

Early Learning Commission

# Conditions on Approvals and Waivers Policy

---

NSW Early Learning Commission

Version 1.0

26 February 2026



Early Learning  
Commission

## Acknowledgement of Country

The Early Learning Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Policy.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Conditions on Approvals and Waivers Policy

Published by NSW Early Learning Commission

<https://education.nsw.gov.au/early-childhood-education/regulation-and-compliance>

First published: February 2026

### Copyright and disclaimer

© State of New South Wales through NSW Early Learning Commission 2025. Information contained in this publication is based on knowledge and understanding at the time of writing, December 2025, and is subject to change. For more information, please visit <https://education.nsw.gov.au/rights-and-accountability/copyright>.

# Contents

<b>1</b>	<b>Purpose</b> .....	<b>1</b>
<b>2</b>	<b>Scope</b> .....	<b>1</b>
<b>3</b>	<b>Guiding Principles</b> .....	<b>2</b>
<b>4</b>	<b>Policy</b> .....	<b>2</b>
4.1	General Information.....	3
4.2	Conditions on Provider Approvals.....	5
4.2.1	Imposing or varying a Condition .....	5
4.2.2	Removing a condition.....	6
4.3	Conditions on Service Approvals.....	6
4.3.1	Standard conditions on service approvals under the National Law .....	6
4.4	Imposing or varying a Condition.....	9
4.5	Service Specific Conditions .....	9
4.5.1	Conditions on the transfer of service approval .....	10
4.6	Removing a Condition .....	10
4.7	Conditions on Waivers .....	10
4.8	Enforcement of Conditions .....	11
4.8.1	Breach of a condition on a provider or service approval .....	11
4.8.2	Breach of a condition on a waiver .....	11
4.8.3	Review of a condition.....	11
<b>5</b>	<b>Enquiries</b> .....	<b>11</b>
<b>6</b>	<b>Approval</b> .....	<b>12</b>
<b>7</b>	<b>Document History</b> .....	<b>12</b>

---

# 1 Purpose

The NSW Early Learning Commission (the Commission) regulates more than 6,000 Early Childhood Education and Care (ECEC) services in NSW so that children attending those services receive safe and high-quality education and care.

The protection of the rights and best interests of each child and the children attending education and care services must be the paramount consideration in giving effect to the National Law, including in making decisions or otherwise exercising functions under this Law. The protection of the rights and best interests of each child and the children attending education and care services prevails over the financial interests of approved providers; and other fiduciary duties owed by persons with management or control of education and care services.

The Commission expects all services to deliver safe, high-quality education and care and takes strong regulatory action where these expectations are not met. The Commission adopts a prevention-led and risk-informed approach to regulation to protect children from harm and acts with integrity, confidence and courage to ensure children's safety.

The purpose of this policy is to specify how and when the Commission applies, varies or removes a condition on a provider or service approval, or on a waiver, and the types of conditions that may be applied.

The Commission imposes conditions on approvals and waivers with paramount consideration of the rights and best interests of children and the primary objectives set out in section 3 of the National Law, including:

- To ensure the safety, health and wellbeing of children attending education and care services;
- To improve the educational and developmental outcomes for children attending education and care services; and
- To promote continuous improvement in the provision of quality education and care services.

The information in this policy is intended to clarify the circumstances under which the Commission exercises its discretion in respect to conditions, and the considerations it must and/or may consider when exercising that discretion.

---

# 2 Scope

The Early Learning Commission is the Regulatory Authority for New South Wales (NSW) for regulating the ECEC sector. The Commissioner has delegated the exercise of powers and functions to officers across NSW in accordance with the Commissioner's delegations.

The Early Learning Commission exercises its regulatory functions under the following legislation:

## **National Legislation**

- *Children (Education and Care Services) National Law (NSW) 2010* (the 'National Law')
- *Education and Care Services National Regulations (NSW) 2011* (the 'National Regulation')

## NSW State-based Framework:

- [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)
- [Children \(Education and Care Services\) Supplementary Provisions Regulation 2024](#)

Most education and care services for children around Australia are regulated, under the National Quality Framework. Service types covered by the National Quality Framework are regulated under the National Law and National Regulations. These services include Family Day Care, Long Day Care, Out of School Hours Care and Preschools. The National Quality Framework also includes the [National Approved Learning Frameworks](#) and the [National Quality Standards](#) against which education and care services are assessed and rated. The [Guide to the National Quality Framework](#) is designed to support education and care providers, educators and Authorised Officers understand and apply the requirements of the National Quality Framework.

