides a summary of offences in the National Law.

509. Most offences apply only to the approved provider as the person with the overall responsibility for ensuring that the approved service complies with the National Law or the proposed Regulations. However, in limited circumstances, some offences apply to nominated supervisors, family day care educators, or educators or staff members (e.g. use of inappropriate discipline), based on the person's control over the particular action or omission.

510. The proposed Regulations would also contain obligations for which contravention is subject to penalties. An approach similar to that taken for the National Law will be adopted in determining what obligations should be subject to a penalty for contravention. In most cases, the proposed penalty would apply to the approved provider. Again, consistent with the approach in the National Law, some penalty provisions may apply to nominated supervisors, educators or other staff members based on

the person's control over the particular action or omission. The proposed regulations would also identify what provisions are subject to an infringement notice or compliance direction.

**What is the maximum penalty for contravention of a regulation that is subject to an offence?**

511. It is proposed that the maximum penalty for breaching a regulation that is subject to an offence is \$2000 and the maximum for an infringement notice (if one applies) would be \$200.

**What is the status of an infringement notice once it has been paid?**

512. The payment of an infringement notice is seen to compensate for the offence and the specific infringement can no longer be pursued or taken into account as part of a person's compliance history (e.g. considered in making a decision on the fitness and propriety of a person or the assessment of a service).

**Can an authorised officer enter the service at any time?**

513. An authorised officer can enter a service at any reasonable time to monitor compliance with the National Law or the proposed Regulations.

**Possible issues for discussion**

1. To what extent should educators and other staff members be held liable for failure to meet certain regulatory requirements (refer to paragraphs 328 (administering medicine), 334 (not smoking) and 342 (leaving a service))?

## AUSTRALIAN CHILDREN'S EDUCATION AND CARE QUALITY AUTHORITY

### Objective

514. The primary role of the Australian Children's Education and Care Quality Authority is to guide the administration of the National Quality Framework to ensure consistency in its implementation.

### Outline

515. The National Law establishes the Australian Children's Education and Care Quality Authority and sets out its functions and powers.

516. In addition to guiding the implementation and administration of the National Quality Framework, the Australian Children's Education and Care Quality Authority has a range of functions including to:

- advise the Ministerial Council on the National Quality Framework;
- report to the Regulatory Authorities and the Australian Government Department of Education, Employment and Workplace Relations in relation to the evaluation of the National Quality Framework;
- promote and foster continuous quality improvement by approved education and care services;
- establish consistent, effective and efficient procedures for the operation of the National Quality Framework;
- conduct national auditing for the purposes of the national legislation;
- keep national information on the assessment, rating and regulation of education and care services;
- assess and determine applications for the highest level of rating (the Excellent rating) for approved education and care services;
- publish, monitor and review ratings of approved education and care services;
- establish and maintain national registers of approved providers, approved education and care services and certified supervisors and to publish those registers;
- in conjunction with the Regulatory Authorities, educate and inform education and care services and the community about the National Quality Framework;
- publish guides and resources to support parents and the community in understanding quality in relation to education and care services and to support the education and care services sector in understanding the National Quality Framework;
- publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children;
- publish practice notes and guidelines for the application of the National Law;
- determine the qualifications for authorised officers and provide support and training for staff of Regulatory Authorities;
- determine the qualifications required to be held by educators, including the assessment of equivalent qualifications;
- undertake any other function given to the Australian Children's Education and Care Quality Authority by or under the National Law or Regulations.

517. The Australian Children’s Education and Care Quality Authority will also host and manage a national information technology system. It will conduct regular reviews of the system’s requirements and implement changes resulting from those reviews.
518. The National Law provides that the Australian Children’s Education and Care Quality Authority will be governed by a 13 member board, which is comprised of one member nominated by each State and Territory and four members nominated by the Commonwealth and an independent chair. Members must have particular expertise, such as:
- assessment of quality in education and care or other relevant services;
  - early childhood development;
  - financial management and corporate governance;
  - research and evaluation.
519. The National Law provides for the appointment of a Chief Executive Officer who is responsible for the day to day management of the Authority.
- The Chief Executive Officer must comply with the policies and directions of the Board.
520. The proposed Regulations provide for the Australian Children’s Education and Care Quality Authority to exercise its functions in cooperation with, or with the assistance of, a range of bodies or classes of bodies, including the Australian Bureau of Statistics, research specific bodies, and education and training institutions and related organisations.
521. The proposed Regulations also set out the arrangements for money and property payable into the Australian Children’s Education and Care Quality Authority Fund, the procedures for the allocation, transfer or reimbursement of money to State and Territory Regulatory Authorities and procedures for the proper investment of money.

#### **What is the role of the Australian Children’s Education and Care Quality Authority Board?**

522. The Board is responsible for ensuring that the Australian Children’s Education and Care Quality Authority meets its statutory requirements and undertakes the range of functions detailed in the National Law properly and efficiently. The Board will provide strategic direction and leadership for the Authority and formulate strategies for discharging its functions in relation to the National Quality Framework.
523. The Board will work collaboratively with State and Territory Regulatory Authorities and report to and advise the Ministerial Council on the National Quality Framework.

#### **What reports will the Australian Children’s Education and Care Quality Authority produce?**

524. The Australian Children’s Education and Care Quality Authority will submit an annual report to the Ministerial Council within four months of the end of the financial year and provide any other reports requested by the Ministerial Council in accordance with the National Law.
525. It will also produce a range of guides and resources to support education and care services, parents and the community to better understand the National Quality Framework.

