

# Waiver – policy and guidelines

Quality Education and Care NT as the Regulatory Authority for education and care services in the Northern Territory

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Read this with the Regulation framework.

## 1. Policy

Approved providers of education and care services may encounter unexpected circumstances that prevent them from complying with prescribed Education and Care Services National Regulations (National Regulations). A waiver enables services that are non-compliant to be regarded to be compliant with specified regulations during the period the waiver is in force.

An approved provider may apply in writing to Quality Education and Care Northern Territory (QECNT), as the Northern Territory (NT) Regulatory Authority, for a service or temporary waiver. Applying for a waiver must be a last resort, as providers should explore other avenues before making an application. Not all requirements of the National Regulations can be waived.

The Regulatory Authority adheres to the *Education and Care Services National Law Act 2010* (National Law), National Regulations and National Quality Standard (NQS) when considering waiver applications from approved providers of education and care services.

## 2. Purpose

This document has been developed to:

- clarify the circumstances under which an approved provider can apply for a waiver
- specify the requirements for a valid and complete application for a waiver
- ensure a clear and consistent approach for the assessment and approval of waiver applications submitted by approved providers
- detail the circumstances QECNT exercises its discretion in reviewing and approving waivers.

## 3. Scope

This policy and guidelines apply to approved providers regulated under the National Quality Framework in the NT. It supports the Regulatory Authority in the review and approval of waivers applied for by approved providers in accordance with sections 87 and 94 of the National Law.

## 4. Guiding principles

In considering an application for a waiver, the Regulatory Authority will be guided by the following principles.

- The Regulatory Authority will not review an application unless it is complete, includes all the required information and has been submitted via the National Quality Agenda IT System (NQA ITS).
- The Regulatory Authority will not grant a waiver if in doing so it compromises the safety, health or wellbeing of children attending the service.
- The Regulatory Authority will not grant a waiver if alternative arrangements to meet the regulatory requirements result in unsatisfactory practices and service provision.
- The Regulatory Authority may revoke a waiver if the approved provider does not comply with the waiver or the conditions on the waiver.

- Approved providers will be notified of the outcome of their application within 60 calendar days of receiving a complete application.

## 5. Types of waivers

There are two types of waivers approved providers can apply for.

- Service waivers
- Temporary waivers

### 5.1. Service waivers

Service waivers may be considered if there are genuine extenuating circumstances to show that a provider is unable to meet requirements with one or more of the prescribed National Regulations for an ongoing period.

There is no specific expiry date for a service waiver and it will remain in force until revoked.

Section 87 of the National Law allows an approved provider to apply for a service waiver for one or more of the prescribed regulations in regulation 41 of the National Regulations as follows:

- a) regulations 104, 107, 108 and 110
- b) in the case of a centre-based service, any provision in Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134
- c) in the case of a family day care service, regulations 72A, 117, 124, 127 and 128
- d) any provision in Chapter 7 that applies in place of a provision referred to in paragraphs (a) to (c).

In accordance with section 88 of the National Law, an approved provider can simultaneously apply for a service waiver and a service approval.

### 5.2. Temporary waivers

Temporary waivers may be granted for a period of up to 12 months. They provide exemptions from a requirement to comply with one or more of the prescribed National Regulations.

Section 94 of the National Law allows an approved provider to apply for a service waiver for one or more of the prescribed regulations in regulation 44 of the National Regulations as follows:

- a) regulations 104, 107, 108 and 110
- b) in the case of a centre-based service, any provision in Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134 and 136
- c) in the case of a family day care service, regulations 72A, 117, 124, 127, 128 and 136
- d) any provision in Chapter 7 that applies in place of a provision referred to in paragraphs (a) to (c).

## 6. Applying for a waiver

An approved provider must submit a valid and complete SA08 form: Application for service or temporary waiver application through the [NQA ITS](#) and pay the prescribed application fee.

The application must include:

- the regulations to be waived
- the reasons the service is unable to comply with the requirements of the specified regulations
- details and evidence of attempts to comply
- if the waiver is temporary, the time period of the waiver required and the reasons for requesting that time period
- details of steps to be taken in order to comply after the temporary waiver time period ceases
- measures being taken to protect the health, safety and wellbeing of children while the temporary waiver is in force.

