

**Applying a modified application of the National Law to Residual Early Childhood Services**

Part 3, Section 16 of the *Education and Early Childhood Services (Registration and Standards) Act 2011 (the Act),* states that residual early childhood services are to be regulated through a modified application of the [Education and Care Services National Law (South Australia)](http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+653+2011+cd+0+N) (the National Law).

Schedule 2 of the Act outlines exclusions and modified provisions to the National Law as they apply to residual early childhood services. This schedule outlines provisions of the National Law that do not apply and provisions that apply as modified. The following table *Exclusions and modifications to the Education and Care Services National Law* provides a list of exclusions and modifications outlined in Schedule 2.

**Exclusions and Modifications to the Education and Care Services National Law (South Australia) from Schedule 2 of the Act.**

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| **Schedule 2 (2) Exclusion of certain provisions** | | |
| (1) The following provisions of the *Education and Care Services National Law (South Australia)* do not apply to, or in relation to, a residual early childhood service: | | |
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| **Section / Part** | **Title** | **Notes / Information** |
| (a) s42 | Exercise of powers by another Regulatory Authority |  |
| (b) Part 3 | Service approval; |  |
|  | Division 5 – Application for service waiver |  |
|  | Division 6 – Temporary waiver |  |
|  | Division 7 – Exercise of powers by another Regulatory Authority |  |
|  | Division 8 – Associated children’s services |  |
| (c) s131 | Exercise of powers by another Regulatory Authority |  |
| (d) Part 5 | Assessments and ratings | Residual services do not have a service rating as they are not in scope of the National Quality Framework under the National Law for assessment and rating purposes. |
| (e) s168 | Offence relating to required programs |  |
| (e) s169 | Offence relating to staffing arrangements |  |
| (f) s198 | National Authority representative may enter service premises in company with Regulatory Authority. |  |
| (g) Part 10 | Ministerial Council |  |
| (h) Part 11 | Australian Children’s Education and Care Quality Authority |  |
| (i) s266 | Register of approved providers |  |
| (j) Part 14 | Miscellaneous |  |
|  | Division 1 – Finance |  |
|  | Division 2 – Reporting |  |
|  | Division 8 – National regulations |  |
| (k) Part 15  (other than sections  314 and 322) | Transitional provisions |  |
| (2) | A provision of the Education and Care Services National Law (South Australia), to the extent that it applies to an associated children's service (within the meaning of that Law), does not apply to, or in relation to, a residual early childhood service. |  |
| (3) | A provision of the Education and Care Services National Law (South Australia), to the extent that it relates to rating an education and care service (including a provisional rating), does not apply to, or in relation to, a residual early childhood service. |  |
| (4) | A provision of the Education and Care Services National Law (South Australia), to the extent that it imposes a fee (however described), does not apply to, or in relation to, a residual early childhood service. | Fees that apply to in scope services (e.g. Family Day Care, Centre-Based services) do not apply to residual services. However, residual services do have their own fee structure as prescribed in the State Regulations. |