#### **Why do we need a new national body as well as State and Territory Regulatory Authorities?**

526. The roles, powers and functions of the Australian Children’s Education and Care Quality Authority and the Regulatory Authorities in each jurisdiction are quite distinct. Other than in relation to applications for the Excellent rating or a further review of a decision by a Regulatory Authority in

relation to a rating and assessment of an education and care service, most services will primarily deal with their State or Territory Regulatory Authority.

527. One of the Australian Children's Education and Care Quality Authority's important roles will be to ensure that the National Quality Framework is administered consistently across Australia (i.e. how a Regulatory Authority exercise its powers or conducts its processes in one jurisdiction is consistent with arrangements in another jurisdiction). This is to promote a uniform national system.

**Is the Australian Children's Education and Care Quality Authority a Commonwealth body?**

528. No. The Australian Children's Education and Care Quality Authority is a jointly governed body representing each State and Territory and the Commonwealth. The composition of the Board reflects this representation.

**Where will the Australian Children's Education and Care Quality Authority be located?**

529. The Australian Children's Education and Care Quality Authority will be located in Sydney, New South Wales and will commence operation in 2011.

## REGULATORY AUTHORITY

### Objective

530. The Regulatory Authority will have primary responsibility for administration of the National Quality Framework and therefore will be the main point of contact for services. A key difference between Regulatory Authorities and current regulatory agencies under State and Territory law is that Regulatory Authorities will undertake quality assessment processes. Services will no longer be accredited by the National Childcare Accreditation Council.
- As noted above, the key times when services will have contact with the Australian Children's Education and Care Quality Authority are when a service applies for a further review of an assessment and rating decision by a Regulatory Authority or for the Excellent rating.

### Outline

531. The National Law sets out that the Regulatory Authority has a range of functions, these being to:
- administer the National Quality Framework;
  - assess approved education and care services against the National Quality Standard and the National Regulations and determine the ratings of those services;
  - monitor and enforce compliance with the National Law;
  - receive and investigate complaints arising under the National Law;
  - work in collaboration with the Australian Children's Education and Care Quality Authority to support and promote continuous quality improvements in education and care services;
  - in conjunction with the Australian Children's Education and Care Quality Authority and the relevant Commonwealth Department (the Department of Education, Employment and Workplace Relations), educate and inform education and care services and the community in relation to the National Quality Framework;
  - undertake information collection, review and reporting for the purposes of the regulation of education and care services, reporting on the administration of the National Quality Framework, and the sharing of information under the National Law;
  - undertaken any other functions conferred on the Regulatory Authority under the National Law or Regulations.
532. The National Law sets out the powers of the Regulatory Authority in each relevant part of the National Law; for example, the power to:
- grant Provider Approval, Service Approval or Supervisor Certificates (Parts 2, 3 and 4 of the National Law);
  - conduct rating and assessments of services (Part 5 of the National Law);
  - monitor compliance with the National Law and exercise compliance tools (Parts 7 and 9 of the National Law);
  - conduct internal review of decisions made by the Regulatory Authority (Part 8 of the National Law).

533. Part 12 of the National Law also sets out the particular administrative powers of the Regulatory Authority. These include:

- to collect, hold and use information;
- to maintain and publish registers;
- to publish information about the National Quality Framework including about ratings and prescribed information about compliance with the National Law;
- to collect, waive, reduce, defer or refund fees.

### ***Delegations***

534. The National Law also provides for the Regulatory Authority to delegate functions and powers to any person employed under a public sector law.

535. The proposed Regulations set out the additional persons to whom the Regulatory Authority may delegate to, in addition to those specified in the National Law.

### **Who will be the Regulatory Authority in each jurisdiction?**

536. The National Law allows for each State and Territory law that adopts or applies the National Law to declare who will be the Regulatory Authority for that jurisdiction.

- For example, in Victoria the Regulatory Authority for the purposes of the National Law is the Secretary of the Department of Education and Early Childhood Development.

537. Consistent with the National Partnership Agreement, the National Law allows for a State or Territory to declare there to be a Regulatory Authority for a class of education and care services within that jurisdiction (i.e. there would be more than one Regulatory Authority in that jurisdiction). This may occur where there is a current division of regulatory responsibility within a jurisdiction (e.g. private sector/community services or services operating within a school). However, the National Partnership Agreement requires each jurisdiction to identify a lead Regulatory Authority.

### **What are the responsibilities of the delegate?**

538. The National Law requires that the delegate of the Regulatory Authority must inform the Regulatory Authority of any direct or indirect personal or pecuniary interest they may have in relation to the delegated functions and powers for which that they are responsible.

### **What is the difference between the National Authority and the Regulatory Authority?**

539. The roles, powers and functions of the Australian Children's Education and Care Quality Authority (the National Authority) and the Regulatory Authorities in each jurisdiction are distinct. Services will primarily deal with their State or Territory Regulatory Authority, except in relation to applications for the Excellent rating or a further review of a decision by a Regulatory Authority in relation to a rating and assessment of an education and care service.

## INFORMATION AND PRIVACY

### Objective

540. One of the principles underlying the National Quality Framework is promoting greater transparency and accountability. This is achieved not only through the publication of the rating levels for approved education and care services, but also through the publication of other types of information and the sharing of information between the Australian Children's Education and Care Quality Authority, Regulatory Authorities and other government agencies.
541. To ensure a uniform national system, the National Law applies the Commonwealth privacy and freedom of information laws as if they are State or Territory laws. This means that the same privacy and freedom of information laws will apply to each Regulatory Authority instead of having separate State and Territory laws apply.