Applications can only be assessed by the Regulatory Authority if this information is included. Before submitting, check that:

- all the required sections of the application are completed with sufficient detail
- all supporting documentation or evidence is attached
- prescribed fees are paid.

Additional information for service waivers.

- Approved providers are encouraged to consider applying for temporary waivers as opposed to service waivers, which are granted in limited circumstances. Please contact the Regulatory Authority if you are unsure whether you should apply for a service or temporary waiver.

The following list of waivers is not exhaustive, however provides further details on what information can be provided to support the approved providers application for a waiver.

## 6.1. Early Childhood Teacher waivers

Waivers from Early Childhood Teacher (ECT) requirements will be considered if a service has demonstrated that it has attempted to meet the ECT level qualified educator or suitably qualified person requirements but is unable to do so.

The ECT requirements waiver, if granted, would permit an educator who does not hold an approved ECT level qualification to be counted as equivalent for the purposes of meeting requirements under regulations 130 to 134 of the National Regulations.

The waiver application should include:

- details of any exceptional or extenuating circumstances as to why the waiver should be granted
- evidence of ongoing efforts to recruit an ECT. For example, regular job advertisements dated within the previous 3 months, information on unsuitable applicants or no response, a record of unsuccessful recruitment attempts
- for each day the service operates, the number of all children in attendance at the service
- details on all staff and qualifications or staff progression records towards qualifications, including enrolment details and transcripts if relevant

- details of the nominated educators for the duration of the waiver period, including copies of any relevant qualifications held by the educator, and evidence of any qualifications the educator is working towards including the date the educator is expected to complete their studies.
- details of the mentoring arrangements, training, supervision and support available to the nominated educator
- planning provisions to ensure the health, safety and wellbeing of children, continuity of care and the program is not impacted
- evidence of ways the service will meet the outcomes of the approved learning framework.

## 6.2. Staffing waivers

Waivers from staffing arrangements will be considered if a service has demonstrated that it has attempted to meet the qualification requirements but is unable to do so.

*A general qualifications waiver, if granted, would permit a staff member who does not hold and is not working toward an approved level qualification, to be counted as equivalent for the purposes of meeting regulations 126, 127 and 128 of the National Regulations.*

The waiver application should include information similar in nature to the ECT waiver above.

## 6.3. Educator to child ratio waiver

Waivers from educator to child ratio requirements will be considered if a service has demonstrated that it has attempted to meet the ratio but is unable to do so.

A ratios waiver, if granted, would permit the educator to child ratio requirements to be counted as equivalent for the purposes of meeting regulations 123, 124 and 290 of the National Regulations.

Educator to child ratio requirements are determined by the age and number of children being educated and cared for by the service at any one time.

The waiver application should include:

- details of any exceptional or extenuating circumstances as to why the waiver should be granted
- evidence of efforts to recruit a relevant level qualified staff. For example, regular job advertisements dated within the previous 3 months, information on unsuitable applicants or no response, a record of unsuccessful recruitment attempts
- details of current staff qualifications or staff progression records towards qualifications, including enrolment details and transcripts if required
- planning provisions in place to ensure the safety, health and wellbeing of children, continuity of care, and the program is not impacted
- for each day the service operates, the number of children in attendance and the number of educators who work directly with the children, and their qualifications
- information about any vulnerable children highlighting their needs and attendance information
- a risk assessment for the proposed educator to child ratio
- a transition plan detailing the actions being undertaken to assist the service to meet the educator to child ratio prescribed in regulation.

## 6.4. Physical environment waivers – including indoor and outdoor spaces

Physical environment requirement waivers, if granted, would permit the physical environment requirements to be counted as meeting requirements under regulations 104, 107, 108, and 110 to 115 of the National Regulations.

An indoor or outdoor space temporary waiver, for example, would be utilised if the service is unable to meet the indoor or outdoor space requirements for the number of children attending:

- during renovation of the service
- emergency works to the service due to damage, that may affect the current approved space
- must temporarily relocate and is unable to find premises large enough to accommodate the number of approved places
- for any other reason.

