

Department of Education

Legislative Delegations

Delegation of Director-General's Powers as the Regulatory Authority under the

Education and Care Services National Regulations

(Version 14 – October 2023)

NOTE: In accordance with the Managing delegations, authorisations and administrative approvals procedure, legislative delegations are centrally managed by Policy and Statutory Engagement. Policy and Statutory Engagement must be contacted for all proposed amendments to these delegations.

INSTRUMENT OF DELEGATION

Education and Care Services National Regulations

I, Michael De'Ath, Director-General of the Department of Education and Regulatory Authority, under section 262 of the *Education and Care Services National Law (Queensland)*, DELEGATE those powers and functions conferred or imposed on the Regulatory Authority under the provisions of the *Education and Care Services National Regulations* which are specified in **Column 1** of Schedule 1, subject to the limitations (if any) specified in **Column 3** of Schedule 1, to the persons who are from time to time the holders of each position specified in **Column 4** of Schedule 1.

This Instrument of Delegation is comprised of this page, and Schedule 1 comprising 13 pages. No other material forms part of the Instrument.

This Instrument of Delegation revokes and replaces any Instrument of Delegation previously issued with respect to the powers and functions of the Director-General under the *Education and Care Services National Regulations*.

This Instrument of Delegation is in addition to and does not repeal or replace any Instrument of Delegation issued with respect to powers and functions of the Director-General under the *Education and Care Services National Law (Queensland) Act 2011*.



MICHAEL DE'ATH
REGULATORY AUTHORITY AND DIRECTOR-GENERAL
DEPARTMENT OF EDUCATION

DATED AT BRISBANE THIS 7 day of OCTOBER, 2023.

SCHEDULE 1 – Table of Delegated Powers of Director-General
Education and Care Services National Regulations

Schedule 1– Table of Director-General’s Delegated Powers – <i>Education and Care Services National Regulations</i>			
Column 1	Column 2	Column 3	Column 4
Reference	Nature of Power	Observations / Limitations	Delegate
Chapter 2 – Approvals and certificates			
Part 2.2 – Service approvals			
Division 1 – Applications for service approvals			
s.25(2)	<p>Additional information about proposed education and care service premises</p> <p>(1) Subject to subregulation (2) and regulation 25A, in addition to the information referred to in regulation 24, an application for a service approval for a centre-based service must include the following information about the proposed education and care service premises—</p> <p style="padding-left: 20px;">(a) the location and street address of the proposed education and care service premises;</p> <p style="padding-left: 20px;">(b) plans prepared by a building practitioner of the proposed education and care service premises showing the following—</p> <p style="padding-left: 40px;">(i) the location of all buildings, structures, outdoor play areas and shaded areas;</p> <p style="padding-left: 40px;">(ii) the location of all entries and exits;</p> <p style="padding-left: 40px;">(iii) the location of all fences and gates, specifying the type of fence or gate used or to be used;</p> <p style="padding-left: 40px;">(iv) the location of toilet and washing facilities, nappy changing areas and any food preparation areas;</p> <p style="padding-left: 40px;">(v) the boundaries of the premises;</p> <p style="padding-left: 40px;">(vi) the landscape of, or landscaping plans for, outdoor spaces that will be used by the education and care service, specifying the natural environments that are or will be provided;</p> <p style="padding-left: 40px;">(vii) a floor plan indicating unencumbered indoor and outdoor spaces suitable for children;</p> <p style="padding-left: 40px;">(viii) the location of any associated children’s service;</p>	Refer to s.44(1)(c) of the National Law	<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation • Principal Regulatory Officer

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	<p>(ix) calculations, carried out by a building practitioner, of the areas referred to in regulations 107 and 108 relating to unencumbered indoor and outdoor space;</p> <p>(x) the elevation plans of the premises;</p> <p>(ba) if the proposed education and care service premises will be located within a multi-storey building shared with other occupants—</p> <p>(i) the total number of storeys in the building; and</p> <p>(ii) the storey or storeys on which the premises will be located; and</p> <p>(iii) if the premises will be located on more than one storey, the ages of the children who will attend on each storey;</p> <p>(c) if a swimming pool or other water hazard is situated on the proposed education and care service premises, a copy of the service’s proposed water safety policy;</p> <p><i>Note—</i> Restrictions on swimming pools apply in New South Wales and Tasmania.</p> <p>(d) one of the following—</p> <p>(i) a soil assessment for the site of the proposed education and care service premises;</p> <p>(ii) if a soil assessment for the site of the proposed education and care service premises has previously been undertaken, a statement to that effect, specifying when the soil assessment was undertaken;</p> <p>(iii) a statement made by the applicant that states that, to the best of the applicant’s knowledge the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children;</p> <p>(e) a copy of the planning permit for the proposed education and care service premises if a planning permit is required under the planning and development law of the participating jurisdiction;</p>		

