

Education and Care Services (Removal of Rest Periods) Amendment Regulation 2025

Explanatory notes for SL 2025 No.159

made under the

Education and Care Services Act 2013

General Outline

Short title

Education and Care Services (Removal of Rest Periods) Amendment Regulation 2025

Authorising law

Sections 110, 112, 117 and 244 of the *Education and Care Services Act 2013*.

Policy objectives and the reasons for them

The objective of the *Education and Care Services (Removal of Rest Periods) Amendment Regulation 2025* (Amendment Regulation) is to amend the *Education and Care Services Regulation 2013* (ECS Regulation) to remove provisions that prescribe reduced educator-to-child ratios and educator qualification requirements during rest periods for Queensland education and care (QEC) approved services with rest period conditions.

In Queensland, the majority of early childhood education and care (ECEC) services are approved and regulated under the National Quality Framework (NQF). The NQF services include long day care services, kindergartens and family day care. A small number of Queensland education and care (QEC) services, such as limited hours care and occasional care services, are not captured under the NQF and are instead regulated under the *Education and Care Services Act 2013* (ECS Act) and *Education and Care Services Regulation 2013* (ECS Regulation).

The NQF and ECS Act establish a provider approval and service approval system for NQF and QEC approved services and set standards for persons who provide education and care for children attending these services.

Currently, NQF and QEC service approvals may include a rest period condition. This is a non-standard condition providing for one or more periods during the day, totalling not more than two hours, as rest periods for the service. During rest periods, significantly reduced staffing requirements apply from the minimum baseline ratio and qualification requirements prescribed for services at all other operating hours. The condition only applies to children aged over 24 months.

Under a rest period condition, the two-hour timeframe applies typically between 12:00pm to 2:00pm Monday to Friday. They allow for educator-to-child ratios to be reduced. For example, for a QEC service the ratio is reduced from 1:6 (during non-rest periods) to 1:12 for children aged two to three years.

Educator qualification requirements are also reduced during the rest period. For example, during non-rest periods, at least 50% of educators in QEC services included in calculating the educator-to-child ratios are required to hold, or be working towards, a Diploma level qualification and all others must hold, or be working towards, a Certificate III. Whereas, during rest periods all educators included in calculating the educator-to-child ratios must be at least 17 years and hold, or be actively working towards, a Certificate III.

As of 3 September 2025, 582 out of the 3,313 NQF and QEC services licensed to operate in Queensland had a rest period condition in their service approvals. The vast majority are NQF services, with only 3 out of a total 43 QEC services having a rest period condition as at 5 November 2025.

Queensland is the only Australian jurisdiction that allows rest period conditions. Sleep and rest periods were previously identified in Queensland as a quiet time of low activity and thereby an opportunity for staffing ratios and qualifications requirements to be relaxed. However, contemporary child-safety evidence and supervision standards now identify sleep and rest periods as times of heightened risk requiring greater vigilance, not reduced staffing.

In August 2022, the Australian Federal Police launched Operation Tenterfield after arresting a former childcare worker charged with 1623 child abuse offences against 91 children, alleged to have been committed in Brisbane, Sydney and overseas between 2007 and 2022.

In December 2023, the Australian Children's Education and Care Quality Authority released the Review of Child Safety Arrangements Under the NQF (Child Safety Review) which found that more can be done to strengthen and refine the NQF with respect to child safety. The Child Safety Review made 16 recommendations, where the final recommendation was to undertake a supplementary child safety review within two years informed by an AFP intelligence analysis of Operation Tenterfield.

The Child Safety Review and resulting program of child safety reforms being rolled out by Education Ministers nationally, as well as recent high-profile incidents and alleged incidents of sexual abuse by former childcare workers, have highlighted the critical importance of adequate supervision in keeping children safe in NQF and QEC services at all times.

Accordingly, the Queensland Government moved to remove rest period conditions from NQF and QEC services to strengthen child safety by ensuring consistent supervision and staffing requirements during all operating hours and bring Queensland into alignment with all other Australian jurisdictions. This was achieved through the *Education (General Provisions) Amendment Act 2025* (Amendment Act), which received assent on 24 October 2025.

Specifically, the Amendment Act amended the ECS Act to provide that, from 1 January 2026, rest period conditions included in existing QEC service approvals are taken to be removed and to prohibit any future rest period conditions being included in QEC service approvals.

The Amendment Act also amended the *Education and Care Services National Law (Queensland) Act 2011* to remove existing rest period conditions from Queensland NQF services from 1 January 2026.

While the Amendment Act provided for the removal of rest period conditions for QEC and NQF services in primary legislation, the reduced educator-to-child ratios and relaxed qualifications for rest periods are prescribed in subordinate legislation – that is, the ECS

Regulation for QEC services and the *Education and Care Services National Regulations* (National Regulations) for NQF services.