Occasional care services, Multifunctional Aboriginal Children's Services (MACS) and Mobile services are out of scope of the NQF and are regulated under the state-based framework. These types of services are referred to as 'state regulated' services. In NSW, this means they can expect the same regulatory oversight as other services. National Law Alignment Provisions are applicable to NSW state regulated education and care services.

The Commission is responsible for the implementation of this policy. Transferring and receiving approved providers must submit valid notification of an intended transfer of a service approval.

The Commission must act according to its functions and powers under the National Law (Section 260 of the National Law). In exercising its functions and powers with respect to the transfer of service approvals, the Commission will be guided by this, and other relevant policies and procedures. The Policy applies to both in scope and out of scope providers and services in NSW, with specific relevance to persons with legal responsibility according to:

- Provider Approvals
- Service Approvals

---

## 3 Guiding Principles

The Commission's over-arching principles for the exercise of its powers and functions are set out in the [Guiding Principles policy](#).

In exercising its powers and functions, the Commission must uphold the objectives and guiding principles set out in section 3 of National Law. In accordance with the NSW Children (Education and Care Services National Law Application) Amendment Act 2025, the rights and best interests of each child attending ECEC services are the paramount consideration. The Commission ensures this paramountcy principle informs all its decisions and the exercise of all functions under the National Law.

The Commission is also guided by the [Child Safe Standards](#), which are regulated by the NSW Office of the Children's Guardian, and is committed to upholding the safety of children through its regulatory decision making.

---

## 4 Policy

## 4.1 General Information

A condition is a legal constraint or requirement imposed on a provider approval (section 19 of the National Law), service approval (section 51 of the National Law) or waiver, and is intended to ensure compliance with the National Law and National Regulations.

A condition may be imposed upon the grant of an approval or, alternatively, the Commission may also impose conditions on an approval at any time. While the National Law does not place any specific limitation on the Commission's power to impose a condition on a provider or service approval, the Commission may consider imposing conditions to:

- Promote continuous quality improvement and compliance;
- Uphold the child paramountcy principle by ensuring that all decisions prioritise the safety, health, wellbeing and best interests of children and
- Address risks associated with:
  - a. the safety, health and wellbeing of children in an education and care service;
  - b. the management capacity of the approved provider;
  - c. potential and actual non-compliance with regulatory requirements;
  - d. the transfer of a service to another approved provider; or
  - e. the quality of services provided to children.

When imposing a condition, the Commission takes a risk-based approach. All conditions must meet the following requirements:

### Clarity and enforceability

- Conditions must be clearly expressed as applying to a provider approval, service approval, or waiver.
- Conditions must be enforceable

### Consistency With Legislative Requirements

Conditions must not:

- Duplicate any provision of the National Law or National Regulations.
- Waive or diminish an existing requirement under the National Law or National Regulations.
- Impose unreasonable or disproportionate obligations.
- Include personal names or any other identifying information.
- Conditions must be consistent with the National Law and National Regulations.

### Relevant considerations

In determining whether to impose a condition, the Commission will consider relevant factors including but not limited to:

- The services' current quality rating
- The compliance history of the service and approved provider
- The nature and type of service
- Staffing levels, skills and qualifications
- education programs offered by the service
- service practice, policies and procedures

A condition remains in force until the Commission removes it, unless the duration of the condition is expressly stated. The Commission can remove or vary a condition at any time. Alternatively, an approved provider can apply to vary or remove a condition. In some circumstances, the Commission may extend a time-limited condition to allow the approved provider more time to comply with the condition. The Commission assesses each case on its own merits.

The types of conditions that the Commission may consider imposing include, but are not limited to, the following examples in Table 1 to 3.