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	<p>(f) a statement that the applicant has the right to occupy and use the premises and any document evidencing this;</p> <p><i>Example–</i> A lease of the premises.</p> <p>(g) unless the education and care service premises is a government or registered school, either—</p> <p>(i) a copy of any occupancy permit, certificate of final inspection, building certificate, certificate of classification or building surveyor’s statement issued or given in respect of the final construction and fit out of the education and care service premises; or</p> <p>(ii) a statement made by a building practitioner that states that the education and care service premises complies with building requirements under a building law or planning and development law of the participating jurisdiction.</p> <p>(2) If the approved provider is seeking to locate the education and care service on a school site, the Regulatory Authority may determine that the requirements of subregulation (1)(b), (d), (e) or (g) do not apply to the application for the service approval.</p>		
<p>s.25A(2) and (3)</p>	<p>Application for service approval for a centre-based service—relocation of existing centre-based service</p> <p>(1) This regulation applies if—</p> <p>(a) an application for a service approval relates to a centre-based service that is an approved education and care service; and</p> <p>(b) the purpose of the application is to change the location of that service.</p> <p><i>Note–</i> A service approval cannot be amended to change the location of a centre-based service—see section 54(8) of the Law.</p> <p>(2) If the centre-based service is to be relocated for less than 12 months, the Regulatory Authority may determine that the requirements of regulation 25(1)(b) or (g) do not apply to the application for the service approval.</p> <p>(3) If the centre-based service is to be relocated due to exceptional</p>	<p>Refer to s.44(1)(c) of the National Law</p>	<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation • Principal Regulatory Officer

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	<p>circumstances (whether for more or less than 12 months), the Regulatory Authority may determine that any of the following information is not required to be provided in the application for the service approval—</p> <p>(a) the information set out in regulation 24(g);</p> <p>(b) the contact details of the nominated supervisor, set out in regulation 24(k);</p> <p>(c) any of the information set out in regulation 25(1)(b), (ba), (c), (d), (e), (f) or (g).</p> <p>(4) If the Regulatory Authority makes a determination under subregulation (3), the approved provider must provide the relevant information to the Regulatory Authority as soon as possible.</p> <p>(5) A failure by the approved provider to provide the relevant information to the Regulatory Authority under subregulation (4) does not prevent the Regulatory Authority granting the service approval.</p> <p><i>Note—</i> The <i>Education and Care Services National Regulations 2012</i> of Western Australia do not include regulation 25A.</p>		
s.32A	<p>Condition on service approval— maximum number of family day care educators</p> <p>A service approval for a family day care service is granted subject to the condition that the approved provider of the service must ensure that the number of family day care educators providing education and care as part of the service does not exceed the maximum number of family day care educators determined by the Regulatory Authority in the service approval.</p> <p><i>Note—</i> See section 51(5) of the Law.</p>	Refer to s.51(5) of the National Law	<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation
Division 5 – Service waiver			
s.43(1)(b) and (2)(b)	<p>Prescribed period – revocation of service waiver</p> <p>(1) For the purposes of section 92(3) of the Law, the prescribed period in relation to a revocation of a service waiver under section 92(1) of the Law is—</p>		<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation

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	<p>(a) 14 days after the Regulatory Authority notifies the approved provider of the decision to revoke; or</p> <p>(b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.</p> <p>(2) For the purposes of section 92(3) of the Law, the prescribed period in relation to a revocation of a service waiver under section 92(2) of the Law, is—</p> <p>(a) 14 days after the Regulatory Authority notifies the approved provider of the approval of the application; or</p> <p>(b) if another period is determined by the Regulatory Authority with the agreement of the approved provider, that other period.</p>		
Chapter 3 – Assessments and ratings			
Part 3.1 – Quality improvement plans			
s.56(1)(b)	<p>Review and revision of quality improvement plans</p> <p>(1) The approved provider of an education and care service must review and revise the quality improvement plan for the service having regard to the National Quality Standard—</p> <p>(a) at least annually; and</p> <p>(b) at any time when directed by the Regulatory Authority.</p> <p>(2) The approved provider must submit the current quality improvement plan to the Regulatory Authority on request.</p> <p><i>Note—</i></p> <p>See regulation 31 for the conditions on the service approval requiring the current quality improvement plan to be kept available.</p>		<ul style="list-style-type: none"> • Manager, Regulation • Principal Regulatory Officer • Senior Regulatory Officer • Regulatory Officer
Chapter 4—Operational requirements			
Part 4.3 – Physical environment			
Division 1 – Centre-based services and family day care services			
s.107(4)	<p>Space requirements – indoor space</p> <p>(1) This regulation does not apply in respect of a family day care residence.</p> <p>(2) The approved provider of an education and care service must ensure</p>		<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation • Principal Regulatory Officer

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	<p>that, for each child being educated and cared for by the service, the education and care service premises has at least 3.25 square metres of unencumbered indoor space. Penalty: \$2200.</p> <p>(3) In calculating the area of unencumbered indoor space—</p> <p>(a) the following areas are to be excluded—</p> <p>(i) any passageway or thoroughfare (including door swings);</p> <p>(ii) any toilet and hygiene facilities;</p> <p>(iii) any nappy changing area or area for preparing bottles;</p> <p>(iv) any area permanently set aside for the use or storage of cots;</p> <p>(v) any area permanently set aside for storage;</p> <p>(vi) any area or room for staff or administration;</p> <p>(vii) any other space that is not suitable for children;</p> <p>(b) the area of a kitchen is to be excluded, unless the kitchen is primarily to be used by children as part of an educational program provided by the service.</p> <p>(4) The area of a verandah may be included in calculating the area of indoor space only with the written approval of the Regulatory Authority.</p> <p>(5) A verandah that is included in calculating the area of outdoor space cannot be included in calculating the area of indoor space.</p> <p>(6) In this regulation a reference to a child does not include—</p> <p>(a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or</p> <p>(b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6).</p> <p><i>Note—</i> A compliance direction may be issued for failure to comply with sub-regulation (2).</p>		

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s.108(5)(a)	<p>Space requirements—outdoor space</p> <p>(1) This regulation does not apply in respect of a family day care residence.</p> <p>(2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 7 square metres of unencumbered outdoor space. Penalty: \$2200.</p> <p>(3) In calculating the area of unencumbered outdoor space required, the following areas are to be excluded—</p> <ul style="list-style-type: none"> (a) any pathway or thoroughfare, except where used by children as part of the education and care program; (b) any car parking area; (c) any storage shed or other storage area; (d) any other space that is not suitable for children. <p>(4) A verandah that is included in calculating the area of indoor space cannot be included in calculating the area of outdoor space.</p> <p>(5) An area of unencumbered indoor space may be included in calculating the outdoor space of a service that provides education and care to children over preschool age if—</p> <ul style="list-style-type: none"> (a) the Regulatory Authority has given written approval; and (b) that indoor space has not been included in calculating the indoor space under regulation 107. <p>(6) In this regulation a reference to a child does not include—</p> <ul style="list-style-type: none"> (a) a child being educated or cared for in an emergency in the circumstances set out in regulation 123(5); or (b) an additional child being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6). <p><i>Note—</i> A compliance direction may be issued for failure to comply with sub-regulation (2).</p>		<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation • Principal Regulatory Officer