### Outline

#### *Publication of registers and information*

542. The National Law provides for the keeping and publication of registers:
- the Australian Children's Education and Care Quality Authority must keep a register of approved providers and certified supervisors, which may be inspected or copied;
  - Regulatory Authorities must keep a register of education and care services, which may be inspected or copied;
  - approved providers of family day care services must keep a register of their family day care educators and any other person engaged by their family day care services to educate and care for a child, and must provide this information to the Regulatory Authority on request.
543. The National Law also allows the Australian Children's Education and Care Quality Authority or a Regulatory Authority to publish a range of information, for example:
- name of each approved provider, each approved service and each certified supervisor;
  - for a centre-based service – the address of the service;
  - for a family day care service – the address of its principal office;
  - the rating of each service;
  - other information set out in the Regulations (this could include the Service Approval number, contact details etc).
544. The National Law provides that enforcement action may be published by the Regulatory Authority, such as information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals or certificates, or any prescribed matters.
545. The National Law also permits the disclosure of information to prescribed parties in certain circumstances, including allowing Regulatory Authorities to disclose information about education and care services to each other, the Australian Children's Education and Care Quality Authority or the Commonwealth for the purposes of:
- the National Quality Framework;
  - research and the development of national policy with respect to education and care services;

- the funding of education and care services or the payment of benefits or allowances to persons using education and care services;
- compliance and disciplinary action.

#### ***Application of Commonwealth privacy, freedom of information and ombudsman laws***

546. The National Law applies the Commonwealth privacy, freedom of information and ombudsman laws as if they are a law of the State and Territory.

- The Commonwealth’s ombudsman laws will be applied to the operation of the Australian Children’s Education and Care Quality Authority.

547. The National Law allows the Regulations to modify these laws. These provisions are likely to be modelled on provisions in the *National Health Practitioner Regulation National Law Regulations*, which is also a national applied laws scheme that applies Commonwealth privacy, information and ombudsman laws as if they were State or Territory laws, for the purposes of achieving national consistency.

548. The National Law provides that records for the Australian Children’s Education and Care Quality Authority will be kept in accordance with the *State Records Act 1998* of New South Wales.

#### **What information will be included in the register of approved providers?**

549. The National Law requires that the register of approved providers to be kept and published by the Australian Children’s Education and Care Quality Authority must include the name of the approved provider.

550. The proposed Regulations also require other information such as contact details or conditions of approval.

#### **What information will be included in the register of education and care services?**

551. The National Law provides that the register of education and care services to be kept and published by the Regulatory Authority must include:

- the name of each service and its approved provider;
- for a centre-based service – the address of the service;
- for a family day care service – the address of its principal office;
- the rating of each service.

552. The proposed Regulations also require other information such as hours of operation for a centre-based service, conditions of approval, and the maximum number of children who may be educated and cared for.

553. The Australian Children’s Education and Care Quality Authority may also publish this register on its website.

#### **What information will be included in the register of certified supervisors?**

554. The register of certified supervisors to be kept and published by the Australian Children’s Education and Care Quality Authority must include the name of each certified supervisor.

555. The proposed Regulations also require other information such as the Supervisor Certificate number or the prescribed class of persons to which the certified supervisor belongs, if relevant.

### **What information will be included in the register of family day care educators?**

556. The National Law states that the register must contain the information that is prescribed in the Regulations.

557. The proposed Regulations provide for information such as the following to be included in the register:

- name of the educator;
- contact details;
- the premises where educators provide education and care;
- the family day care service in which the educator is registered;
- days and hours when family day care educators will provide education and care.

### **What information about an approved service may be published by the National Authority or Regulatory Authority?**

558. The proposed Regulations provide that the following information in respect of an approved education and care service may be published by the National Authority and Regulatory Authority (in addition to the information already set out in the National Law and described above):

- contact details for the service;
- the hours of operation of the service;
- the conditions to which the Service Approval is subject;
- the maximum number of children who may be educated and cared for by the service at any one time (where applicable).

### **What information about compliance may be published by a Regulatory Authority?**

559. The National Law provides that a Regulatory Authority may publish prescribed information about enforcement actions taken under the National Law such as information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals or certificates, or any matters set out in the Regulations.

560. This, along with information about the rating levels of each service, enables parents or prospective parents to have ready access to transparent information about the quality of services, including any history of action that has been or is being taken to address non-compliance with the legislative requirements.

### **What will the application of the Commonwealth privacy or freedom of information laws mean?**

561. The application of the Commonwealth privacy and freedom of information laws will mean that the same requirements in relation to privacy and freedom of information obligations will apply to each State and Territory Regulatory Authority and the Australian Children's Education and Care Quality Authority. This will ensure national consistency for the purposes of the National Quality Framework.

### **Who do I complain to about the actions of the Regulatory Authority?**

562. A person who believes they may have been treated unfairly in administrative processes by a Regulatory Authority would make a complaint to the relevant Regulatory Authority. The Regulatory Authority in each State and Territory will make information available about their procedures for making a complaint. Depending on the jurisdiction there may also be external complaint procedures.

### **Possible issues for discussion**

1. Should charges for offences under the National Law be included in the range of information that may be published by a Regulatory Authority (refer to paragraphs 559-560)?

## TRANSITIONAL AND SAVING PROVISIONS

### Objective

563. The National Law provides transitional arrangements that will ensure a smooth and seamless transition for existing service owners or licensees and managers/directors of services to the new system.

### Outline

564. The National Law includes a range of provisions that are transitional in nature (that is temporary or for a specific defined period of time or activity) to facilitate the new arrangements under the National Law.

565. The National Law also enables the establishment of the Australian Children's Education and Care Quality Authority prior to 1 January 2012.

