

Waivers

Information for providers

This information outlines general waiver requirements, including the application process and information required for all applications. Read this information with the Waivers policy and guidelines.

What is a waiver

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.

Before applying for a waiver

Waivers are generally considered where approved providers can demonstrate extenuating circumstances and genuine difficulty in meeting the requirements of the National Quality Standards (NQS) and National Regulations.

Prior to making an application for a waiver, approved providers should explore all possible ways to meet the requirements of the NQS and National Regulations. A waiver will only be considered where the approved provider is operating in compliance with all other requirements of the National Quality Framework.

Types of waivers available

The *Education and Care Services National Law Act 2010* provides for 2 types of waivers:

- a) **Service waiver:** ongoing and may be revoked at the Regulatory Authority's discretion, or on receipt of an application from the approved provider. 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.
- b) **Temporary waiver:** may be granted for a period of up to 12 months. An extension can be applied for at the end of this period. A temporary waiver may be revoked at the Regulatory Authority's discretion. 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.

How to apply for a waiver

An approved provider must submit a valid and complete SA08 form: Application for service or temporary waiver application through the National Quality Agenda IT System (NQA ITS) and pay the prescribed application fee.

Before an application will be considered, all sections of the application form must be satisfactorily completed, all supporting evidence must be attached and the prescribed fee must be paid.

How waiver applications are processed

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.

Applicants will be notified in writing of the Regulatory Authority's decision within 60 days of receiving a completed waiver application. Approved providers need to consider this timeframe when submitting waiver applications to ensure services remain compliant with the National Regulations at all times.

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.

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

What the Regulatory Authority considers when assessing an application

In assessing applications, the Regulatory Authority will consider several criteria including:

- 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 number and age range of children enrolled at the service
- attempts made by the approved provider to comply with the requirements
- the compliance history of the approved provider or the service.

Applying for an extension of 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.

Requirement to display waiver

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.