

Education and Care Services National Amendment Regulations 2022

SL 2022/139

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Education and Care Services National Amendment Regulations 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulations 3 and 4 — on 1 September 2022;
- (c) the rest of the regulations — on 1 March 2023.

3. Regulations amended

These regulations amend the *Education and Care Services National Regulations 2012*.

4. Chapter 7 Part 7.9 Divisions 3A and 3B inserted

After Chapter 7 Part 7.9 Division 3 insert:

**Division 3A — Communication equipment at family day
care residences and approved family day care venues**

**373A. Telephones or other communication equipment at
family day care residences and approved family day
care venues**

The approved provider of a family day care service must ensure that, when children are being educated and cared for at a family day care residence or approved family day care venue as part of the service —

- (a) educators at the residence or venue have ready access to at least 2 operating telephones or other similar means of communication to enable immediate communication to and from parents, family members, other adults who may

need to be in contact about a child and emergency services; and

- (b) at least 1 of the telephones or other similar means of communication referred to in paragraph (a) is kept in a fixed location at the residence or venue.

Penalty: a fine of \$1 000.

Note for this regulation:

The national regulations made by the Ministerial Council do not include provisions as Part 7.9 Division 3A.

Division 3B — Swimming pools, outdoor spas and hazardous water features at family day care residences and approved family day care venues

Note for this Division:

The national regulations made by the Ministerial Council do not include provisions as Part 7.9 Division 3B.

373B. Terms used

In this Division —

hazardous water feature, at a family day care residence or approved family day care venue, means a permanent body of water, the primary purpose for which is not swimming or bathing, that is —

- (a) situated outdoors; and
- (b) more than 300 mm deep; and
- (c) accessible to children being educated and cared for at the residence or venue;

safety device, for a swimming pool or outdoor spa at a family day care residence or approved family day care venue, means a device designed to —

- (a) warn an educator at the residence or venue that a child being educated and cared for at the residence or venue has entered the swimming pool or outdoor spa, or the area surrounding the swimming pool or outdoor spa; or
- (b) cover the swimming pool or outdoor spa in such a way that the device —
 - (i) cannot be easily lifted or removed by a child being educated and cared for at the residence or venue; and
 - (ii) would prevent such a child from entering the swimming pool or outdoor spa;

water hazard safety inspection has the meaning given in regulation 373E(1)(a);

water hazard safety inspection report has the meaning given in regulation 373E(1)(b).

373C. Conditions on service approval: restrictions on engaging or registering educators operating at residence or venue with swimming pool or outdoor spa

- (1) 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 there is no swimming pool or outdoor spa at a family day care residence or approved family day care venue of the service unless —
 - (a) the swimming pool or outdoor spa existed at the residence or venue before 1 September 2022 (whether or not the residence or venue was a residence or venue of the service at that time); and
 - (b) the educator who provides education and care to children at the residence or venue was engaged by or registered with the service —
 - (i) before 1 September 2022; or
 - (ii) on or after 1 September 2022 with the approval of the Regulatory Authority under subregulation (3).
- (2) A service approval for a family day care service is granted subject to the condition that the approved provider of the service must not, without the approval of the Regulatory Authority under subregulation (3), engage or register a family day care educator to provide education and care to children at a family day care residence or approved family day care venue with a swimming pool or outdoor spa.
- (3) The Regulatory Authority may give written approval for the approved provider of a family day care service to engage or register a family day care educator to provide education and care to children at a family day care residence or approved family day care venue with a swimming pool or outdoor spa if —
 - (a) the swimming pool or outdoor spa existed at the residence or venue before 1 September 2022; and
 - (b) the educator was, before 1 September 2022, engaged by or registered with another family day care service to provide education and care to children at the residence or venue; and
 - (c) the Regulatory Authority considers exceptional circumstances exist justifying the approval.

Note for this regulation:

See section 51(5) of the Law.

373D. Condition on service approval: register of residences and venues with swimming pool, outdoor spa or hazardous water feature

- (1) A service approval for a family day care service is granted subject to the condition that the approved provider of the service must —
 - (a) keep a register that includes the information set out in subregulation (2) in respect of each family day care residence or approved family day care venue of the service with a swimming pool, outdoor spa or hazardous water feature; and
 - (b) make the register available for inspection by the Regulatory Authority on request.
- (2) For the purposes of subregulation (1), the register must include the following information —
 - (a) the name of the educator who provides education and care to children at the residence or venue;
 - (b) the address of the residence or venue;
 - (c) each swimming pool, outdoor spa and hazardous water feature that is at the residence or venue;
 - (d) each safety device for a swimming pool or outdoor spa that is at the residence or venue;
 - (e) the date on which a water hazard safety inspection of the residence or venue was last conducted.

Note for this regulation:

See section 51(5) of the Law.

373E. Condition on service approval: water hazard safety inspections

- (1) 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 —
 - (a) at the times set out in subregulation (2), an inspection (a ***water hazard safety inspection***) of each family day care residence or approved family day care venue of the service with a swimming pool, outdoor spa or hazardous water feature is conducted in accordance with this regulation to determine whether the residence or venue is a safe operating environment; and
 - (b) a written report (a ***water hazard safety inspection report***) of each water hazard safety

inspection is prepared and given to the approved provider in accordance with this regulation.