If an approved provider is unable to meet physical environment requirements, it may apply for a temporary waiver to assist with compliance. The waiver application should include:

- an outline of how the service will ensure children's safe access to reduced indoor or outdoor space
- details of access to indoor and outdoor spaces or facilities, for example toilets
- building and floor plans by a certified building practitioner
- photos of relevant spaces, for example simulated outdoor space
- details of renovations, outlining how the service will manage the movement of trades people through the service
- calculations of the unencumbered outdoor space that will be available to children during each stage of the works
- evidence that temporary fencing, if required, meets the requirements of regulation 104
- impact on programming, educational outcomes and experience of children.

## 7. Considering a waiver application

### 7.1. Assessment

The Regulatory Authority considers all service or temporary waivers on a case-by-case basis.

The Regulatory Authority may request additional information or may inspect the service premises or office whilst reviewing the waiver application.

In assessing applications, the following criteria are considered:

- the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the proposed waiver would be in place
- whether the service can meet the objectives of the regulations by alternative means

- the benefits to families, children and communities in having the service operate
- the service's quality improvement plan
- the number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirements
- the cost of any adjustments needed for the service to comply with the regulations for which a waiver is being sought
- the compliance history of the approved provider or the service
- unusual or unforeseen circumstances, such as natural disasters
- whether the issue is ongoing and requires a service waiver rather than a temporary waiver, or circumstances have changed and a temporary waiver is required instead of a service waiver.

## 7.2. Timeframe for assessing an application

The Regulatory Authority must notify the approved provider of the decision within 60 calendar days of receiving a complete application.

If more information is requested, the time taken to provide additional information is not included in the 60-day period.

Approved providers need to consider this timeframe when submitting waiver applications to ensure services always remain compliant with the National Regulations.

## 7.3. Determining an application

The Regulatory Authority can determine to grant or refuse an application for a waiver. The Regulatory Authority will not grant a waiver unless it is satisfied that the matters in section 90 of the National Law, relevant to service waivers, or section 97 relevant to temporary waivers, in addition to compliance with the objectives and guiding principles of the NQS, have been met.

# 8. Granting a waiver

If the Regulatory Authority grants a waiver, the service approval must be reissued, and a copy of the service approval given to the provider.

The reissued service approval will specify:

- the elements or National Regulations to which the service waiver applies
- any conditions placed on the waiver
- in the case of a temporary waiver, the period of the waiver.

While a service waiver is in force, the approved service is taken to comply with the National Regulations that are specified in the service waiver.

While a temporary waiver is in force, the approved service is not required to comply with the National Regulations that have been temporarily waived.

## 8.1. Determining the period of a temporary waiver



The Regulatory Authority will set the duration of a temporary waiver, with a maximum duration of 12 months. In determining this period the Regulatory Authority may consider:

- the length of time for which the waiver was applied for and will be required, for example the length remaining for relevant study, or the time taken to complete renovation work
- previous service history
- any risk posed to the safety, health and wellbeing of children attending the education and care service
- any risk posed to the educational and developmental outcomes for children attending the education and care service.

## 8.2. Waiver conditions

At the time of granting the waiver, conditions may be placed on the service approval whilst the waiver is in force. These are applied at the discretion of the Regulatory Authority and may be varied or removed at any time.

A condition is a legal constraint imposed on a waiver intended to ensure compliance with the National Law and National Regulations. The Regulatory Authority may grant a waiver with conditions for a variety of reasons, including where it believes limiting the scope of the waiver is appropriate to protect the wellbeing of the children educated and cared for by the service. A condition on a waiver will remain in place until the Regulatory Authority removes the condition.

When a condition is enforced, the Regulatory Authority will reissue the service approval certificate specifying the element or elements that have been waived and the conditions placed on it while the waiver is in force.

## 9. Refusing a waiver

The Regulatory Authority may refuse to grant a waiver where the application cannot satisfy the requirements by an alternate means or where it can, but to do so would not be in the best interests of the children in care.

The Regulatory Authority will notify the applicant in writing of the decision and the reasons for the decision. It's important to note that a decision to refuse a waiver is not an internal reviewable decision.