### *Education and care services*

566. The National Law outlines arrangements to allow existing owners or licensees of an education and care service and supervisors to transition to the new National Law from 1 January 2012.

567. The National Law provides for the transition of service owners or licensees and managers/directors of services under current State and Territory regulatory arrangements to the new arrangements set out under the National Law.

568. For example the National Law allows State and Territory laws to declare:

- that an owner or licensee of an education and care service is taken to be an approved provider;
- an education and care service holding an approval or licence under a former education and care services law is taken to hold a service approval;
- that if an application for approval was made under a former education and care services law the application can be taken to be under this law;
- a person or a class of persons to be taken to be a certified supervisor.

569. In each case the Regulatory Authority must issue the person a Provider Approval, Service Approval or Supervisor Certificate, as the case may be, by 30 June 2012.

570. The National Law also provides for existing exemption arrangements to remain in place until 31 March 2012 (or, if an application for a Temporary Waiver or Service Waiver has been made, until that application is determined).

571. The National Law also enables Regulatory Authorities to bring, or continue with, a prosecution for offences under former education and care services law after 1 January 2012, in relation to an existing service.

### *The Australian Children's Education and Care Quality Authority*

572. The National Law outlines arrangements for the Ministerial Council to convene the first meeting of the Board of the Australian Children's Education and Care Quality Authority, and arrangements for the appointment of the first Chief Executive Officer and the first annual report. This is to enable the Authority to be established before it is expected to commence operation on 1 January 2012.

### ***General provisions***

573. The National Law provides that the Regulatory Authority must, in accordance with the Regulations, keep prescribed information in relation to licensing, approval, monitoring and enforcement of education and care services under former education and care services law. This information and documents may be used for information purposes under the National Law (such as informing rating assessments or fit and proper deliberations) or be made available to Regulatory Authorities in other States or Territories.
574. The National Law also requires education and care services to keep former documentation and make it available to the Regulatory Authority upon request.
575. In addition, the National Law states that a declared approved learning framework will be taken to be an approved learning framework under the National Law.

### ***Savings and transitional regulations***

576. The National Law allows for the Regulations to contain provisions of a savings or transitional nature that will facilitate the change from the operation of a former education and care services law to the new National Law.

577. The proposed Regulations set out two kinds of provisions:

- arrangements that are permitted to remain in place for a defined period of time following commencement of the National Quality Framework from 1 January 2012 – transitional provisions;
- arrangements that are permitted to remain in place indefinitely or until a decision is made in the future to amend such arrangements following the commencement of the National Quality Framework from 1 January 2012 – savings provisions.

578. The proposed Regulations are expected to set out transitional arrangements with respect to:

- educator-to-child ratios and qualification requirements;
- first aid qualifications;
- information retention and sharing;
- the physical environment of premises.

579. The proposed Regulations are expected to set out savings provisions with respect to:

- approval of Learning Frameworks;
- teacher qualifications;
- diploma qualifications;
- space requirements in some New South Wales services;
- some school based New South Wales services.

### **What is the purpose of the transitional arrangements for educator-to-child ratios and qualifications?**

580. The proposed transitional arrangements would provide for:

- existing State and Territory educator-to-child ratios and qualifications requirements to remain in place until the National Quality Standard comes into effect;
- a later timeframe for compliance where required in a jurisdiction.

### **Will all States and Territories have the same ratios and qualification requirements once the National Quality Standard comes into effect?**

581. No. Consistent with the National Partnership Agreement, some States and Territories will retain standards currently existing in their jurisdiction's regulations where they are higher than the standards set out in the National Quality Standard.
582. Additionally, as educator-to-child ratios and qualifications requirements have not yet been agreed for outside school hours care services, those currently in existence in jurisdictions will remain in place.

### **Will existing first aid qualifications be recognised?**

583. It is proposed that individuals currently recognised as having a first aid qualification will continue to be recognised as holding a suitable qualification until that qualification is required to be renewed or updated (e.g. training in administration of an 'EpiPen' is usually every 12 months).

### **Will services be required to modify their service premises to meet the National Quality Standard on 1 January 2012?**

584. It is proposed that currently licensed or approved services will not be required to modify their premises if they do not meet the physical environment requirements of the National Quality Standard on 1 January 2012.
585. However, after 1 January 2012, the proposed Regulations set out that if the service undertakes any of the following work on the premises, then the service will be required to ensure that the physical environment requirements under the National Quality Standard are met:
- demolition, removal or relocation of an existing building or other fixed structure (or part thereof); or
  - construction of a building or other fixed structure (or part thereof); or
  - structural alteration of a building or other fixed structure; or
  - other significant works on the premises (e.g. re-wiring, installing insulation, re-plumbing, renovating playgrounds and other similar works).

### **What Learning Frameworks will be allowed under the National Quality Framework?**

586. The National Law provides for learning frameworks to be approved by the Ministerial Council. The proposed Regulations provide for National Approved Learning Frameworks, as well as jurisdiction-specific Approved Learning Frameworks.
587. The proposed Regulations provide that the National Approved Learning Frameworks are:
- *Belonging, Being and Becoming: The Early Years Learning Framework for Australia (EYLF);*
  - *My Time, Our Place: A Framework for School Age Care in Australia.*
588. It is proposed that the jurisdiction-specific Approved Learning Frameworks would be:
- Victorian Early Years Learning and Development Framework: For all Children from Birth to Eight Years;
  - Western Australian Curriculum Framework for Kindergarten to Year 12;
  - Every chance to learn – Curriculum Framework for Australian Capital Territory schools for preschool to Year 10.

