

New regulatory requirements for children's services

Introduction

The children's services regulatory regime was reformed in 2020 to align it with the National Quality Framework (NQF), where appropriate. The reform simplified licensing arrangements for providers and ensures more consistent minimum standards across the two regulatory regimes.

This fact sheet summarises the most important changes in the reform and the new regulatory requirements applying to children's services since May 2020. It also outlines the additional requirements that will come into effect at the end of a transitional period, on 1 January 2022.

Key actions for children's services to take by 1 January 2022

Staffing

Get ready to meet the new educator to child ratios and qualification requirements

Policies and procedures

Review and update all your service's policies and procedures to ensure:

- they include the new policies required
- all policies and procedures comply with the new requirements.

Asthma management training

Ensure at least one staff member or one nominated supervisor has current approved emergency asthma management training (in addition to current approved first aid qualifications and anaphylaxis management training).



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When do the changes start?

Changes to the *Children’s Services Act 1996* (CS Act) and the new Children’s Services Regulations 2020 (new Regulations) came into effect together on **17 May 2020**.

New children’s services

Children’s services that have been granted approval to operate since 17 May 2020 must meet all requirements of the revised CS Act and the new Regulations.

Former licensed children’s services

Children’s services that had current licences at 17 May 2020 must meet most of the new requirements (which are very similar to the previous requirements).

However, there is a transitional period in place until **1 January 2022** to allow former licensed children’s services time to prepare to meet

requirements for staffing (educator to child ratios and qualifications), some new policies and procedures, and a requirement for asthma management training – see the summary of key actions on page 1.

Approved associated children’s services (AACs)

The associated children’s services licensing model allows NQF approved providers to operate a licensed children’s service at the same location as their education and care service, under the NQF service approval. This licensing model for AACs will be phased out by 17 May 2022. Until this date, AACs must meet the same requirements as former licensed children’s services. The regulatory authority has contacted all these providers directly over the changes to their licensing arrangements.

Most important changes since May 2020

Licensing and approvals

Licences automatically converted to new provider and service approvals

On 17 May 2020, fixed term licences were replaced with perpetual provider and service approvals that no longer need to be renewed. Provider and service approvals end when they are surrendered or cancelled.

Approved providers may now operate multiple services, and service approvals may be transferred between approved providers.

An approved provider under the NQF can apply for a service approval to operate children's service without having to apply for a separate provider approval under the CS Act.

New service approval types

The former seven licence categories were replaced by two prescribed service types:

- **Limited hours** services that provide education and care to each child for not more than three hours per day and six hours per week
- **Occasional care** services with no limit on the hours that children can attend.

All current licensees as at the commencement date became approved providers, and their licences were converted to a service approval for one of the two new service types:

- Former Limited Hours Type 1 licences became approved **Limited hours services**.
- Former Standard, Limited Hours Type 2 and School holidays care licences became approved **Occasional care services**.

Persons with management or control of a service

Each approved provider must have one or more 'person with management or control' (PMC) responsible for managing the delivery of the children's service. The regulatory authority must be satisfied that a PMC is a fit and proper person to be involved in the provision of a children's service. (*Section 12*)

On 17 May 2020, previous licensee representatives and responsible persons automatically transitioned to become PMCs, and providers had to confirm their details to the regulatory authority.

Responsible person must be present at the service

Previously, the licensee, a responsible person or nominee had to be physically present at the service. Now, one of the following responsible persons must be present at all times that the service is educating and caring for children:

- the approved provider (if an individual) or a PMC; or
- a nominated supervisor; or
- a person in day-to-day charge. (*Section 103*)

Appointing suitable people to key roles

Approved providers must now meet explicit requirements in appointing suitable persons to the role of nominated supervisor, and in placing a person in day-to-day charge of a service.

(*Regulations 85 to 87*)



Terminology and roles

On 17 May 2020 the terminology changed, and the following roles transitioned automatically to new roles.

