

Education and Care Services Regulation 2013

Explanatory notes for SL 2013 No. 265

made under the

Acts Interpretation Act 1954

Building Act 1975

Child Employment Act 2006

Education and Care Services Act 2013

Fire and Rescue Service Act 1991

Food Act 2006

Health Act 1937

Public Health Act 2005

Queensland Civil and Administrative Tribunal Act 2009

Sustainable Planning Act 2009

General Outline

Short title

Education and Care Services Regulation 2013.

Authorising law

Section 17 of the *Acts Interpretation Act 1954*

Section 261 of the *Building Act 1975*

Section 39 of the *Child Employment Act 2006*

Section 244 of the *Education and Care Services Act 2013*

Section 154 of the *Fire and Rescue Service Act 1990*

Section 278 of the *Food Act 2006*

Section 180 of the *Health Act 1937*

Section 461 of the *Public Health Act 2005*

Sections 224 and 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Section 763 of the *Sustainable Planning Act 2009*

Policy objectives and the reasons for them

On 23 September 2013, the *Education and Care Services Bill 2013* received royal assent. The *Education and Care Services Act 2013* (the Act) establishes a new regulatory framework for services currently regulated under the *Child Care Act 2002* and repeals the *Child Care Act 2002*. In Queensland there are over 2600 education and care services with approximately 98% of these services regulated under a national regulatory framework implemented in Queensland by the *Education and Care Services National Law (Queensland) Act 2011* (National Law). The remaining 2% of services are regulated under the *Child Care Act 2002*. These services include limited hours care services in receipt of Queensland Government funding, occasional care services, budget based funded services that do not receive the Australian Government child care benefit, and early childhood education and care services that are also disability services under the *Disability Services Act 2006*. Generally speaking, these are small services operating in regional and remote communities.

The policy objective of the *Education and Care Services Regulation 2013* (the Regulation) is to prescribe a range of matters under the Act to establish a regulatory framework for Queensland education and care services. The Act establishes a framework of provider and service approvals and outlines decision making processes for key decisions. The objective of the Regulation is to prescribe the detailed requirements about operating a Queensland education and care service such as staffing levels, qualifications, record keeping requirements and fees payable. The Regulation includes red tape reduction measures for services without reducing the standards expected of services operating under the Act.

Consistency with the National Law

The Regulation, like the Act, takes the approach of ensuring consistency with the National Law where possible whilst retaining some elements of the *Child Care Act 2002* and *Child Care Regulation 2003*. Currently there are two different regulatory schemes in place in Queensland and the Act, and this Regulation, will ensure a greater degree of consistency between the schemes. This will benefit providers and the Department of Education, Training and Employment (DETE). Some providers operate two services from the one site with one service regulated under the National Law and the other service regulated under the *Child Care Act 2002*. For these services consistency with the National Law will reduce red tape because both services will be regulated under similar frameworks. For DETE, ensuring that all services are regulated under similar frameworks will reduce the complexity of its task as the regulator.

Waivers

The Act adopts the National Law approach of allowing services to apply for waivers for requirements prescribed under regulation. Waivers can be used in a variety of situations and provide flexibility for services and the regulator. A waiver can be used to address temporary non-compliance such as a situation where a service is repairing its premises and the amount of space available to children is reduced while the repair is carried out. A waiver can also be used to address more permanent issues such as exemption from the required administrative space.

Educational programs

Queensland education and care services are required to have an educational program for children in their care. This recognises that Queensland education and care services are required to provide children with learning opportunities. The type of program delivered will be tailored to the service's individual requirements.

Safety, health and wellbeing of children

The Regulation seeks to ensure the safety, health and wellbeing of children by prescribing a number of requirements for Queensland education and care services. The objective is to ensure that services have appropriate arrangements for hygiene, food safety, sleep and rest and providing medical attention to children. Services are also required to notify the chief executive of serious incidents and the Regulation prescribes the definition of serious incident. The requirements under this part are consistent with the requirements in the National Law.