- (2) The times for conducting a water hazard safety inspection of a family day care residence or approved family day care venue are —
 - (a) for the 1st inspection —
 - (i) if it is a residence or venue of the service on 1 September 2022 — no later than 30 September 2022; or
 - (ii) in any other case — within 30 days after the day on which it becomes a residence or venue of the service;
 - and
 - (b) after that, at monthly intervals.
- (3) A water hazard safety inspection of a family day care residence or approved family day care venue cannot be conducted by —
 - (a) an educator who provides education and care to children at the residence or venue; or
 - (b) a person who resides at the residence or venue.
- (4) A water hazard safety inspection of a family day care residence or approved family day care venue may be conducted by a person who is —
 - (a) physically present at the residence or venue; or
 - (b) subject to subregulation (5), using technology that enables the person to inspect the residence or venue without being physically present (a ***virtual inspection***).
- (5) A water hazard safety inspection of a family day care residence or approved family day care venue cannot, without the written approval of the Regulatory Authority, be a virtual inspection if —
 - (a) the previous 2 inspections of the residence or venue were virtual inspections; or
 - (b) 6 previous virtual inspections of the residence or venue have been conducted in the current calendar year.
- (6) The person who conducts a water hazard safety inspection of a family day care residence or approved family day care venue of a family day care service must —
 - (a) when conducting the inspection, complete a water hazard safety inspection checklist in a form determined by the Regulatory Authority; and

- (b) prepare a water hazard safety inspection report in accordance with subregulation (7) and give it to the approved provider of the service —
 - (i) if a safety issue relating to a swimming pool, outdoor spa or hazardous water feature is identified in the course of the inspection — within 24 hours of completing the inspection; or
 - (ii) in any other case — within 7 days of completing the inspection.
- (7) A water hazard safety inspection report must —
 - (a) be in a form determined by the Regulatory Authority; and
 - (b) include the information set out in subregulation (8); and
 - (c) include the water hazard safety inspection checklist completed by the person who conducted the inspection.
- (8) For the purposes of subregulation (7)(b), the information is as follows —
 - (a) the address of the residence or venue;
 - (b) the date and time of the inspection;
 - (c) the full name of the person who conducted the inspection and the person's signature;
 - (d) whether the inspection was a virtual inspection;
 - (e) the type and condition of each safety device for a swimming pool or outdoor spa that is at the residence or venue;
 - (f) whether any safety issue relating to a swimming pool, outdoor spa or hazardous water feature was identified and, if so —
 - (i) a description of the safety issue; and
 - (ii) whether the safety issue was rectified during the inspection; and
 - (iii) if the safety issue has not been rectified, the action that the person who conducted the inspection considers should be taken to rectify it and mitigate risks associated with it before it is rectified; and
 - (iv) if relevant, an estimate of the time that is needed to complete the action referred to in subparagraph (iii);
 - (g) any other information required by the form determined under subregulation (7)(a).

Note for this regulation:

See section 51(5) of the Law.

373F. Offences relating to water hazard safety inspection reports: approved provider

- (1) The approved provider of a family day care service must, as soon as practicable after being given a water hazard safety inspection report in relation to a family day care residence or approved family day care venue of the service, give a copy of it to the educator who provides education and care to children at the residence or venue.

Penalty for this subregulation: a fine of \$2 000.

- (2) The approved provider of a family day care service must, within 24 hours of being given a water hazard safety inspection report that identifies a safety issue in relation to a swimming pool, outdoor spa or hazardous water feature at a family day care residence or approved family day care venue of the service, give written notice of the safety issue to the Regulatory Authority.

Penalty for this subregulation: a fine of \$2 000.

- (3) If an unrectified safety issue relating to a swimming pool, outdoor spa or hazardous water feature is identified in a water hazard safety inspection report relating to a family day care residence or approved family day care venue of a family day care service, the approved provider of the service must, as soon as practicable after the safety issue is rectified, record on the report the date on which it was rectified.

Penalty for this subregulation: a fine of \$2 000.

- (4) The approved provider of a family day care service must ensure that each water hazard safety inspection report in relation to a family day care residence or approved family day care venue of the service is kept at the principal office of the service until the end of 3 years after the day on which it was completed.

Penalty for this subregulation: a fine of \$2 000.

- (5) The approved provider of a family day care service must ensure that each water hazard safety inspection report kept under subregulation (4) is made available on request to the Regulatory Authority.

Penalty for this subregulation: a fine of \$2 000.

- (6) The approved provider of a family day care service must ensure that each water hazard safety inspection report kept under subregulation (4) in relation to a residence or venue is made available on request to a

parent of a child who is educated and cared for at the residence or venue as part of the service.

Penalty for this subregulation: a fine of \$2 000.

373G. Offences relating to water hazard safety inspection reports: family day care educator

- (1) A family day care educator who is given a water hazard safety inspection report in relation to the family day care residence or approved family day care venue at which the educator educates and cares for children must ensure that the report is kept at the residence or venue until the end of 3 years after the day on which it was completed.

Penalty for this subregulation: a fine of \$2 000.

- (2) A family day care educator must ensure that a water hazard safety inspection report kept under subregulation (1) is made available on request to the Regulatory Authority.

Penalty for this subregulation: a fine of \$2 000.

- (3) A family day care educator must ensure that a water hazard safety inspection report kept under subregulation (1) is made available on request to a parent of a child who is educated and cared for at the residence or venue.

Penalty for this subregulation: a fine of \$2 000.

5. Regulation 373DA inserted

After regulation 373D insert:

373DA. Condition on service approval: safety devices for swimming pools and outdoor spas

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 there is, at each family day care residence or approved family day care venue of the service with a swimming pool or outdoor spa, at least 1 safety device for the swimming pool or outdoor spa.

Note for this regulation:

See section 51(5) of the Law.