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| **Schedule 2 (3) Certain provisions to apply as modified** | | |
| (1) The following provisions of the *Education and Care Services National Law (South Australia)* apply to, or in relation to, a residual early childhood service as modified by this clause: | | |
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| **Section / Part** | **Title** | **Notes / Information** |
| (a) s5(1) | definition of ***national education and care services quality framework***,  (d)—delete paragraph (d) | *national education and care services quality framework means –* ~~(d) the prescribed rating system~~ |
| (b) s19(1) | delete "that are prescribed in the national regulations or" | (1)     A provider approval may be granted subject to any conditions  ~~that are prescribed in the national regulations or~~ that are determined by the Regulatory Authority. |
| (c) s47(1)(a) and (g) | delete paragraphs (a) and (g) | (1) Subject to subsection (3), in determining an application under section 43, the Regulatory Authority must have regard to –  ~~(a) the National Quality Framework; and (g) any other prescribed matter.~~ |
| (d) s51(5) | delete "prescribed in the national regulations or" | (5) Service approval is granted subject to any other conditions ~~prescribed in the national regulations~~ or imposed by – (a) this Law; or (b) the Regulatory Authority. |
| (e) s112(c) | delete "prescribed minimum requirements for qualifications, experience and management capability" and substitute: the minimum requirements (if any) set out in the regulations for a supervisor of a residual early childhood service | The Regulatory Authority must refuse to grant a supervisor certificate if –  (c) the Regulatory Authority is not satisfied that the applicant meets the ~~prescribed minimum requirements for qualifications, experience and management capability~~ minimum requirements (if any) set out in the regulations for a supervisor of a residual early childhood service. |
| (f) s114(1) | delete "prescribed class of persons" and substitute: belonging to a class of persons prescribed by the regulations for the purposes of this subsection | The Regulatory Authority may grant a supervisor certificate to a person ~~in a prescribed class of persons~~ belonging to a class of persons prescribed by the regulations for the purposes of this subsection. |
| (g) s172(e) and (f) | delete paragraphs (e) and (f) | An approved provider of an education and care service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the education and care service premises: ~~(e) any service waivers or temporary waivers held by the service (f) any other prescribed matters~~ |
| (h) s175(1) | delete "the prescribed documents" and substitute: the documents specified by the regulations | An approved provider of an education and care service must keep ~~the prescribed documents~~ the documents specified by the regulations available for inspection by an authorised officer in accordance with this section. |
| (i) s260(e) | delete paragraph (e) | The Regulatory Authority has the following functions under this Law in relation to this jurisdiction: ~~(e) in conjunction with the National Authority and the relevant Commonwealth Department, to educate and inform education and care services and the community in relation to the National Quality Framework;~~ |
| (j) s261(2)(d) and (f) | delete paragraphs (d) and (f) | (2) Without limiting subsection (1), the Regulatory Authority has the following powers under this Law in relation to this jurisdiction: ~~(d) to publish information about the National Quality Framework, including ratings and prescribed information about compliance with this Law; (f) to enter into agreements relating to fees and funding with the  National Authority;~~ |
| (k) s268 | delete "National Authority" wherever occurring and substitute in each case: Regulatory Authority | (1) The ~~National Authority~~ Regulatory Authority must keep a register of certified supervisors. (3) The register of certified supervisors may be inspected at the office of the ~~National Authority~~ Regulatory Authority during normal office hours without charge. |
| (l) s270(1) | delete "National Authority and the" | (1) The ~~National Authority and the~~ Regulatory Authority may publish the following information about approved providers, approved education and care services and certified supervisors: (a) the name of each provider, service or supervisor; (b) except in the case of approved family day care services, the address of each education and care service premises; (c) in the case of approved family day care services, the address of the principal office of each service; (d) the rating levels of each approved education and care service; (e) other prescribed information in respect of approved education and care services. |
| (m) s270(2) | delete "National Authority" and  substitute: Regulatory Authority | (2) The ~~National Authority~~ Regulatory Authority— (a) must publish on its website— (i) the register of approved providers; and (ii) the register of certified supervisors; and (b) may publish on its website the register of approved education and care services as kept by a Regulatory Authority. |
| (n) s270(2)(b) | delete paragraph (b) | (2) The ~~National Authority~~ Regulatory Authority— (a) must publish on its website— (i) the register of approved providers; and (ii) the register of certified supervisors; and ~~(b) may publish on its website the register of approved education and care services as kept by a Regulatory Authority.~~ |
| (o) s270(4) | delete subsection (4) | ~~(4) The relevant Commonwealth Department is authorised to publish the register of approved education and care services on a website kept by that department.~~ |
| (p) s273(2)(f) | delete paragraph (f) | (1) An individual who is, or who has been, a person exercising functions under this Law must not disclose to another person protected information. Penalty: $5 000. (2) However, subsection (1) does not apply if— ~~(f) the disclosure is otherwise authorised by the Ministerial Council.~~ |
| (q) s314(1) | delete "section 306" and substitute: clause 29 of Schedule 2 of the Education and Early Childhood Services (Registration and Standards) Act 2011 | (1) In determining whether to suspend or cancel under Part 2 a provider approval referred to in ~~section 306~~ clause 29 of Schedule 2 of the Education and Early Childhood Services (Registration and Standards) Act 2011,  the Regulatory Authority— (a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but (b) must not suspend or cancel the provider approval solely on the basis of that non-compliance. |
| (r) s314(2) | delete "section 307(1)" and substitute: clause 30 of Schedule 2 of the Education and Early Childhood Services (Registration and Standards) Act 2011 | (2) In determining whether to suspend or cancel under Part 3 a service approval referred to in ~~section 307(1)~~ clause 30 of Schedule 2 of the Education and Early Childhood Services (Registration and Standards) Act 2011, the Regulatory Authority— (a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but (b) must not suspend or cancel the service approval solely on the basis of that non-compliance. |
| (2) | A reference in the Education and Care Services National Law (South Australia) to the National Quality Standard will, to the extent that it applies to, or in relation to, a residual early childhood service, be taken to be a reference to the standard prescribed by the regulations for the purposes of this subclause. |  |
| (3) | A reference in the Education and Care Services National Law (South Australia) to a prescribed element or elements of the National Quality Standard will be taken to be a reference to the corresponding provision (if any) of the standard applying to, or in relation to, residual early childhood services pursuant to subclause (2). |  |
| (4) | A reference in the Education and Care Services National Law (South Australia) to a service waiver or temporary waiver will be taken to be a reference to an exemption under section 17 of this Act. |  |