## 10. Displaying waivers

Once a waiver application is approved, the Regulatory Authority will send the approved provider a new service approval certificate which outlines the waiver and any applicable conditions relating to the waiver.

The new service approval certificate must be displayed at the entry of the service. A new certificate is not required at the end of the waiver period.

## 11. Extending a temporary waiver

The Regulatory Authority cannot extend a temporary waiver without an application from the approved provider. An approved provider must submit a valid and complete SA13 form: Application for extension of temporary waiver application through the NQA ITS and pay the prescribed application fee.

The application must relate to the same regulations and circumstances for which the initial waiver was granted. Once approved, extensions can be granted for up to 12 months.

The application must outline why an extension is needed and include evidence of progress towards meeting the nominated requirements.

If an approved provider seeks a waiver of different requirements, a new application must be submitted.

Approved providers may apply for further extensions to a temporary waiver; however, this will be assessed on a case-by-case basis. When considering an extension application of a temporary waiver, the Regulatory Authority will consider the same matters as the initial application, paying particular attention to the approved provider's attempts to comply with the regulations.

The Regulatory Authority must notify the approved provider of the decision within 60 calendar days of receiving a complete application.

Approved providers need to consider this timeframe when submitting waiver applications to ensure services remain compliant with the National Regulations at all times.

## 12. Revoking a waiver

Once a waiver has been granted it remains in force until revoked. The Regulatory Authority can revoke a service or temporary waiver at its discretion.

Approved providers can also apply to revoke a service waiver that applies to an education and care service they operate. There is no provision for an approved provider to apply for the revocation of a temporary waiver. The Regulatory Authority, in this instance, can consider a written request from the approved provider to revoke a temporary waiver if it is no longer required.

The Regulatory Authority will consider revoking a waiver where:

- the operation of the waiver is ineffective in ensuring compliance with the objectives of the National Law
- the grounds on which the service waiver was granted no longer apply
- the provider is not complying with the waiver including the conditions applied
- the operation of the service due to the waiver has created a risk to the safety, health and wellbeing of children at the service.

### 12.1. Revoking a service waiver

A service waiver is ongoing and remains in force until it is revoked by the Regulatory Authority or if the approved provider requests for it to be revoked.

If a service waiver is revoked by the Regulatory Authority, the waiver ceases to apply:

- 60 calendar days after the Regulatory Authority notifies the approved provider of the decision; or

- at the end of a period determined by the Regulatory Authority and agreed to by the approved provider.

If the approved provider applies to the Regulatory Authority to have a service waiver revoked, the waiver ceases to apply:

- 14 calendar days after the Regulatory Authority notifies the approved provider of the revocation of the service waiver; or
- at the end of a period determined by the Regulatory Authority and agreed to by the approved provider.

## 12.2. Revoking a temporary waiver

A temporary waiver can be in force for a period of up to 12 months and can be revoked at the Regulatory Authority's discretion.

If during the time the temporary waiver is in force, the Regulatory Authority is made aware that the grounds on which the waiver was granted no longer apply, it can revoke the waiver at its discretion with no notice.

## 13. Review

In accordance with section 190(f) of the National Law, an approved provider can seek an internal review if the Regulatory Authority revokes a service waiver. An internal review gives an approved provider the opportunity to have a decision reconsidered by the Regulatory Authority.

A decision to refuse to grant a waiver or to revoke a temporary waiver is not an internally reviewable decision.

If applications are not subject to an internal review, the Regulatory Authority will contact the approved provider and inform it that their application is invalid and can be refused. The Regulatory Authority will provide information of other avenues the approved provider can access to have its matter reviewed, if applicable.

Sections 192 and 193 of the National Law sets out circumstances in which a person subject to decisions made by the Regulatory Authority may apply for an external review. The person:

- may apply to the Local Court of the NT
- must apply in writing within 30 calendar days after being notified of the decision made by the Regulatory Authority.

Additionally, decision-making processes and conduct of the Regulatory Authority in the NT is subject to scrutiny by the Ombudsman NT. However, the Ombudsman NT may not accept a complaint before the Regulatory Authority has had the opportunity to address the complaint in the first instance.

