

Early Learning Commission

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We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Service Transfers Policy

Published by NSW Early Learning Commission

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

First published: February 2026

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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 the Commission considers notifications to transfer a service approval from one approved provider (transferring approved provider) to another approved provider (receiving approved provider) under Part 3, Division 3 ('Transfer of Service Approval') of the Children (Education and Care Services) National Law (NSW) 2010 (National Law), and under Part 2.2, Division 3 ('Transfer of Service Approval') of the Education and Care Services National Regulations (NSW) (National Regulations).

The National Law allows the Commission to intervene in the proposed transfer and, following any such intervention, to consent or refuse to consent to the proposed transfer. This is to ensure that there are sufficient measures in place to protect the safety, health, wellbeing and best interests of children being educated and cared for.

2 Scope

The NSW 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 Standard 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.

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 Notification requirements

For in-scope services, notifications to transfer a service must be submitted to the Commission through the National Quality Agenda IT System on the [Australian Children's Education and Care Quality Authority \(ACECQA\) website](#).

For out-of-scope services, the [Notification of Transfer of Service Approval form](#) be completed and emailed to eceapprovals2@earlylearningcommission.nsw.gov.au

Both the transferring approved provider and receiving approved provider must notify the Commission of the transfer at least 60 days before the intended transfer date (Section 59 of the National Law). This period may be reduced if the Commission determines that the circumstances are exceptional (Section [59](#) of the National Law).

For information about notification requirements, including valid and invalid notifications and prescribed fees, see Sections [58](#), [59](#) and [59A](#) of the National Law, Regulations [36](#) and [37](#) of the National Regulations and Section 2.6 of the Guide to the National Quality Framework.

4.2 Assessing and determining a notification to transfer a service approval

4.2.1 Consent to transfer of a service approval

A service approval cannot be transferred without the consent of the Commission (Section [60](#) of the National Law).

The Commission is taken to have consented to the transfer if it has been given a valid notification of the transfer and does not notify the parties 28 days before the transfer is intended to take effect that it intends to intervene (Section [61](#) of the National Law).

Once the Commission has consented to the transfer, the transferring approved provider and the receiving approved provider may request the transfer take effect on an earlier date than specified in the notification (Section [67A](#) of the National Law).

4.2.2 Intervention in a transfer of a service approval

The Commission may intervene if it has concerns about the receiving approved provider's ability to operate the service, their history of compliance with the National Law and any other matters relevant to the transfer of the service approval including, but not limited to the compliance history of services operated by other entities which have Persons with Management or Control in common with the receiving approved provider (Section 62(1) of the National Law).

The Commission may request further information or undertake inquiries to make a fully informed decision. The Commission may publish information about any decision to intervene (and any other administrative decisions).

The Commission may consider whether the receiving approved provider has the management and financial capability to operate an education and care service in accordance with the National Law. The Commission may consider matters such as the receiving approved providers:

- previous experience in operating an education and care service

- previous experience in operating another business
- qualifications in a leadership, governance or management role
- financial sustainability
- understanding of the role and responsibility of an approved provider
- fitness and propriety, including the fitness and propriety of any persons with management or control (PMC). This may include a reassessment of the fitness and propriety of the approved provider and/or any persons with management or control (PMC); the process of assessing the fitness and propriety can be found in Section 5.2 of our [Provider Approval Policy](#).
- knowledge of the National Law and Regulations.

If the Commission decides to intervene, it will notify both parties of the decision at least 28 days before the intended date of transfer (Sections 62(2)-(5) of the National Law).

If the Commission has intervened, the transfer cannot go ahead unless and until the Commission has given written consent (Section 63 of the National Law).

4.2.3 Decision after intervention

After intervening in a transfer, the Commission will determine whether to consent, or refuse consent, to the transfer and will notify each party of the outcome (Sections 65 and 66 of the National Law). Consent to the transfer of a service approval can be given subject to certain conditions.

The Commission must notify both parties of its decision at least 10 days before the intended date of transfer (Section [66](#) of the National Law). If it has not made a decision in this time, it must do so within a further 28 days (Section [66](#) of the National Law).

4.2.4 Void transfers

A transfer of a service approval is void if it takes place without the consent of the Commission, violates the Commission's conditions of consent, or if the service approval is transferred to someone other than the receiving approved provider who was nominated in the notification (Section [67](#) of the National Law).

4.2.5 Confirmation of transfer

The transferring approved provider and receiving approved provider must give written notice to the Commission within two days of the transfer taking effect specifying the date of the transfer (Section [68](#) of the National Law).

4.3 Transitional and savings provisions

Savings provisions allow certain services to continue to operate under previous legislative requirements and transitional provisions provide that a service does not need to comply with some requirements under the National Law until a certain circumstance occurs, such as the transfer of a service.

4.3.1 Transitional provisions

Where relevant, transitional provisions will apply to a service only until it is transferred to a new provider.

If a transitional provision regarding space requirements is in place, the receiving approved provider must provide the Commission with plans and calculations from a building practitioner to confirm that the service can meet the space requirements (Regulation 107 & 108).

The Commission will only issue a service approval based on the number of children that can be educated and cared for at the service premises in accordance with Regulations 107 and 108 of the National Law (Regulations [107](#) and [108](#) of the National Regulations). The receiving approved provider may apply for a waiver of the space requirements. For information about waivers, see the Commission's [Waivers Policy](#).

4.3.2 Savings provisions

Savings provisions in the National Law allow some services to keep operating under previous legislative requirements or may allow a service to not comply with certain requirements under the National Law. Where relevant, savings provisions will cease to apply when the service premises are renovated.

4.4 Notification to parents

Parents of children who are enrolled at the service must be notified of the transfer at least seven days before it takes place. This must be in writing and is the responsibility of the receiving approved provider (Sections [69](#) of the National Law).

Parental consent is needed before the transferring approved provider shares enrolment records with the receiving approved provider (Regulation [184](#) of the National Regulations).

4.5 Review

A person who is affected by the Commission's refusal to consent to the transfer of a service approval can apply for a review of the decision (Sections [190\(e\)](#) and [191](#) of the National Law).

For more information on rights of review, including notification 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

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	Service Transfers Policy
Document type	Policy
Version number	1.0

NSW Early Learning Commission Service Transfers Policy

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