Licensee	Approved provider
Licence	Service/Provider approval
Proprietor	<i>Term redundant, no equivalent</i>
Responsible person	Person with management or control (PMC)
Primary nominee	Nominated supervisor
Approved/accepted nominee	Person in day-to-day charge
Teaching staff	Early childhood teacher (ECT)
Qualified staff	Educator

Educational program and practice

Educational program

Previously, children’s services were required to provide an educational or recreational program that was based on the developmental needs, interests and experiences of each child, and designed to take into account the individual differences of those children.

This requirement has now been strengthened to also require the service’s educational program to be based on an approved learning framework and delivered in a manner that accords with the approved learning framework. *(Section 108)*

The educational program must contribute to the following outcomes for children:

- the child will have a strong sense of identity
- the child will be connected with and contribute to his or her world
- the child will have a strong sense of wellbeing
- the child will be a confident and involved learner
- the child will be an effective communicator.

(Regulation 42)

Documenting and providing information about the educational program

Previously, children’s services were required to display an outline of the educational program and make the program available for inspection.

There are new requirements for child assessments and evaluations, documenting the educational program and providing information to parents.

Child assessments and evaluations of the delivery of the educational program must be documented.

(Regulation 43) This involves the service:

- for a child preschool age or under, assessing each child’s developmental needs, interests, experiences, participation and progress against the outcomes of the service’s educational program
- for a child over preschool age, evaluations of the child’s wellbeing, development and learning
- considering the period of time that the child is being educated and cared for by the service, and how the program documentation will be used by educators
- ensuring that the documentation is readily understandable by educators and parents.

Information about the educational program must be available. Services must ensure:

- information about the contents and operation of the service's educational program is displayed and available at the service premises *(Regulation 44)*
- information about the educational program must be given to parents on request including:
 - information about the contents and operation of the educational program to parents
 - information about the child's participation in the program
 - a copy of the child's assessments or evaluations. *(Regulation 45)*

Guidance for children's services in how to use the approved learning frameworks, undertake program planning and meet documentation requirements is available in our practical guide *Planning and Delivering a Program in a Children's Service*. This guide can be downloaded from www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx and is available in hard copy on request from licensed.childrens.services@education.vic.gov.au.

Interactions with children, and relationships in groups

The new Regulations set out more explicit requirements for interactions with children, and children's relationships in groups.

The approved provider must take all reasonable steps to ensure education and care is provided in a way that:

- encourages children to express themselves and their opinions
- gives children the opportunity to become self-reliant and develop self-esteem
- always maintains the dignity and rights of each child
- gives positive guidance and encouragement towards acceptable behaviour
- has regard to the family and cultural values, age, physical and intellectual development and abilities of each child being educated and cared for by the service. *(Regulation 104)*

Approved providers must also take all reasonable steps to ensure:

- children being educated or cared for by the service have opportunities to interact and develop respectful and positive relationships with each other, and with staff members and volunteers at the service
- they have regard to the size and the composition of the groups in which children are educated and cared for. *(Regulation 105)*

Safety, health and wellbeing of children

The key operational requirements in the CS Act for protecting the safety, health and wellbeing of children still apply:

- Ensure adequate supervision of children (but individual staff members are no longer liable) *(Section 105)*
- Protect children from harm and hazard. *(Section 107)*

Awareness of child protection law

- Services must ensure that nominated supervisors and staff are advised of the existence and application of current child protection law and their obligations. These obligations include mandatory reporting for child protection, Child Safe Standards, the Reportable Conduct Scheme, the Child Information Sharing Scheme, and the Family Violence Information Sharing Scheme. *(Regulations 5 and 53)*
- The Department's PROTECT website contains guidance and resources about child protection obligations for staff in early childhood services. (www.education.vic.gov.au/childhood/professionals/health/childprotection/Pages/ecguidance.aspx)

Notification requirements for serious incidents and complaints

Approved providers must notify the regulatory authority about incidents, complaints and changes to certain information and circumstances.