**Table 1. Conditions on Provider Approvals**

Conditions imposed on provider approvals (Section 19):

- (1) A provider approval –
  - (a) is granted subject to the conditions specified in subsection (2); and
  - (b) may be granted subject to additional conditions –
    - (i) prescribed in the national regulations; or
    - (ii) prescribed in the NSW regulations; or
    - (iii) determined by the Commission. (i.e number or size of service, types of services, requiring a certain action by an approved provider or persons with management or control, applying certain requirements as to the operation of each of the approved provider's services, etc)
- (2) For subsection (1)(a), a provider approval is subject to the following conditions –
  - (a) the condition that the approved provider must comply with this Law, the national regulations and the NSW regulations;
  - (b) the condition that the approved provider must disclose to the Commission, as required by the Commission, the names of any related entities of the approved provider;
  - (c) the condition that the approved provider must disclose to the Commission, as required by the Commission, any changes in the names of any related entities of the approved provider;
  - (d) the condition that the approved provider must take reasonable steps to transparently demonstrate the approved provider's ownership structure –
    - (i) at any education and care service premises at which the approved provider operates; and
    - (ii) on the approved provider's website and other digital content; and
    - (iii) in all advertisements for any education and care service operated by the approved provider; and
    - (iv) as part of any information required to be displayed under this Law.
- (3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.
- (4) An approved provider must comply with the conditions of the provider approval.

**Table 2. Conditions on Service Approvals**

Limiting the number of children attending the service, including by age group (setting the maximum number of children)
Setting the number of Family Day Care (FDC) Educators or coordinators
Setting the date a service transfer will take place
Requiring a certain action by a service. For example, relevant staff completing professional development training
Limiting or placing a requirement on how a service may operate

**Table 3. Conditions on Waivers**

Requiring certain action to comply with waiver requirements, for example: Requirements to address Early Childhood Teacher  (ECT) staffing requirements Requiring a service to maintain a best practice simulated environment where outdoor space is not available
---

## 4.2 Conditions on Provider Approvals

### 4.2.1 Imposing or varying a Condition

Section 19 of the National Law states that provider approval may be granted subject to any conditions that are prescribed in the National Regulations or that are determined by the Commission. Conditions may be imposed either at the time of provider approval, or after the approval has been granted. A condition on a provider approval addresses risks that affect, or potentially affect, all of the provider's services. For example, the Commission may impose conditions on provider may impose conditions on a provider approval that limit the types of education and care services the provider is authorised to operate, such as centre-based or family day care services.

A provider approval is granted subject to the standard condition in section 19(2) that the approved provider must comply with the National Law, which includes compliance with the National Regulations.

A provider approval under the State Law is generally subject to the same conditions as prescribed in the National Law. However, a provider approval for a mobile education and care service is also subject to the following conditions:

- The approved provider must keep a register of the address of each of the premises at which the service is provided and the name of the proprietor of each of those premises;

- The approved provider must ensure that the premises of the service comply with the venue management plan for those premises.

Section 23 of the National Law provides that the Commission may amend a provider approval at any time. This includes imposing a new condition, or varying an existing condition, on the approval. The Commission imposes or varies a condition in accordance with the general principles outlined in section 4.1 above.

If the Commission imposes or varies a condition, written notice of the decision is given to the approved provider. The notice includes a copy of the amended provider approval certificate. The amendment takes effect 14 days after the Commission gives notice of the amendment or, if another period is specified by the Commission, at the end of that period.

The approved provider may apply at any time to the Commission to amend a provider's approval, including varying a condition (section 22 of the National Law). For example, a provider may apply to extend the duration of a time-limited condition to enable them to have more time to comply with the requirements of the condition. For further information, see the [Provider Approvals Policy](#).

#### 4.2.2 Removing a condition

Section 23 of the National Law provides that the Commission may amend a provider approval at any time. This includes removing a condition on the provider's approval. The Commission may remove a condition where it is no longer required, for example, the condition was time-limited, and the approved provider has complied with the condition within the specified timeframe. The approved provider may apply at any time to the Commission to amend a provider approval, including to remove a condition (section 22 of the National Law). For further information, see the [Provider Approvals Policy](#).

If the approved provider has applied to vary or remove a condition on a provider approval, as soon as they are aware of any adverse or serious matters, they are obligated to disclose this during the application process. The Commission undertakes inquiries in relation to these matters and may ask the applicant to provide further information.

### 4.3 Conditions on Service Approvals

A condition on a service approval addresses risks that affect, or potentially affect, a specific service. For instance, if the Commission has concerns that the environment at a particular service may not be safe for infants, it may impose a condition preventing the service from providing education and care to children under 12 months of age.

#### 4.3.1 Standard conditions on service approvals under the National Law

The standard conditions that apply to service approvals are contained in Section 51 of the National Law, which provides that a service approval is granted subject to the conditions set out in that section and in regulations 29-32A of the National Regulations.