### **Will existing teacher qualifications be recognised?**

589. Yes. The proposed Regulations ensure that individuals who:

- are employed/registered/accredited/approved as a qualified early childhood teacher (or equivalent) at any time between 1 January 2010 and 1 January 2012; or
- hold a qualification approved by a jurisdiction as a qualified early childhood teacher (or equivalent) immediately prior to 1 January 2012;

will continue to have their qualification recognised under the National Quality Framework.

590. It is proposed that those individuals who have worked as a qualified early childhood teacher with restrictions will carry over those same restrictions. However, if a staff member was employed, registered or accredited as a qualified early childhood teacher on the basis that they were working towards such a qualification, they will not be recognised as a qualified early childhood teacher unless they complete their degree qualification.

### **What will happen to services that currently have an exemption for an early childhood teacher?**

591. It is proposed that an approved service that currently has an exemption from the requirement for an early childhood teacher under a former education and care services law will be allowed to transition into the new arrangements until 31 March 2012. Such services must either apply for a Temporary or Service Waiver under the National Law by 31 March 2012 to be deemed compliant with any such requirement under the National Law.

### **Will early childhood Diploma qualifications currently recognised in a State or Territory still be recognised?**

592. Yes. It is proposed that individuals employed as an early childhood Diploma qualified (or equivalent) staff member in a State or Territory or holding a qualification recognised by a State or Territory as being an early childhood Diploma (or equivalent) will continue to be recognised as meeting that qualification.

### **Possible issues for discussion**

1. The Australian Children's Education and Care Quality Authority will be responsible for approving and publishing a list of nationally approved educator qualifications. What factors should it take into account in relation to the transition of educators to these qualifications (refer to paragraphs 430-436, 589-592)?





## ATTACHMENT B – INFORMATION PROPOSED TO BE KEPT IN THE RECORDS OF A SERVICE

**Table: Information proposed to be kept in the enrolment, medication and incident, injury, trauma and illness records of children being educated and cared for at a service**

| Enrolment Record                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Medication Record                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Incident Injury, trauma and illness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>For each child enrolled at the service:</p> <ul style="list-style-type: none"> <li>● full name, date of birth and address of the child;</li> <li>● full name, address and telephone number of any parent with whom the child resides;</li> <li>● name, address and telephone number of a person to be notified of any incident, injury, trauma or illness;</li> <li>● name, address and telephone number of the person who can be contacted in an emergency and who can collect the child;</li> <li>● details of any court orders and registered parenting plans, relevant family violence or apprehended violence orders, protection orders, intervention orders, or restraining or restraint orders;</li> <li>● name, address and telephone number of any person with lawful authority to consent to the medical treatment of the child, request or permit the administration of medication to the child, collect the child from the service or authorise the taking of the child outside the premises by an educator;</li> <li>● the child’s gender;</li> <li>● the language used in the child’s home and the child’s cultural background (and, if different, the parent’s);</li> <li>● any special considerations for the child, including cultural, religious or dietary requirements.</li> </ul> <p><b>Relevant authorisations for:</b></p> <ul style="list-style-type: none"> <li>● consent to seek medical treatment of the child;</li> </ul> | <p>For each child to whom medication is to be given by the service the following:</p> <ul style="list-style-type: none"> <li>● the name of the child;</li> <li>● the authorisation to administer medication signed by a person who has lawful authority* to sign the authorisation;</li> <li>● the name of the medication to be administered;</li> <li>● the time and date the medication was last administered;</li> <li>● the time and date, or the circumstances under which, the medication should be next administered;</li> <li>● the dosage to be given and how it is to be given (e.g. orally, with food);</li> <li>● if the medication is given to the child: <ul style="list-style-type: none"> <li>- the dosage that was given;</li> <li>- the means used for administering the medication;</li> <li>- the time and date the medication was given;</li> <li>- the name and signature of the person who gave the medication;</li> <li>- in some circumstances a second person (to the person giving the medicine) is required to check the dosage of medication. In this case the record should also include the name and signature of the person who checked the dosage that was given.</li> </ul> </li> </ul> <p>*Lawful authority will be defined in the Regulations.</p> | <p>An incident, injury, trauma and illness record should include:</p> <ul style="list-style-type: none"> <li>● details of any incident, injury received or trauma to which a child has been subjected while being educated and cared for by the service, including: <ul style="list-style-type: none"> <li>- the name and age of the child;</li> <li>- the circumstances leading to the incident, injury or trauma;</li> <li>- any products or structures involved (e.g. playground equipment or toys);</li> <li>- the time and date of the incident, injury or trauma;</li> </ul> </li> <li>● details of any illness of a child being educated and cared for by the service, including: <ul style="list-style-type: none"> <li>- the name of the child;</li> <li>- the relevant circumstances surrounding the child’s illness and any apparent symptoms;</li> <li>- the time and date the onset of the illness became apparent;</li> </ul> </li> <li>● details of the action taken by the service in relation to any incident, injury, trauma or illness, including any medication or first aid treatment provided, any medical personnel contacted and the names of any witnesses to the incident;</li> <li>● the name of the person who was notified of the incident, injury, trauma or illness and the time and date of the notification;</li> <li>● the name of any other person attempted to be notified regarding the incident, injury,</li> </ul> |