Notification requirements have been streamlined to align with the NQF, and are now required in the following instances:

- any serious incident at the service
- any complaints alleging that:
 - a serious incident has occurred or is occurring while a child was or is being educated and cared for by the service
 - that the CS Act has been contravened.
- other information prescribed by regulation
- any circumstance at the service that poses a risk to the health, safety or wellbeing of children
- allegations and incidents of physical or sexual abuse.

The definitions of 'serious incident' and 'complaint' have been amended.

(Regulation 10 and section 114(2)(b))

Approved providers must notify the regulatory authority in writing within seven days of the relevant event, or within seven days of the approved provider becoming aware of the relevant information for circumstances and allegations and incidents.

Serious incidents and complaints must be notified within 24 hours of the complaint or incident (or the time that the person becomes aware of the incident).

Services no longer need to notify the regulatory authority by phone and in writing; they are now required to notify only once, in writing, within the specified timeframe.

(Sections 113 and 114, regulations 117 to 119)

Forms for applications and notifications can be found online at: Children's services regulated under State Law (education.vic.gov.au) (www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx) and must be submitted by email to the regulatory authority at: licensed.childrens.services@education.vic.gov.au for assessment and processing.

A summary of the reporting requirements, including types of notifications and timeframes under the equivalent NQF provisions is available on the ACECQA website (www.acecqa.gov.au/resources/applications/notification-types-and-timeframes). (Note while the requirements are comparable, the section and regulation references are different under the children's services regulatory regime.)





Changes commencing on 1 January 2022

Staffing requirements

Staffing requirements in the new Regulations have been aligned with the NQF and apply to all children’s services approved after the commencement date. (*Regulations Part 4, Division 11—Staffing arrangements*)

Former licensed children’s services have until 1 January 2022 to meet the new educator to child ratios and educator qualification requirements.

All services must have at least one educator whenever children are in attendance. Services are no longer required to have two staff on duty as a minimum.

There must be adequate supervision of children at all times. (*Section 105*)

There is greater flexibility in how educator to child ratios are counted and applied to mixed age groups. Guidance on how to count mixed age ratios under the equivalent NQF provisions can be found at page 430 of the ACECQA *Guide to the National Quality Framework*.

www.cecqa.gov.au/sites/default/files/2020-09/Guide-to-the-NQF-September-2020.pdf

In calculating the ratios, a child (or two or more children from the same family) being educated and cared for in an emergency for a period of not more than two consecutive days on which the service operates does not need to be considered in calculating the ratios. (*Regulation 90(4) and (5)*)

Educator to child ratios

New educator to child ratios* for all children’s services	Former staffing ratios
<ul style="list-style-type: none"> • 1:4 for children aged from birth to under 36 months • 1:11 for children aged 36 months and over (not including children over preschool age) • 1:15 for children over preschool age (enrolled in school) <p style="text-align: right;"><i>(Regulation 90)</i></p>	<p>Services holding a former Standard licence:</p> <ul style="list-style-type: none"> • 1:4 for children aged under 3 years • 1:15 for children aged 3 years and over <hr/> <p>Services holding other former licences:</p> <ul style="list-style-type: none"> • 1:5 for children aged under 3 years • 1:15 for children aged 3 years and over

*Only educators working directly with children can be counted in the educator to child ratios. (*Regulations 11 and 89*)