The standard conditions on service approvals are listed in Table 4 below. They may apply to centre-based services, family day care services and out of scope services.

Table 4. Standard conditions on service approvals under the National Law				
Sector/Regulation	Condition	Centre-based service	Family day care service	Out of scope service

<p><b>S51(1)</b></p>	<p>The service is operated in a way that ensures the safety, health and wellbeing of children educated and cared for by the service and meets children’s educational and developmental needs.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>S51(2)</b></p>	<p>Each family day care educator is adequately monitored and supported by a family day care coordinator.</p>		<p>✓</p>	
<p><b>S51(2A)</b></p>	<p>Each family day care residence, and any approved family day care venue of the service, is in the jurisdiction that granted the service approval.</p>		<p>✓</p>	
<p><b>S51(3)</b></p>	<p>The service commences ongoing operation within six months after the approval is granted, unless the Commission agrees to an extension.</p>	<p>✓</p>	<p>✓</p>	<p>✓</p>
<p><b>S51(4) Reg 29</b></p>	<p>The approved provider has:</p> <ul style="list-style-type: none"> <li>• a current insurance policy providing adequate cover for the service against public liability, with a minimum cover of \$10 million; or</li> <li>• an insurance policy or indemnity against public liability provided for the service by a state</li> </ul>	<p>✓</p>	<p>✓</p>	<p>✓</p>

	or territory government.			
<b>S51(4) Reg 30</b>	Each family day care educator engaged by or registered with the service holds public liability insurance with a minimum cover of \$10 million.		✓	
<b>S51(4A)</b>	The number of children educated and cared for by the service at any one time does not exceed the maximum number of children specified by the service approval.	✓		✓
<b>Reg 31(a)</b>	The service's quality improvement plan is kept up to date at the service premises (the principal office for family day care).	✓	✓	✓
<b>Reg 31(b)</b>	The service's quality improvement plan is made available for inspection by the Commission or an Authorised Officer.	✓	✓	✓
<b>Reg 31(c)</b>	The service's quality improvement plan is made available on request to parents of children enrolled, or seeking enrolment, at the service.	✓	✓	
<b>Reg 32</b>	The service continues to be entitled to occupy the education and care service premises.	✓		
<b>Reg 32A</b>	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 Commission in the service approval.			
<b>Reg 14(2)(a) Supplementary Provisions Regulation</b>	The approved provider of the education and care service must develop, maintain and implement procedures to ensure that the nominated supervisor and all other members of staff of the education and care service comply with the conditions of the service approval that apply to them.			✓

Where a condition relates to insurance, the approved provider must comply with regulation 180, which prescribes the evidence that must be kept for insurance policies required under the National Law.

## 4.4 Imposing or varying a Condition

Section 51(5) of the National Law states that a service approval may be granted subject to any conditions that are imposed by the National Law, prescribed in the National Regulations or that are determined by the Commission.

Conditions may be imposed either at the time of service approval, or after the approval has been granted.

A service approval for an out-of-scope service is generally subject to the same conditions as prescribed under the National Law. However, specific variations, as outlined in the table above, also apply.

Section 55 of the National Law provides that the Commission may amend a service approval at any time. This includes imposing a new condition, or varying an existing condition, on the approval. The Commission imposes or vary a condition in accordance with the general principles outlined in section 5.2.1 above.

If the Commission imposes or varies a condition, it will give notice in writing of its decision to the approved provider. The notice will include a copy of the amended service approval certificate. The amendment will take effect 14 days after the Commission gives notice of the amendment or, if another period is specified by the Commission, at the end of that period.

The approved provider may apply at any time to the Commission to amend a service approval, including varying a condition (section 54 of the National Law). For further information, see the [Service Approvals Policy](#).

## 4.5 Service Specific Conditions

## 4.5.1 Conditions on the transfer of service approval

The Commission may impose conditions on a transfer of a service approval to achieve outcomes including:

- Ensuring the receiving approved provider is ready and able to operate the transferred service.
- Ensuring the transferring approved provider has sufficient time to undertake all of their obligations in relation to the transfer of the approval.
- Ensuring any changes in service conditions, including staffing, are in place for the service transfer date.
- Meeting the objectives of the National Quality Framework, including ensuring the safety, health and wellbeing of children attending education and care services.
- Upholding the child paramountcy principle by ensuring that decisions relating to the transfer prioritise children's best interests, safety and continuity of care.