## 14. Definitions

Term	Definition
Australian Children's Education and Care Quality Authority (ACECQA)	ACECQA is a national body and works with all governments to provide guidance, resources, and service to support the sector to improve outcomes for children.
Approved provider	A person who holds a provider approval under the National Law. A provider approval authorises a person to apply for one or more service approvals and is valid in all jurisdictions. This can be an individual, a body corporate, an eligible association, a partnership, or an entity such as a local council. The approved provider can have service approvals for multiple services in one, or multiple jurisdictions.
Complaint	An implied or expressed statement of dissatisfaction where a response is sought, reasonable to expect or legally required. This includes a grievance, expression of dissatisfaction, or written allegation.
Education and care service	Refers to any service providing or intended to provide education and care on a regular basis to children under 13 years of age. See section 5 of the National Law for services that are excluded from this definition.
Educator	An individual who provides education and care for children as part of an education and care service.
Family day care service	An education and care service that is delivered by 2 or more educators to provide education and care to children and operates from 2 or more residences.  Family day care educator is engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue.
National Law	Refers to the <i>Education and Care Services National Law Act 2010</i> , enacted by <i>Education and Care Services (National Uniform Legislation) Act 2011</i> in the NT, which sets a national standard for children's education and care across Australia.
National Quality Standard (NQS)	The NQS is prescribed by the National Regulations and sets a national benchmark for early childhood education and care and outside school hours care services in Australia.  Services are assessed and rated by their Regulatory Authority against the NQS, and given a rating for each of the 7 quality areas and an overall rating based on these results.
National Regulations	Refers to the Education and Care Service National Regulations (NSW). They outline the legal obligations of approved providers, nominated supervisors, and educators and explain the powers and functions of the state and territory regulatory authorities and ACECQA.

Term	Definition
Regulatory Authority	Refers to a person declared by a law of a participating jurisdiction to be the regulatory authority for that jurisdiction or for a class of education and care services for that jurisdiction. In the Northern Territory, the Chief Executive (CE) of the Department of Education and Training is the Regulatory Authority for education and care services.
Service approval	<p>An approved provider may apply to the Regulatory Authority for a service approval, which authorises the approved provider to operate a specific education and care service at a specified location.</p> <p>The Regulatory Authority cannot grant a service approval if the applicant does not have a provider approval, or if the Regulatory Authority is satisfied the operation of the service would constitute an unacceptable risk to the safety, health or wellbeing of children.</p>

## 15. Related legislation and resources

### 15.1. Legislation

- *Education and Care Services (National Uniform Legislation) Act 2011* is the legislation that adopts the National Law. The Schedule to the *Education and Care Services National Law Act 2010 (Vic)* sets out the National Law - <https://legislation.nt.gov.au/Legislation/EDUCATION-AND-CARE-SERVICES-NATIONAL-UNIFORM-LEGISLATION-ACT-2011>
- *Education and Care Services National Law Act 2010* - <https://www.legislation.vic.gov.au/inforce/acts/education-and-care-services-national-law-act-2010/020>
- Education and Care Services National Regulations - <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653>

### 15.2. Resources

- National Quality Standard - <https://www.acecqa.gov.au/nqf/national-quality-standard>
- Guide to the National Quality Framework - <https://www.acecqa.gov.au/nqf/about/guide>
- Waiver policy - Early Childhood Education Quality Assurance and Regulatory Services Directorate (NSW) - <https://education.nsw.gov.au/content/dam/main-education/early-childhood-education/operating-an-early-childhood-education-service/media/documents/policies/waiver-policy.pdf>
- Waivers in early childhood services - <https://www.vic.gov.au/waivers-early-childhood-services>
- Waivers under the NQF - <https://earlychildhood.qld.gov.au/regulation/approvals/approvals-for-national-quality-framework-services/waivers-under-the-nqf>
- Application for Service Waivers - <https://www.acecqa.gov.au/national-quality-framework/guide-nqf/section-2-applications-and-approvals/3-waivers-and-other-applications>

Acronyms	Full form
ACECQA	Australian Children's Education and Care Quality Authority
ECT	Early Childhood Teacher
NQA ITS	National Quality Agenda IT System
NQS	National Quality Standards
NT	Northern Territory
QECNT	Quality Education and Care, Northern Territory

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