Qualification requirements

New requirements	Previous requirements
<p>Limited hours services</p> <ul style="list-style-type: none"> All educators required to meet the relevant ratios must have at least an approved Certificate III level education and care qualification or No requirement for a Diploma qualified educator. <p style="text-align: right;"><i>(Regulation 92)</i></p>	<p>Former Limited Hours Type 1 services</p> <ul style="list-style-type: none"> All ‘educators’ were required to hold at least an approved Certificate III level education and care qualification.
<p>Occasional care services</p> <ul style="list-style-type: none"> 50% of the educators required to meet the relevant ratios must hold or be ‘actively working towards’ at least an approved diploma level education and care qualification. All other educators required to meet the relevant ratios must hold or be ‘actively working towards’ at least an approved Certificate III level education and care qualification. An early childhood teacher (ECT) must be in attendance at the service if on average over any given 4-week period, the services educates and cares for any child for more than 30 hours per week. ECT attendance is for: <ul style="list-style-type: none"> at least 50% of the time the service is operating; or 20 hours per week (whichever is lower) The ECT can be considered in the educator to child ratios if they are working directly with children. A probationary period is allowed for educators who have not yet commenced study. <p style="text-align: right;"><i>(Regulations 91 and 93)</i></p>	<p>Former Standard and Limited Hours Type 2 services</p> <p>All ‘educators’ were required to hold at least an approved Certificate III level education and care qualification:</p> <ul style="list-style-type: none"> For children aged 3 years and over: 1 in 3 educators required to hold at least a Diploma qualification For children aged under 3 years: 1 in 2 educators required to hold at least a Diploma qualification <p>Services holding a former ‘Standard’ licence were required to have a teaching staff member if approved for or caring for 25 or more children, for at least the lesser of 50% of the operating hours or 20 hours a week.</p>

‘Actively working towards’ a qualification

Educators are considered ‘actively working towards’ a Certificate III level qualification if they are:

- Enrolled in the course and have started study
- Making satisfactory progress towards completion, AND
- Meeting requirements to maintain enrolment.

Educators are considered ‘actively working towards’ a Diploma level qualification if they:

- Can satisfy all the above requirements, AND
- Hold an approved Certificate III level qualification, or
- Have completed the approved Certificate III units (approved by ACECQA), or
- Have completed 30% of the units in an approved ECT qualification.

(Regulation 8)

Probationary period

For Occasional care services, educators who have not yet commenced study may be counted in educator to child ratios as a Certificate III level educator during their probationary period,

for up to three months at one or more services operated by the approved provider. After this time the educator must be enrolled in (and be actively working towards) at least a Certificate III qualification. *(Regulation 91(2))*

Students and volunteers

Students and volunteers may be counted in educator to child ratios if they are actively working towards an early childhood qualification. This includes students on placements in a service.

Details of the dates and times the student or volunteer participates in the service must be recorded in the staff record. *(Regulation 100)*

Approved qualifications

Approved qualifications are those approved by ACECQA (www.acecqa.gov.au/qualifications/nqf-approved).

Educators without approved qualifications whose historical minimum training was recognised under the 2009 Regulations will continue to have their training recognised. *(Regulation 151)* These educators undertook a specific bridging course instead of a Certificate III qualification.



Medical conditions policy and procedures

The previous requirements for policies and procedures in relation to anaphylaxis management now apply to all specific health care needs, allergies or relevant medical conditions.

Medical conditions policy

The service must have in place a **policy** for dealing with medical conditions in children (including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis) that meets the requirements of regulation 59.

The medical conditions policy must contain the requirements arising if a child enrolled at the service has a specific health care need, allergy or relevant medical condition including:

- requiring a parent to provide a medical management plan for the child
- requiring the plan to be followed in the event of an incident relating to the child's specific health care need, allergy or relevant medical condition
- requiring the development of a risk minimisation plan in consultation with the parents of the child
- requiring the development of a communications plan for the service and the child
- the self-administration of medication by children over preschool age.

A copy of the medical conditions policy must be provided to the parent of a child who has a specific health care need, allergy or other relevant medical condition.

Plans required

The following **plans** for the service and individual children must be in place:

- A medical management plan for each child with a specific health care need, allergy or relevant medical condition (provided by the child's parent)
- A risk minimisation plan for each child with a specific health care need, allergy or relevant medical condition (developed in consultation with the parents of the child)

- A communication plan for the service and each child to ensure that
 - relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child
 - a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child and setting out how that communication can occur.

(Regulations 59, 60 and 112)

Guidance on the requirements for the medical conditions policy and a summary of the responsibilities of the service and parents can be found in relation to the equivalent NQF regulations at pages 373 to 375 of the ACECQA *Guide to the National Quality Framework* (www.acecqa.gov.au/sites/default/files/2020-09/Guide-to-the-NQF-September-2020.pdf).