| Enrolment Record                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Medication Record | Incident Injury, trauma and illness                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>● consent for the medical management plan for the child to be followed with respect to a special need, allergy or medical condition;</li> <li>● where the child is diagnosed with or is at risk of anaphylaxis, consent to the current medical management plan for the child;</li> <li>● if relevant, authorisation to take the child for a regular walk or drive to and from a destination in the local area.</li> </ul> <p><b>Health information</b> for each child enrolled including:</p> <ul style="list-style-type: none"> <li>● the name, address and telephone number of the child's registered doctor or medical service;</li> <li>● the child's Medicare number, where available (for use in emergency situations when the child requires immediate treatment);</li> <li>● details of any special needs of the child; allergies, including if the child has been diagnosed as at risk of anaphylaxis; and other relevant medical conditions;</li> <li>● any medical management plan for that child to be followed with respect to a special need, allergy or medical condition, including, where a child is diagnosed with (or at risk of) anaphylaxis, the current anaphylaxis medical management plan for the child;</li> <li>● details of any dietary restrictions for the child;</li> <li>● the immunisation history of the child.</li> </ul> <p>The record should also indicate that an approved provider, nominated supervisor or staff member at the service has sighted a child health record for the child.</p> |                   | <p>trauma or illness and the time and date of the attempted notifications;</p> <ul style="list-style-type: none"> <li>● the name and signature of the person making an entry in the record;</li> <li>● the time and date of the entry in the record.</li> </ul> <p>This information must be included in the record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.</p> |

**Table: Information proposed to be kept in the staff record of an approved service**

| Centre-based service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Family Day Care service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The following information is proposed to be kept in the staff record:</p> <ul style="list-style-type: none"> <li>● the full name, address and date of birth of each nominated supervisor and staff member;</li> <li>● for each nominated supervisor and staff member, evidence of any relevant: <ul style="list-style-type: none"> <li>- qualifications;</li> <li>- completed training, including first aid training;</li> <li>- enrolment in a training course;</li> <li>- satisfactory progress towards completion of a course, where that evidence is required;</li> </ul> </li> <li>● the date and the identifying number of the documentation (as applicable) that the approved provider, nominated supervisor or certified supervisor sighted for the working with children check or working with children card or record of criminal history, for each nominated supervisor and staff member (as relevant);</li> <li>● the name of the person assigned responsibility as the educational leader;</li> <li>● a record of the full name, address and date of birth of any students and volunteers who participate in the service, and the dates and/or hours of their participation.</li> </ul> | <p>The following information is proposed to be kept in the staff record:</p> <ul style="list-style-type: none"> <li>● the full name, address and date of birth of each nominated supervisor and staff member;</li> <li>● for each nominated supervisor and staff member, evidence of any relevant: <ul style="list-style-type: none"> <li>- qualifications;</li> <li>- completed training, including first aid training;</li> <li>- enrolment in a training course;</li> <li>- satisfactory progress towards completion of a course, where that evidence is required;</li> </ul> </li> <li>● the date and the identifying number of the documentation (as applicable) that the approved provider, nominated supervisor or certified supervisor sighted for the working with children check or working with children card or record of criminal history, for each nominated supervisor and staff member (as relevant);</li> <li>● the name of the person assigned responsibility as the educational leader;</li> <li>● a record of the full name, address and date of birth of any students and volunteers who participate in the service, and the dates and/or hours of their participation;</li> <li>● the full name and date of birth of all persons aged 18 years and over who usually occupy or frequently visit each family day care residence;</li> <li>● the full name and date of birth of each child under the age of 18 years who usually occupy each family day care residence.</li> </ul> |

## ATTACHMENT C – OFFENCES IN THE NATIONAL LAW

**Table: Offences in the National Law**

| Offence relating to:                                                        | Approved Provider | Nominated Supervisor | Family Day Care Educator | Staff member |
|-----------------------------------------------------------------------------|-------------------|----------------------|--------------------------|--------------|
| Providing a service without Service Approval (Part 3, s103)                 | ✓                 |                      |                          |              |
| Advertising a service without Service Approval (Part 3, s104)               | ✓                 |                      |                          |              |
| Operating a service without nominated supervisor (Part 6, s161)             | ✓                 |                      |                          |              |
| Operating a service without responsible person present (Part 6, s162)       | ✓                 |                      |                          |              |
| Requirement to engage FDC Coordinator (Part 6, s163)                        | ✓                 |                      |                          |              |
| Requirement to provide support to FDC educators (Part 6, s164)              | ✓                 |                      |                          |              |
| Inadequate supervision (Part 6, s165)                                       | ✓                 | ✓                    | ✓                        |              |
| Inappropriate discipline (Part 6, s166)                                     | ✓                 | ✓                    | ✓                        | ✓            |
| Protection from harm or hazards (Part 6, s167)                              | ✓                 | ✓                    | ✓                        |              |
| Required programs (Part 6, s168)                                            | ✓                 | ✓                    |                          |              |
| Staffing arrangements (Part 6, s169)                                        | ✓                 | ✓                    | ✓                        |              |
| Permitting unauthorised person to remain on premises (Part 6, s170)         | ✓                 | ✓                    | ✓                        |              |
| Direction to exclude inappropriate person (Part 6, s171)                    | ✓                 | ✓                    | ✓                        |              |
| Failure to display prescribed information (Part 6, s172)                    | ✓                 |                      |                          |              |
| Failure to notify Regulatory Authority (2 offences) (Part 6, s173 and s174) | ✓                 |                      |                          |              |
| Keeping enrolment and other documents (Part 6, s175)                        | ✓                 |                      | ✓                        |              |

## ATTACHMENT D – EXTRACT FROM THE NATIONAL PARTNERSHIP AGREEMENT

### Staffing arrangements

Until the following staffing arrangements come into place according to the timeframes below, State and Territory educator-to-child ratios and qualifications requirements that are in force prior to the commencement of the National Quality Standard on 1 January 2012 will continue to apply.