Conditions that the Commission may impose on a service transfer to achieve these outcomes include:

- The date on which the transfer will take effect (the service transfer date);
- Any condition that will ensure the provider can adhere to their obligations under the National Law and National Regulations.

Under Section 67(b) of the National Law the transfer of a service approval is void if it is made in contravention of the conditions imposed by the Commission on the consent to the transfer.

---

## 4.6 Removing a Condition

Section 55 of the National Law provides that the Commission may amend a service approval at any time. This includes removing a condition on the approval. The Commission may remove a condition where it is no longer required, for example, the condition was time-limited and the approved provider has complied with the condition within the specified timeframe.

The approved provider may apply at any time to the Commission to amend a service approval, including to remove a condition (Section 54 of the National Law). For further information, see the [Service Approvals Policy](#).

If an approved provider has applied to amend or remove a condition on a service approval, as soon as they are aware of any adverse or serious matters they are obligated to disclose this during the application process. The Commission undertakes inquiries in relation to these matters and may ask the applicant to provide further information under Section 54(3) of the National Law. The time taken to make these inquiries will not be considered in the legislated period of time within which the Commission makes a decision.

---

## 4.7 Conditions on Waivers

Conditions on waivers operate in a similar way to conditions on provider or service approvals.

A waiver enables a service that is non-compliant with the National Regulations to be taken to be compliant, or not required to comply, during the period that the waiver is in force.

When assessing a waiver, the Commission may impose conditions to refine and clarify the scope of the waiver.

The conditions applied to a service or temporary waiver are limited to the operation of the waiver. For example, a condition on an Early Childhood Teacher (ECT) waiver may require an approved provider to undertake ongoing activity to recruit an ECT, or a condition on a space waiver may require an approved provider to conduct two excursions each week to a natural outdoor environment. Conditions placed on a waiver may also limit its use, for example, to particular times or circumstances.

A condition on a waiver will remain in place until the Commission removes the condition.

The Commission has the authority to place a condition on a waiver or service approval. When a condition is imposed, the Commission re-issues the service approval certificate specifying the provisions of the National Regulations that have been waived and the conditions placed on the service. If the approved provider does not comply with the conditions on a waiver, then the Commission may consider revoking the waiver.

---

## 4.8 Enforcement of Conditions

### 4.8.1 Breach of a condition on a provider or service approval

It is an offence under the National Law (or the State Law for out-of-scope services) for an approved provider to fail to comply with the conditions on a provider or service approval.

If an approved provider breaches a condition of a provider or service approval, the Commission may take appropriate compliance action in accordance with its Compliance Policy.

The Commission may publish information about the imposition of a condition where it has been imposed as part of a compliance action (regulation 227 of the National Regulations).

### 4.8.2 Breach of a condition on a waiver

Where an approved provider has failed to comply with a condition on a waiver in respect to the operation of an education and care service, the Commission may decide to revoke the waiver. For more information see the [Waivers Policy](#).

### 4.8.3 Review of a condition

A person affected by the Commission's decision regarding a condition on a provider or service approval may be able to challenge that decision by applying to have it reviewed.

There are two types of review:

- Internal review by the Commission.
- External review by a relevant tribunal, court or the NSW Ombudsman.

For more information on rights of review, including application processes, the types of review available and the principles that apply to conducting reviews, see the Review of Decisions Policy.

---

## 5 Enquiries

For enquiries about this policy, please contact the NSW Early Learning Commission Information and Enquiries team 1800 619 113 (toll free) or [information@earlylearningcommission.nsw.gov.au](mailto:information@earlylearningcommission.nsw.gov.au)

---

## 6 Approval

**Approved by:** Daryl Currie, A/Commissioner, NSW Early Learning Commission

**Designation:** A/Commissioner, NSW Early Learning Commission

**Dated:** 26 February 2026

---

## 7 Document History

Table 1. Document information

Document title	Conditions on Approvals and Waivers Policy
Document type	Policy
Version number	1.0

# NSW Early Learning Commission Conditions on Approvals and Waivers Policy

105 Phillip Street  
Parramatta NSW 2150

Office hours:  
Monday to Friday  
9:00 am to 5:00 pm

T: 1800 619 113

E: [information@earlylearningcommission.nsw.gov.au](mailto:information@earlylearningcommission.nsw.gov.au)

W: <https://education.nsw.gov.au/early-childhood-education/regulation-and-compliance>



Early Learning  
Commission

OFFICIAL