First aid qualifications

First aid qualification requirements are now more flexible. Services must ensure that at least one staff member or one nominated supervisor is in attendance at the service and immediately available in an emergency who holds a current approved:

- first aid qualification
- anaphylaxis management training
- emergency asthma management training.

(Regulation 95)

Asthma management training is not required for former licensed children's services until 1 January 2022.





Policies and procedures

All children’s services approved after 17 May 2020 must have in place a comprehensive set of policies and procedures.

These policies must be followed and readily accessible to parents, staff/educators and visitors.

Parents must be notified of any changes to policies that would have a significant impact on their ability to use the service or their child’s education and care.

(Regulations 112 to 115)

For former licensed children’s services, some additional policies and procedures have been added to previous requirements. These must be in place by 1 January 2022 and include:

- health and safety requirements, including food and nutrition, water safety, sun protection and sleep
- providing a child safe environment
- dealing with medical conditions
- interactions with children
- acceptance and refusal of authorisations
- governance and management of the service
- the staffing policy must include a code of conduct.

The table below compares the new requirements to the previous requirements.

New policies and procedures	Previous requirements
<p>The approved provider of a children’s service must ensure that the service has in place policies and procedures in relation to the matters set out below:</p> <ul style="list-style-type: none"> • Health and safety, including matters relating to: <ul style="list-style-type: none"> - nutrition, food and beverages, and dietary requirements - sun protection - water safety, including safety during any water-based activities - the administration of first aid - sleep and rest for children • Incident, injury, trauma and illness policies and procedures complying with regulation 54 • Dealing with infectious diseases, including procedures complying with regulation 57 • Dealing with medical conditions in children, including the matters set out in regulation 59 • Emergency and evacuation, including the matters set out in regulation 66 • Delivery of children to, and collection of children from, the children’s service premises, including procedures complying with regulation 68 • Excursions, including procedures complying with regulations 69, 70 and 71 • Providing a child safe environment • Staffing, including: <ul style="list-style-type: none"> - a code of conduct for staff members - determining the responsible person present at the service - the participation of volunteers and students on practicum placements • Interactions with children, including the matters set out in regulations 104 and 105 • Enrolment and orientation • Governance and management of the service, including confidentiality of records • The acceptance and refusal of authorisations • Payment of fees and provision of a statement of fees charged by the children’s service • Dealing with complaints. <p style="text-align: right;"><i>(Regulation 112)</i></p>	<p>The proprietor of a children’s service must ensure information about the following matters is available for inspection at the children’s service at all times the service is open for the care or education of children:</p> <ul style="list-style-type: none"> • Admission requirements and enrolment procedures • Arrangements for the payment of fees • The policy of the service with respect to the employment of qualified staff • The educational or recreational programs provided for children cared for or educated by the service • The policy of the service with respect to behaviour management • Arrangements for the delivery and collection of children • Procedures for dealing with illness and emergency care • Procedures for dealing with infectious disease • Provision for dealing with complaints • The anaphylaxis management policy

Template policies, procedures and resources should be tailored to the service.

The ACECQA website has guidance on information to consider when preparing and reviewing policies and procedures under the equivalent NQF requirements.

www.acecqa.gov.au/resources/preparing-nqf-policies-and-procedures

Other changes since May 2020

Physical premises

Indoor space

All children's services must provide 3.25 square metres of unencumbered indoor space per child.

(Regulation 76)

Where children are over preschool age, an area of unencumbered indoor space may be included in calculating the outdoor space, if approved by the regulatory authority. *(Regulation 77(5))*

Indoor spaces must have adequate natural light. From 1 January 2022, they must also be well ventilated and be maintained at a temperature that ensures the safety and wellbeing of children.

(Regulation 79)

Children's services are no longer required to have a second babies' room.

Outdoor space

Limited hours services are not required to have an outdoor space.