| <b>Regulations and Schedules will include the additional requirement that:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                      |
|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| <b>Schedule Educator to child ratios</b>                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                      |
| <b>Age group</b>                                                               | <b>Preschool and long day care<br/>Educator to child ratio</b>                                                                                                                                                                                                                                                                                                                                                                                            | <b>Timeframes for<br/>compliance</b> |
| Birth to 24 months                                                             | 1:4                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 1 January 2012                       |
| 25 to 35 months                                                                | 1:5                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 1 January 2016                       |
| 36 months to school age                                                        | 1:11                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1 January 2016                       |
| Mixed age groups                                                               | Proportional formula based on the above ratios                                                                                                                                                                                                                                                                                                                                                                                                            | 1 January 2012                       |
| <b>Number of children (at<br/>any one time)</b>                                | <b>Qualification Requirements</b>                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Timeframe</b>                     |
| Less than 25                                                                   | <ul style="list-style-type: none"> <li>• 50% of educators have a Diploma (or are actively working towards) level ECEC qualification or above (the teacher may be included) *</li> <li>• Other educators have (or are actively working towards) a Certificate III level ECEC qualification (or equivalent)</li> <li>• An early childhood teacher is in attendance for some of the time that the service is being provided to children.</li> </ul>          | 1 January 2014                       |
| 25 to 59 children                                                              | <ul style="list-style-type: none"> <li>• 50% of educators have a Diploma (or are actively working towards) level ECEC qualification or above (the teacher may be included) *</li> <li>• Other educators have (or are actively working towards) a Certificate III level ECEC qualification (or equivalent)</li> <li>• An early childhood teacher is in attendance at the service whenever the service is being provided to 26 children or more.</li> </ul> | 1 January 2014                       |

|                   |                                                                                                                                                                                                                                                                                                                                                          |                |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 60 to 80 children | <ul style="list-style-type: none"> <li>• 50% of educators have a Diploma (or are actively working towards) level ECEC qualification or above (the teacher may be included) *</li> </ul>                                                                                                                                                                  | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• Other educators have a certificate III or are actively working towards) level ECEC qualification (or equivalent)</li> </ul>                                                                                                                                                                                     | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• An early childhood teacher is in attendance at the service whenever the service is being provided to 26 children or more.</li> </ul>                                                                                                                                                                            | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• A second early childhood teacher or another suitably qualified leader is in attendance at the service for at least half the time the service is being provided to 60 children or more.</li> </ul>                                                                                                               | 1 January 2020 |
| over 80 children  | <ul style="list-style-type: none"> <li>• 50% of educators have a Diploma (or are actively working towards) level ECEC qualification or above (the teacher may be included) *</li> </ul>                                                                                                                                                                  | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• Other educators have a certificate III (or are actively working towards) level ECEC qualification (or equivalent)</li> </ul>                                                                                                                                                                                    | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• An early childhood teacher is in attendance at the service whenever the service is being provided to 26 children or more.</li> </ul>                                                                                                                                                                            | 1 January 2014 |
|                   | <ul style="list-style-type: none"> <li>• A second early childhood teacher or another suitably qualified leader is in attendance at the service for at least half the time the service is being provided to 60 to 80 children, and once there are more than 80 children, the teacher needs to be there whenever the service is being provided.</li> </ul> | 1 January 2020 |

- For the purposes of clarity, in relation to 50% of Educators have a Diploma, for every 2 educators (or part thereof) at least one must have (or be enrolled in and studying) a Diploma level ECEC qualification, that is if there are 15 carers in the service 8 must hold a Diploma level ECEC qualification.
- For the purposes of clarity, an early childhood teacher is in attendance at the service whenever the service is being provided to 26 children or more, would require the teacher to be at the service at least 6 hours per day.
- Victoria would retain its ratio 1:4 for children under 3 years of age.
- NSW, WA and Tasmania would retain a ratio of 1:10 for children 36 months and over.
- NSW would retain its requirements for teachers:
  - 2, for 40-59 children under school age
  - 3, for 60-79 children under school age
  - 4, for 80 plus children under school age.
- Services licensed in Queensland by 1 January 2011 that can justify a need to use a staff to child ratio of 1:5 for a group of children aged 15-36 months will be deemed to comply with the NQS staffing ratios. This arrangement will expire on 31 December 2017. All Queensland services will be expected to be compliant with the NQS staffing ratios from 1 January 2018.

**Jurisdictional requirements for teacher to child ratios in preschool programs (additional to staffing and other requirements of the NQS)**

- New South Wales: as described above.
- South Australia: The requirements for SA Government pre-schools are 1:11 for the majority of services, with a 1:10 ratio for category 1 preschools in low SES communities. Qualified staff ratios will also be maintained with the first and second staff members required to hold an early childhood teaching qualification in stand-alone preschools, and the first and third staff member holding an early childhood teaching qualification in school-based preschools.
- Western Australia: The requirement is a staff to child ratio of 1:10.
- Tasmania: The requirement is 1 to 25 children to 2 educators, one of whom is a four-year university qualified teacher.
- Northern Territory: The requirements are for a staff to child ratio of 1:11 and a qualified staff to child ratio of 1:22.
- ACT: The requirements are a staff to child ratio of 1:11 for children 3 years and above in licensed children’s services (LDC and OSHC) and a staff to child ratio of 2:25 for children attending ACT Government operated preschools.