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Chapter 5 – Review, enforcement and compliance			
Part 5.2 – Enforcement and compliance			
s.187(3)(b)	<p>Prescribed form of identity card</p> <p>(1) For the purposes of section 196(1) of the Law, an identity card is in the prescribed form if it—</p> <p style="padding-left: 40px;">(a) states the full name of the authorised officer; and</p> <p style="padding-left: 40px;">(b) states that the officer is authorised under section 195 of the Law; and</p> <p style="padding-left: 40px;">(c) is issued by the Regulatory Authority which authorised the officer; and</p> <p style="padding-left: 40px;">(d) states the date of the officer’s authorisation.</p> <p>(2) An identity card may contain a photograph of the authorised officer.</p> <p>(3) If an identity card does not contain a photograph of the authorised officer, the authorised officer must carry the following and produce it when showing the identity card under the Law or these Regulations—</p> <p style="padding-left: 40px;">(a) another form of photographic identification of the authorised officer; and</p> <p style="padding-left: 40px;">(b) a letter from the Regulatory Authority authorising the use of that form of photographic identification.</p> <p>Penalty: \$1100.</p>		<ul style="list-style-type: none"> • Executive Director, Early Childhood Regulatory Authority • Director, Regulation
Chapter 6 - Administration			
Part 6.1 - Australian Children’s Education and Care Quality Authority			
s.193	<p>Allocating, transferring or reimbursing money to a participating jurisdiction</p> <p>For the purposes of section 276(c) of the Law, money that is to be allocated, transferred or reimbursed from the Authority Fund to a participating jurisdiction is to be credited to a fund specified by the Regulatory Authority of the participating jurisdiction.</p>		<ul style="list-style-type: none"> • Associate Director-General, Early Childhood and State Schools • Deputy Director-General, Early Childhood • Executive Director, Early Childhood Regulatory Authority
Part 6.2 – Information, records and privacy–national authority and regulatory authorities			
Division 5 – Publication of information			

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s.227(3)(ab)	<p>Compliance and enforcement information</p> <p>(1) For the purposes of section 270(5)(a) of the Law, the Regulatory Authority may publish the information set out in subregulation (3) in relation to any enforcement action set out in subregulation (2).</p> <p>(2) The enforcement actions are—</p> <p>(a) a prosecution for an offence against the Law or these Regulations leading to a conviction or finding of guilt or a plea of guilt;</p> <p>(b) the acceptance by the Regulatory Authority of an enforceable undertaking;</p> <p>(c) the giving of a compliance notice;</p> <p>(d) the suspension or cancellation (other than a voluntary suspension or surrender) of a provider approval or service approval;</p> <p>(e) an amendment made to a provider approval or service approval for purposes of enforcement;</p> <p>(f) the giving of an emergency action notice under section 179 of the Law.</p> <p>(3) The following information may be published—</p> <p>(a) the nature of the enforcement action;</p> <p>(ab) where enforcement action has been taken against the approved provider and if the Regulatory Authority is satisfied that it is in the public interest to do so, information which identifies a person with management or control of an education and care service;</p> <p>(b) the details of the person in relation to whom the enforcement action was taken, including—</p> <p>(i) the name and provider approval number of the approved provider;</p> <p>(ii) for a centre-based service—</p> <p>(A) the address of the service; and</p> <p>(B) the name by which the service is known;</p> <p>(iii) for a family day care</p>	Refer to s.270(5)(a) of the National Law	<ul style="list-style-type: none"> • Deputy Director-General, Early Childhood • Executive Director, Early Childhood Regulatory Authority

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	<p>service—</p> <p>(A) the address of the service, unless the address is also the home address of a family day care educator;</p> <p>(AB) the service approval number; and</p> <p>(B) the name by which the service is known;</p> <p>(iv) for an individual, the name of the individual;</p> <p>(c) the reason for taking the enforcement action, including details of the breach or alleged breach by the person of the Law or these Regulations and the provision that was breached or alleged to be breached;</p> <p>(d) details of the enforcement action taken, including—</p> <p>(i) for a prosecution leading to a conviction or finding of guilt or a plea of guilt—</p> <p>(A) the provision of the Law or these Regulations that the person was convicted or found guilty of, or pleaded guilty to, breaching; and</p> <p>(B) the date of the conviction, finding of guilt or the making of the plea of guilt for the offence; and</p> <p>(C) any penalty imposed for the offence; and</p> <p>(D) information about any steps taken to remedy the subject of the prosecution and the date the steps were taken;</p> <p>(ii) for an enforceable undertaking—</p> <p>(A) the terms of the enforceable undertaking; and</p> <p>(B) the date of the enforceable undertaking; and</p> <p>(C) information about any steps taken to remedy the subject of the enforceable undertaking and the date the steps were taken;</p> <p>(iii) for a compliance notice—</p> <p>(A) the steps specified in the compliance notice that</p>		