Occasional care services must provide seven square metres of unencumbered outdoor space per child.*

*Former licensed Limited Hours Type 2 services that do not have seven square metres of unencumbered outdoor space per child can operate under the Occasional care service type but may not educate or care for any child for more than five hours a day and not more than a total of 15 hours a week. This requirement will be a condition on the service approval.

(Regulation 77)

Veranda space

Previously, a verandah space could only be calculated for outdoor space. Under the new regulations, verandah space may be included in an indoor or an outdoor space calculation with the approval of the regulatory authority. However, it can only be included in the calculation for either indoor or outdoor space, not both.

(Regulation 76)

Fencing

Fencing requirements have changed to be 'outcomes based' rather than be a precise height

from the ground. Any outdoor space used by children at the children's service premises must be enclosed by a fence or barrier that is of a height and design that children of preschool age or under cannot go through, over or under it.

Fencing is not required where all children are over preschool age.

(Regulation 73)

Nappy changing facilities

Currently, if the service cares for or educates children who wear nappies, there must be adequate and age-appropriate facilities provided for changing nappies in a safe and hygienic manner.

From 1 January 2022, this requirement will change to specifically require hand cleansing facilities for adults in the immediate vicinity of the nappy change area. In addition, if the service cares for children under three years who wear nappies, there must be at least one properly constructed nappy changing bench. These facilities must be designed and maintained in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children. *(Regulations 81 and 84)*

Exemptions from regulatory requirements and service waivers

Service waivers and temporary waivers from certain prescribed requirements are now available.

Previously, a licensee could apply for an exemption from a provision in the CS Act, and only the Minister could grant an exemption. While this Ministerial exemption power is still available, the regulatory authority now has the power to grant a waiver from certain prescribed requirements.

Applying for a waiver is a more streamlined process than the previous process of applying for an exemption—making it easier both for services to apply and for the regulatory authority to decide the application.

www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx

Fees

Licence renewal fees have been replaced by an annual service fee, and late payment fees apply. 2021 is the first year the annual service fee will be charged.

There are now fixed fees for new processes, such as the application for a service waiver.

Many of the previous fees no longer apply, such as the application for approval of new nominees, or application to vary licence conditions.

See the Fees section on the Department's website for a list of current fees:

www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx.

Enrolment records, and risk assessments and authorisations for excursions

There are more comprehensive requirements in the new Regulations for:

- information to be kept in the child's enrolment record
- risk assessments and authorisations for excursions.

These requirements are being updated to align with recent changes to the NQF around the safe transportation of children.

We will provide detailed advice on these new requirements later in 2021.

Contact us

The **Department of Education and Training** is the Regulatory Authority for children's services in Victoria.

Phone: 1300 307 415

Email: licensed.childrens.services@education.vic.gov.au

Web: www.education.vic.gov.au/childhood/providers/regulation

Key differences from the National Quality Framework

The NQF regulates education and care services providing *regular care* to children. While the children's services regulatory regime has been aligned with the NQF, some key aspects of the NQF were not adopted:

- The National Quality Standard does not apply to children's services
- There will be no assessment and quality rating of children's services
- There is no requirement for children's services to have an educational leader
- There is no requirement for children's services to have a quality improvement plan.

Useful links

Children's Services Act 1996:

www.legislation.vic.gov.au/in-force/acts/childrens-services-act-1996/035

Children's Services Regulations 2020:

www.legislation.vic.gov.au/in-force/statutory-rules/childrens-services-regulations-2020/001

Information and resources about operating children's services

are available on the Department's website at: www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx

The approved learning frameworks are:

- The Victorian Early Years Learning and Development Framework (VEYLDF) – for children from **birth to 8 years**
- Belonging, Being and Becoming: The Early Years Learning Framework for Australia (EYLF) – for children from **birth to 5 years**
- My Time, Our Place: A Framework for School Age Children in Australia (MTOPI) – for **school aged children**

available at: www.acecqa.gov.au/nqf/national-law-regulations/approved-learning-frameworks

ACECQA Guide to the National Quality Framework:

www.acecqa.gov.au/sites/default/files/2020-09/Guide-to-the-NQF-September-2020.pdf