Physical environment

The Regulation prescribes the physical requirements for services consistent with the requirements set out in the National Law. The requirements set out the amount of indoor and outdoor space per child that a service must have and other matters in relation to the physical environment. The amount of space required per child effectively determines the capacity of a service. The Regulation also prescribes the requirements for particular facilities such as laundry facilities, nappy changing facilities and administrative space. Prescribing these requirements is necessary to ensure that children have an appropriate environment whilst receiving education and care.

Staffing arrangements

The Regulation sets out requirements for staff in a range of areas including qualifications, staff ratios and the role of the supervisor in a service.

The Act sets out a streamlined staffing model for Queensland education and care services consisting of a supervisor and educators. The qualification required for a supervisor is an approved diploma level qualification as set out under the National Law. The Act discontinues the position of centre director in the *Child Care Act 2002* which required a three year qualification. The three year qualification is not a recognised qualification level under the National Law and is gradually being phased out by training providers.

The Regulation takes the approach of prescribing a two year qualification as the highest qualification level required. The two year qualification is a vocational education and training qualification which is appropriate for the types of services regulated under the Act. The use of a two year qualification will also assist Queensland education and care services to attract and retain staff given that most services are operating in regional and remote communities.

The Regulation continues the qualification and staffing arrangements for school age care services as set out in the *Child Care Act 2002*. This recognises the different needs of school age children and provides these services with more flexibility in staffing arrangements. School age care services provide education and care to school aged children and generally only operate for a few hours before or after school and possibly during school holidays.

Based on the age of the children and the hours of operation, it is appropriate that different requirements continue to apply to these services.

The Regulation also adopts requirements for training in first aid, and asthma and anaphylaxis management. The *Child Care Act 2002* already requires first aid training but asthma and anaphylaxis management are new requirements in this Regulation. The inclusion of these new requirements recognises the need for Queensland education and care services to be able to deal with asthma and anaphylaxis and that first aid training alone is not sufficient to manage these health issues which children may experience. These requirements are consistent with the National Law. To allow services time to adjust to the new requirements, the asthma and anaphylaxis management training requirements will not take effect until one year after the Regulation commences.

Stand-alone services

The Act provides for the liability insurance that a stand-alone service must hold to be prescribed in a regulation. The Regulation prescribes the insurance required to be held by stand-alone services as a public liability insurance policy of \$10 million. This is consistent with the requirements under the *Child Care Act 2002*.

Information, records and privacy

The Act provides for a range of matters in relation to information, records and privacy to be prescribed in a regulation. The Regulation prescribes the types of information which services must retain about children enrolled at the service and the duration for keeping records. The Regulation adopts the duration for record keeping set out in the National Law. The Regulation also prescribes the policies and procedures that each service must have in place. The Regulation requires that particular information be displayed at the entrance of the service for the information of parents.

Fees

The Regulation provides for the fees payable by services for applications, approvals and the annual fee for holding a service approval. These fees are consistent with the fees in the *Child Care Regulation 2003* and will not result in Queensland education and care services paying more fees than they currently pay. Because of changes in regulatory approach some new fees are introduced, such as an annual fee for a service approval, but the overall fee burden is not increased for services. The Act establishes a system of perpetual provider and service approvals replacing the three year licence system in the *Child Care Act 2002*. The Regulation therefore prescribes an annual service approval fee for holding a service approval.

Transitional arrangements

The Act provides for the transition of services currently regulated under the *Child Care Act 2002* and the Regulation complements this approach. The Regulation adopts new physical space requirements which are set out in the National Law. In relation to limited hours care services only, this represents an increase of 2m² of outdoor space per child. To ensure existing services are not disadvantaged, the new outdoor space requirements will not apply to existing services. Existing services will be required to continue to meet the space requirements that applied under the *Building Act 1975*. This approach recognises that these

services were designed to meet the prevailing building requirements at the time of application for building approval to operate a licensed child care service. An increase in requirements, such as the amount of outdoor space per child, would have a significant impact on these services so the Regulation will not apply this requirement to existing services.