The reduced educator-to-child ratios and relaxed qualification requirements prescribed in both the ECS Regulation and National Regulations no longer have effect because the Amendment Act removed existing rest period conditions for QEC and NQF service approvals. However, it is preferable to remove redundant provisions in subordinate legislation to maintain alignment between primary and subordinate legislation and provide clarity for the early childhood sector about the removal of rest period conditions.

For this reason, the *Education and Care Services (Removal of Rest Periods) Amendment Regulation 2025* (Amendment Regulation) makes consequential amendments to the ECS Regulation to remove the prescribed staffing arrangements for QEC services during rest periods.

Amendments to the National Regulations cannot be made by Queensland and will require consideration and approval of all Education Ministers.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives through amendments to the ECS Regulation to:

- omit sections 41(3), 41(4), 46, 47, 48 and Schedule 2, which prescribe the reduced educator-to-child ratios and relaxed qualification requirements during rest periods; and
- omit references to rest periods and make minor consequential amendments in sections 51, 53 and Schedule 3.

The Amendment Regulation will commence on 1 January 2026, to align with the commencement of the amendments to the ECS Act to remove rest period conditions for QEC services.

This approach is reasonable and appropriate as it will ensure that from 1 January 2026 minimum baseline educator-to-child ratios and qualification requirements apply at all times a QEC service is operating, to strengthen supervision and safeguard children attending the service and provide for national consistency.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the *Education and Care Services Act 2013*, which are to ensure the safety, health and wellbeing of children attending QEC services.

Inconsistency with policy objectives of other legislation

As no other Australian jurisdiction provides for rest period conditions and requires consistent educator-to-child ratios and educator qualifications during all operating hours of early childhood education and care services, the Amendment Regulation provides for consistency with the national regulatory framework.

Benefits and costs of implementation

Removing rest periods will strengthen safeguards for children and ensure all children receive consistent supervision from appropriately qualified educators at all times during a QEC approved service's hours of operation.

While some services may incur additional staffing costs to meet the minimum baseline ratios and qualifications for all operating hours, these costs are considered proportionate to the benefits of enhanced child safety.

Based on the outcome of the consultation with all NQF and QEC services with a rest period condition in early 2025, in particular where the respondents indicated their services would be impacted from removal of rest period conditions and quantified the additional cost for their service, it is estimated the additional average cost to each service (currently not meeting baseline staffing requirements at all operating times) will be \$48,000 per year. This figure was reached based on asking service providers to provide an estimated annual cost of potential staffing changes for their services. Where a service provider had more than one service, they were asked to provide an average annual dollar cost.

From the consultation results, it is anticipated that approximately 368 NQF and QEC services may be impacted with an estimated additional staffing cost of approximately \$17.664 million per annum across the sector, approximately 662 additional qualified staff needed, and approximately 257 existing staff would have their hours extended.

Costs to Government arising from the amendments will be met within existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to, and are generally consistent with, the fundamental legislative principles (FLP) set out in section 4 of the *Legislative Standards Act 1992* (LS Act).

Potential departures and breaches of FLPs in relation to the Amendment Regulation were considered in detail in the development of the Amendment Act. This included potential engagement of the FLP that legislation is consistent with principles of natural justice (LS Act section 4(3)(b)). The Amendment Act may depart from the principle of natural justice, as they will automatically remove existing rest period conditions from service approvals without providing a right to appeal or object.

However, this potential limitation is considered justified given the imperative to strengthen child safety and supervision standards in QEC and NQF services. Approved providers of NQF and QEC services were consulted in early 2025 and given notice of the proposed changes, which will not commence until 1 January 2026, allowing time for adjustment.

Furthermore, rest period conditions are not a universally held right across the national or even local Queensland early childhood education and care sector. They are unique to Queensland services, with only 17.5% of all Queensland NQF and QEC services currently having a rest period condition.

As the Amendment Regulation does not further impact QEC approved services, the analysis of FLPs undertaken in the development of the Amendment Act to remove rest period conditions has not changed and the Amendment Regulation does not give rise to any further potential departures or breaches of FLPs.

Consultation

Targeted consultation was undertaken from 31 March 2025 to 22 April 2025 with all QEC and NQF approved providers that currently have rest period conditions (both under the NQF or the ECS Act). A discussion paper was provided along with invitations to online information sessions and a feedback survey.

Of the 45 responses received, 38% supported maintaining rest period conditions, while 62% supported either legislative or voluntary removal of rest period conditions. Regardless of their preferred option, respondents expressed strong support for improving child safety and achieving national consistency.

Based on feedback provided through the consultation, services indicated there would be cost impacts arising from staffing changes needed to maintain minimum baseline staffing and indicated a need for transition time to adjust staffing arrangements.

These views were taken into account in finalising the reforms, including the proposed commencement date of 1 January 2026, to allow sufficient time for services to prepare for implementation.

The amendments reflect a balanced response to child safety priorities and sector readiness.

The proposal relating to the removal of rest period conditions for NQF and QEC services was exempted from further impact analysis due to the inherent risk to children of not implementing legislative changes as quickly as practicable to remove rest period conditions.