

Waivers

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What is a waiver?

A waiver acts as a form of exemption.

The National Law states that an approved provider may apply to the Regulatory Authority for a waiver from certain requirements of the National Quality Standard and the National Regulations (section 87).

When do I need one?

Waivers allow approved providers to continue to provide a level of service to children and families when managing certain requirements of the National Quality Framework (NQF) is proving difficult, or if dealing with unexpected events.

What types of waivers are available?

Regulations 41 and 44 refer to the National Quality Standard and specific regulations where waivers may be granted. A summary of these is provided at the end of this fact sheet.

You may apply for two types of waivers depending on your circumstances:

Service waiver

This is an ongoing waiver that may be revoked at the Board's discretion, or when you apply to the Board to do so (section 92).

Temporary waiver

This applies for no more than 12 months at a time (section 98[2]).

Effect of Waivers

While a service waiver is in force, the approved education and care service is taken to comply with the elements of the National Quality Standard and the national regulations that are specified in the application for service waivers (section 93).

While a temporary waiver is in force, the approved education and care service is taken to comply with the elements of the National Quality Standard and the national regulations that have been temporarily waived.

How can I apply for a waiver?

All applications for waivers must be submitted on an SA08 form: Application for Service or Temporary Waiver.

There is a prescribed fee for an application for waiver.

Forms can be submitted online using the public portal, i.e. the National Quality Agenda IT system(NQAITS).

How are waiver applications processed?

As the South Australian Regulatory Authority, the Education and Early Childhood Services Registration and Standards Board of South Australia ('the Board') is responsible for assessing applications for waivers.

In accordance with the National Law the Board must notify applicants of their decision within 60 days after the application has been received in full (section 98[1]).

The Board may ask the applicant for further information to support the assessment of their application (section 96). Incomplete applications will be returned to applicants for further information.

What does the Board consider when assessing an application?

The Board will consider the risk to children's safety, health or wellbeing before granting a waiver.

We will also review and assess the evidence of any attempts your service has made to comply with the specific elements, standards or regulations.

In most cases, the Board will also determine whether the issue noted in your application is an ongoing issue or whether it can be resolved over a shorter or longer period of time.

Temporary waivers can be issued for a maximum of 12 months only. In some cases, additional conditions may be added to a service approval whilst the waiver is in place and these will be specific to your service.

The Board may revoke a waiver at any time at its discretion, in particular if the Board becomes aware that the circumstances for granting a waiver change or no longer apply.

Can I apply for an extension to a temporary waiver?

Yes.

You may apply for an extension to a temporary waiver if your circumstances have not changed and the issue relates to the same elements, standards or regulations you originally applied for.

The National Regulations prescribe the sections of the Standards and Regulations where a waiver can be applied (Regulations 41 and 44). The following table provides a summary of these areas.

Standard or Regulation Area	Temporary Waiver	Service Waiver
Family day care and centre based services		
Standards and elements of the National Quality Standard	√	√
• Quality Area 3 Physical Environment		
• Quality Area 4 Staffing Arrangements	√	√
Regulations	√	√
• 104 Fencing		
• 110 Ventilation and natural light	√	√
• 136 First aid qualifications	√	
Specific to centre based services		
• 107 Space Requirements – indoor space	√	√
• 108 Space Requirements – outdoor space	√	√
• 111 Administrative space	√	√
• 112 Nappy change facilities	√	√
• 113 Outdoor space – natural environment	√	√
• 114 Outdoor space – shade	√	√
• 115 Premises designed to facilitate supervision	√	√
• 120 Educators who are under 18 to be supervised	√	√
• 123 Educator-to-child ratios – centre based services	√	√
• 126 Centre based services – general educator qualifications	√	√
• 130-134 Requirements for early childhood teacher – centre based services	√	√
Specific to family day care services		
Regulations	√	√
• 117 Glass		
• 124 Number of children who can be educated and cared for – family day care educator	√	√
• 127 Family day care educator qualifications	√	√
• 128 Family day care coordinator qualifications	√	√

You must provide details of why you are requesting an extension as well as your attempts to comply.

Alternatively, if you no longer need a waiver, you can apply to revoke your waiver by submitting an SA09 form: Application for Revocation of Service Waiver.

Further information

The Operational Policy Manual for Regulatory Authorities (available on the ACECQA website) contains clear and detailed information about compliance monitoring.

This is available at: <http://acecqa.gov.au/operational-policy-manual-for-regulatory-authorities>.

Contact details

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