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	<p>the person must take to comply with the provision of the Law or these Regulations; and (B) the date specified in the notice by which the steps must be taken; and (C) information about any steps taken to remedy the subject of the compliance notice and the date the steps were taken;</p> <p>(iv) for the amendment of a provider approval or service approval— (A) the details of the amendment; and (B) the date on which the amendment took effect;</p> <p>(v) for a suspension of a provider approval or service approval— (A) the date on which the suspension took effect; and (B) the date on which the suspension ends;</p> <p>(vi) for a cancellation of a provider approval or service approval, the date on which the cancellation took effect.</p> <p>(4) In this regulation, a reference to information does not include information that could identify or lead to the identification of a child.</p> <p><i>Note—</i> Section 270(6) of the Law further restricts the publication of identifying information.</p>		
Part 6.3 – Fees			
Division 1 – Provisions applying generally to fees			
s.235(1)	<p>Late payment fees (annual fees)</p> <p>(1) If the annual fee for a service approval is not paid on or before 1 July, the Regulatory Authority may charge the approved provider a late payment fee, in addition to the annual fee, for every 30 days (or part of every 30 days) that the annual fee is overdue.</p> <p>(2) For the purposes of subregulation (1), the late payment fee is 15 per cent of the relevant prescribed annual fee that is overdue.</p>		<ul style="list-style-type: none"> • Director, Regulation • Manager, Regulation • Principal Regulatory Officer

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s.236A(2)	<p>Publication of prescribed and other required fees</p> <p>(1) The National Authority must publish, before the financial year beginning on 1 July in each year, the fees applicable for that financial year calculated in accordance with this Part.</p> <p>(2) The Regulatory Authority may also publish the fees referred to in sub-regulation (1).</p>		<ul style="list-style-type: none"> • Executive Director, Early Childhood Regulatory Authority • Director, Regulation
Chapter 7 – Jurisdiction-specific and transitional and saving provisions			
Part 7.1—General transitional and saving provisions			
Division 7 - General provisions relating to exemptions			
s.257(3)	<p>Application for removal of exemption</p> <p>(1) This regulation applies if an education and care service is taken under a prescribed regulation to comply with a provision of these Regulations for the purpose of a rating assessment.</p> <p>(2) The approved provider of the education and care service may apply to the relevant Regulatory Authority for the prescribed regulation to cease to apply in relation to the service.</p> <p>(3) The Regulatory Authority may approve the application.</p> <p>(4) The relevant prescribed regulation ceases to apply to the education and care service on the approval of the application.</p> <p>(5) In this regulation— <i>prescribed regulation</i> means regulation 239, 248, 249, 250, 251, 285, 286, 287, 337, 338, 339 or 383.</p>		<ul style="list-style-type: none"> • Executive Director, Early Childhood Regulatory Authority • Director, Regulation
Part 7.5 – Queensland—specific provisions			
Division 3 – Transitional provisions—Staffing arrangements—general			
Subdivision 1 - Centre-based services			
s.300(4)	<p>Educator to child ratios – children aged 15 months to 24 months</p> <p>(1) This regulation applies to a declared approved service that—</p> <p>(a) was granted a licence under the former education and care services law of Queensland before 1 January 2011; and</p>	300(4) Once approved the service can continue with the 1 educator to 5 children ratio until 31 December 2017.	<ul style="list-style-type: none"> • Manager, Regulation • Principal Regulatory Officer • Senior Regulatory Officer • Regulatory Officer

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	<p>(b) immediately before the scheme commencement day educated and cared for children aged 15 months or more up to and including 24 months.</p> <p>(2) The educator to child ratio for the service for children aged 15 to 24 months is 1 educator to 5 children.</p> <p>(3) The educator to child ratio in sub-regulation (2) applies in place of regulation 123(1)(a) until—</p> <p>(a) 31 March 2012, unless paragraph (b) applies; or</p> <p>(b) if the approved provider applies to the Regulatory Authority under sub-regulation (4), that application is finally determined.</p> <p>(4) If, on the application of the approved provider, the Regulatory Authority decides that it is necessary for the service to continue to apply the educator to child ratio in sub-regulation (2), that ratio continues to apply in place of regulation 123(1)(a) until 1 January 2020.</p>		