In addition, the qualifications recognised under the Regulation will be different to those currently recognised under the *Child Care Act 2002* because the Regulation adopts definitions set out in the National Law. Persons currently working in a child care service can continue to rely on those qualifications even if they are no longer recognised under this Regulation.

Consequential amendments

The Regulation also includes amendments to other regulations as a result of adopting new terminology for Queensland education and care services and new processes.

Achievement of policy objectives

Waivers

The Regulation prescribes the requirements for which services may seek a service waiver or a temporary waiver. Waivers are available for most of the physical and staffing requirements. Waivers are not available for requirements relating to safety, health and wellbeing. The Act set outs the process for applying for a waiver.

Educational programs

The Regulation requires that services adopt one of two recognised frameworks used in the education and care sector, the 'Belonging, Being and Becoming: The Early Years Framework for Australia' and the 'My Time, Our Place: Framework for School Age Care in Australia.' The Regulation also allows services to adopt another framework that the chief executive considers equivalent to the above frameworks.

Safety, health and wellbeing of children

The Regulation prescribes the following requirements:

- health, hygiene and safe food practices which must be adopted by services;
- the food and beverages that must be offered to children;
- sleep and rest time for children appropriate to the children's needs;
- ensuring that the Queensland education and care service is an alcohol and drug free environment and that staff are not adversely affected by alcohol or drugs whilst providing care;
- obtaining medical authorisation to provide emergency medical attention to a child;
- notifying parents when their child becomes ill or is injured;
- notifying the chief executive of serious incidents;
- taking steps to prevent the spread of infectious diseases at the Queensland Education and Care Service (QEC Service); and
- ensuring an appropriate number of first aid kits are maintained at the QEC service.

These requirements are consistent with the requirements under the National Law. A failure to comply with these requirements is an offence and the Regulation prescribes penalties for each offence.

Physical environment

The Regulation prescribes the following requirements for the physical environment:

- premises, furniture and equipment to be safe, clean and in good repair;
- fencing that under school age children cannot go through, over or under (the requirement does not apply to services that care only for school age children);
- unencumbered indoor space of 3.25m² per child;
- additional requirements for indoor space such as ventilation and natural light;
- administrative space to allow private conversations with parents and to keep records;
- unencumbered outdoor space of 7m² per child;
- additional requirements for outdoor space such as natural environment features and shade;
- premises designed to facilitate supervision of children (this requirement relates to the ability of staff to see children and exercise adequate supervision at all times);
- laundry, toilet and hygiene facilities;
- nappy change facilities for services caring for children who wear nappies; and
- a telecommunication requirement.

This part of the Regulation has offences for some elements of indoor and outdoor space requirements, nappy change facilities and telecommunication facilities. A failure to comply with other requirements may result in a compliance notice being issued.

Staffing arrangements

The Regulation defines the qualifications required by reference to qualifications approved by the Australian Children's Education and Care Quality Authority (ACECQA) under the National Law. ACECQA publishes lists of approved qualifications for the diploma and certificate III levels on its website. The Regulation adopts those qualifications. The Regulation also recognises qualifications that ACECQA has determined are equivalent to those qualifications, for example a person with a qualification from an overseas educational institute may apply for it to be recognised by ACECQA.

The Regulation prescribes different requirements for qualified staff depending on whether the Queensland education and care service is a school age care service or not.

For services other than school age care services, the Regulation adopts the National Law approach to qualification requirements. At least 50% of the educators required to meet the relevant ratio must hold, or be actively working towards, an approved diploma qualification. The remaining educators must hold or be working towards an approved certificate III qualification.

For school age services the requirement is that at least one educator must hold an approved diploma level qualification. For each 30 children being cared for at least one staff member must hold an approved diploma level qualification or an approved certificate III qualification.

The minimum required educator to child ratio for school age care services is one educator for every 15 children.

This means that for the first 30 children being cared for, one person with a diploma qualification is sufficient, but a certificate III qualification would not be sufficient. For more than 30 children, another qualified person must be present and that person can hold either an approved diploma or approved certificate III qualification.