**Family Day Care**

| <b>Age group</b>                                                              | <b>Educator to child ratio</b>                                                                                                                                                                           | <b>Timeframes for compliance</b> |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Mixed age groups of children                                                  | 1:7 with a maximum of four children not yet attending school                                                                                                                                             | 1 January 2014                   |
| [For the purposes of clarity, these ratios include the carer’s own children.] |                                                                                                                                                                                                          |                                  |
| <b>Qualification Requirements</b>                                             |                                                                                                                                                                                                          |                                  |
|                                                                               | <ul style="list-style-type: none"> <li>• All carers have a minimum Certificate III level qualification (or actively working towards)</li> <li>• All coordinators have a Diploma qualification</li> </ul> | 1 January 2014                   |

## Outside School Hours Care

| Age group       | Educator to child ratio                                                                                                                                                       | Timeframes for compliance |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| School age care | The National Quality Standard and Ratings Framework will also apply to OSHC but at this stage no changes to educator-to-child ratios or educator qualifications are proposed. |                           |

| State/Territory | Ratio                                                                                                                                                                                                | Timeframes for compliance |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| ACT             | 1:11                                                                                                                                                                                                 | Immediately               |
| NSW             | None prescribed                                                                                                                                                                                      | Immediately               |
| NT              | 1:15                                                                                                                                                                                                 | 31 Dec 2013               |
| QLD             | 1:15                                                                                                                                                                                                 | Immediately               |
| SA              | 1:15                                                                                                                                                                                                 | Immediately               |
| TAS             | 1:15                                                                                                                                                                                                 | Immediately               |
| VIC             | 1:15                                                                                                                                                                                                 | Immediately               |
| WA              | As prescribed in WA Child Care Outside School Hours Care Regulations 2006 Schedule 1 – contact staff requirements and Division 1 – Prescribed matters 8. Prescribed Qualifications: section 12(2)9c) | Immediately               |

| State/Territory | Qualification Requirements                                                                                                                                                                                                                                                                                                                                               | Timeframe   |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| ACT             | <ul style="list-style-type: none"> <li>1/3 of educators must hold a Diploma level qualification or above; or have completed a Certificate III component of a Diploma qualification or half a Degree qualification and demonstrate continuing progress toward completion of that qualification</li> <li>No formal entry-level requirements for other educators</li> </ul> | Immediately |
| NSW             | <ul style="list-style-type: none"> <li>No prescribed qualification requirements</li> <li>50% of carers must hold a post-secondary sports and recreation or teaching qualification or equivalent</li> </ul>                                                                                                                                                               | Immediately |
| NT              | <ul style="list-style-type: none"> <li>No formal entry-level requirements for other educators</li> </ul>                                                                                                                                                                                                                                                                 | 31 Dec 2013 |
| QLD             | <ul style="list-style-type: none"> <li>50% of educators must hold at least a Diploma level qualification in community services or a two-year qualification in a relevant area of study</li> <li>Other educators must hold at least a Certificate III or IV in Community Services or a</li> </ul>                                                                         | Immediately |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |             |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
|     | one-year qualification in a relevant area of study                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |             |
| SA  | <ul style="list-style-type: none"> <li>• 50% of educators must hold at least an Associate Diploma level qualification in child care and/or youth or recreation</li> <li>• No formal entry-level requirements for other educators</li> </ul>                                                                                                                                                                                                                                                                                                                                          | Immediately |
| TAS | <ul style="list-style-type: none"> <li>• No prescribed qualification requirements</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Immediately |
| VIC | <ul style="list-style-type: none"> <li>• 50% of educators must hold at least a 2 year post-secondary early childhood qualification or a 2 year post-secondary childcare or youth recreation qualification</li> <li>• Other educators must hold at least a Certificate III in Children's Services or equivalent or commence obtaining a qualification within 6 months of commencing to care for children</li> </ul>                                                                                                                                                                   | 31 Dec 2010 |
| WA  | <ul style="list-style-type: none"> <li>• 1/4 of educators must hold at least a Certificate IV in children's studies covering ages four to fourteen or a Certificate IV in outside school hours care</li> <li>• No formal entry-level requirements for other educators</li> </ul>                                                                                                                                                                                                                                                                                                     | Immediately |
|     | <ul style="list-style-type: none"> <li>• SA does not currently regulate OSHC. However, services provided on Department of Education and Children's Services' property are required to meet National Standards. Some other OSHC services are also required, by policy, to meet the National Standards.</li> <li>• TAS indicated in the RIS that they were waiting on National Standards to implement their quality standards. VIC qualification requirements for OSHC do not apply until full licensing (which may not be until close to December 2010 for some services).</li> </ul> |             |

### Minimum age of educators

Educators under the age of 18:

- may be counted in the educator to child ratios
- are not permitted to work alone in a service
- must be supervised by an adult with a Diploma qualification or above (or actively engaged and working towards the qualification).
- Family day carers must be 18 years of age or above.

For purposes of clarity educators under the age of 18 holding a Diploma qualification would still need to be supervised as above.

### **All educator to child ratios**

- If a service is unable to employ an educator, carer or co-ordinator with the required qualification or above, the service would be considered to be at the operating level.
- A schedule of approved qualifications will be developed which includes currently approved qualifications within each state and territory. The list will include Certificate III, Diploma of Children's Services; early childhood teacher and first aid competencies required of staff.
- A national process for approving new qualifications and determining equivalence of overseas and other relevant courses would need to be developed by January 2012.

### **Other matters for Regulations**

- Definition of working directly with children i.e. maintaining educator to child ratios
- Staffing arrangements support children undertaking activities as part of a group that is of appropriate age and composition and promotes relationships with peers and educators.
- At least one educator with a prescribed first aid competency/qualification is present while children are at the service
- All family day carers have a prescribed first aid qualification.
- Professional development plans are documented and implemented.