The Regulation also prescribes the circumstances in which persons who are not qualified are permitted to work in a service. These exemptions are taken from the *Child Care Regulation 2003*.

The Regulation prescribes the ratios of educators to children that apply. The Regulation sets out the ratios generally, during rest periods and for services that care for children in a group of not more than 21 children. For general ratios and rest periods the ratios are set out in a schedule to the Regulation. The ratios are similar to the *Child Care Regulation 2003* but some age ratios have been combined, for example the 3-12 years ratio of 1 educator to 12 children combines three different ratios from the *Child Care Regulation 2003*. This was necessary because some *Child Care Regulation 2003* ratios were based on group size limits and were no longer necessary in this Regulation. Under this Regulation services can count children and educators across the service to establish the staffing requirement without having to comply with prescriptive group size limits.

The Regulation retains the 1:7 ratio that applied to services caring for children of different ages in one group of not more than 21 children. Some services designed their service delivery around this particular model, such as some limited hours care services, and preserving this ratio will ensure these services can continue to operate.

Similar to the *Child Care Regulation 2003* the Regulation provides for rest pauses and temporary absence of staff.

Information, records and privacy

The Regulation prescribes the following requirements:

- the matters to be included in a child's enrolment record;
- the authorisations that must be kept in an enrolment record;
- the health information to be kept in an enrolment record;
- the policies and procedures a QEC service must have in place;
- the access of parents and staff to policies and procedures;
- the notification to parents of changes in policies and procedures including changes to fees charged by the service;
- the information which must be displayed at the entrance of the service; and
- the time for which records must be kept.

Fees

The Regulation prescribes the fees payable in Schedule 1. The Regulation allows for the chief executive to waive, defer, refund or reduce fees payable in exceptional circumstances.

Transitional arrangements

The Regulation provides for the exemption of existing Queensland education and care approved services from outdoor space requirements. This exemption will also apply to a person who takes over an existing service (that is transitioned to the new legislative scheme) as a new approved provider. The exemption does not apply to services that carry out assessable building work.

The Regulation provides for the recognition of qualifications held by staff employed in a child care service immediately before the commencement of this legislative scheme. If those qualifications were on the list issued by the chief executive under the *Child Care Regulation 2003* those persons will be able to continue to rely on the qualification as meeting the requirements in this Regulation.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main objectives of the *Education and Care Services Act 2013*, that is, to provide for the regulation of Queensland education and care services.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will benefit services currently regulated under the *Child Care Act 2002* by reducing red tape and establishing a regulatory framework that is broadly consistent with the National Law.

The implementation of the Regulation will not result in any additional costs to government as current resources used to regulate services under the *Child Care Act 2002* will be used to regulate services under this Regulation.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

The Regulation creates a number of offences without providing for a defence of reasonable excuse: section 15 (Food and beverages); section 16 (Sleep and rest); section 17 (Alcohol, illicit drugs and tobacco); section 18 (Staff members and volunteers not to be affected by alcohol or drugs); and section 58 (Access for parents). Although there is no defence of reasonable excuse, there are other defences available as a result of section 36 of the *Criminal Code* such as mistake of fact and extraordinary emergencies. In addition, the penalties for each offence are no more than 10 penalty units which mitigates any concerns about the

impact of not providing a defence of reasonable excuse. The approach taken in the Regulation is consistent with the approach taken in the National Law.

Consultation

In September 2013 DETE released an explanatory paper outlining the requirements of the Regulation and made a copy of the draft Regulation available to services currently regulated under the *Child Care Act 2002*.

Thirteen responses were received from stakeholders during the consultation period. Overall the feedback on the draft Regulation was positive and supportive. The feedback did not identify any issues or raise objections to the draft Regulation.

DETE consulted with the Queensland Civil and Administrative Tribunal Rules Committee on the changes to the *Queensland Civil and Administrative Tribunal Rules 2009*. The Rules Committee consented to the amendment.