

Early Learning Commission

Waiver Policy

NSW Early Learning Commission

Version 1.0

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We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Waiver Policy

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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 Children (Education and Care Services) National Law (NSW) (the National Law) allows the Commission to manage waivers by assessing and approving or refusing applications, and by revoking existing waivers.

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 manages applications by approved providers for waivers from certain elements and requirements of the National Quality Standard and the Education and Care Services National Regulations (National Regulations).

The information in this policy is intended to clarify:

- What constitutes a complete and valid application to obtain a waiver;
- The circumstances under which the Commission will exercise its discretion in respect to waivers, and the considerations it must and/or may take into account 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.

This policy applies to decisions made by the Commission that are subject to internal review under section 190 of the National Law.

This policy is supplemented by internal staff procedures that guide how the Commission manages applications by approved providers for waivers from certain elements and requirements of the National Quality Standard and the Education and Care Services National Regulations.

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

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

Any waiver must maintain child paramountcy ensuring the rights and best interests of children are considered.

There are two types of waivers:

- Temporary waivers, which may be granted for up to 12 months.
- Service waivers, which may be granted if a service is unable to meet requirements for an ongoing period. There is no expiry date for a service waiver.

An approved provider with an approved service may apply at any time for a waiver to comply with a specific regulation or element of the National Quality Standard. An approved provider may also apply for a service waiver when applying for a service approval.

The Commission may waive the requirement altogether or require that the applicant comply with the requirement by an alternate means. It may also stipulate a timeframe for when the waiver is in effect.

Where a service waiver is in force, the approved education and care service is taken to comply with the element or elements of the National Quality Standard and the national regulations that are specified in the waiver.

Where a temporary waiver is in force, the approved education and care service is not required to comply with the element or elements of the National Quality Standard and the national regulations that have been temporarily waived.

4.1 General Application Information

4.1.1 Valid Waiver Applications

An application for a waiver is complete and valid when the approved provider has submitted all of the prescribed information, including payment of a fee.

The prescribed fees for waiver applications are set out in Schedule 2 of the National Regulations. Fees are indexed each year according to published indexation figures. They are available on the [ACECQA website](#) before the beginning of each financial year.

To avoid assessing delays, applicants should ensure all information is accurate and consistent before submitting the application. Names, addresses and other details must be consistent across all documentation provided. The Early Learning Commission may query any inconsistencies.

The timeframe for assessing an application will commence when the Commission has received all prescribed information and determined that the application is complete and valid.

If the applicant has not provided all of the prescribed information, the Commission will write to the approved provider and advise them of the information required for the application to be complete and valid. If the approved provider does not provide the outstanding information within 14 days of the Commission's written request, the Commission may invalidate the application. This means that the Commission may close the application.

When deciding to invalidate an application, the relevant officer will consider the principles of procedural fairness. If exceptional circumstances exist, an applicant must provide evidence for their claims and all requests must be made in writing and the Commission may re-open an invalid application or may waive the fee for a new application.

Applicants may decide to withdraw an application at any time before the Commission decides on the application. The application may be withdrawn by notice in writing to the Commission. The Commission will consider each request on a case by case basis.

If an applicant withdraws an application, they may request a refund of the application fee. When determining whether a refund is applicable, the Commission will consider various factors such as the reason for the request, the time and resources already expended on the application and any other relevant matter. The Commission will notify an approved provider in writing once a decision is made on a refund request. For more information, see the [Fees and Charges Policy](#).

4.1.2 Application Timeframes

The National Law sets out timeframes for each waiver application type. It provides that the timeframe does not begin until the Commission has received a complete and valid application.

Clause 31 of Schedule 1 of the National Law sets out how timeframes are calculated. When calculating the timeframe for processing an application, the day the Commission deems the application as valid is excluded.

For the purpose of this section, “days” refer to calendar days, including Saturdays, Sundays and public holidays. However, if the last day of the timeframe falls on a non-business day, the next business day will be the last day.

If further information is required from the applicant (in addition to the prescribed information), the time taken to provide the information is not included in the timeframe for determining the application.

As soon as the applicant is aware of any adverse or serious matters, they are obligated to disclose this to the Commission during the application process. The Commission will undertake inquiries in relation to these matters and may ask the applicant to provide further information under sections 89(1) or 96(1) of the National Law. The time taken to make these inquiries will not be considered in the timeframe within which the Commission must make a decision.

The Commission must not grant a waiver unless it is satisfied as to the matters in section 90 of the National Law (in the case of a service waiver) or section 97 of the National Law (in the case of a temporary waiver), and to do so would not be contrary to the objectives and guiding principles of the National Quality Framework. Where there is information outstanding relating to serious matters, such as a criminal investigation, the Commission may not be able to make a determination on the application until an outcome is known, or the matter is finalised.

If the Commission is unable to make a decision within legislative timeframes, the application is taken to be refused. If an application is refused, an applicant may submit a new application at any time.

The Commission must notify the applicant of its decision on the service or temporary waiver application within 60 calendar days after receiving a complete application.

4.2 Application Requirements

4.2.1 Service Waiver

Service waivers have no end date and remain in force until revoked. They are intended to provide ongoing exemptions from a requirement to comply with a prescribed element or elements of the National Quality Standard and the National Regulations.

The approved provider must submit a valid application through the NQAITS portal and pay the prescribed fee. Regulation 42 of the National Regulations sets out the prescribed information for a service waiver, including:

- The reasons the service is unable to comply with the requirement(s) of the National Regulations / element(s) of the National Quality Standard (NQS);
- Details and evidence of attempts to comply; and
- Measures being taken to protect the best interests, safety, health and wellbeing of children.

Evidence: Examples of evidence that may be supplied with a waiver application can be found within Checklist 3 at Appendix A.

See Checklist 1 at Appendix A for the full list of prescribed information.

4.2.2 Temporary Waiver

Temporary waivers may be granted for a period of up to 12 months. They are intended to provide exemptions from a requirement to comply with a regulation set out in the National Regulations or a prescribed element of the National Quality Standard for a specified period of time.

The approved provider must submit a valid application through the NQAITS portal and pay the prescribed fee. Regulation 45 of the National Regulations sets out the prescribed information for a temporary waiver, including:

- The reasons the service is unable to comply with the requirement(s) of the National Regulations / element(s) of the National Quality Standard (NQS);
- Details and evidence of attempts to comply;
- Measures being taken to protect the best interests, safety, health and wellbeing of children; and
- The time period for which the waiver is required.

See Checklist 2 at Appendix A for the full list of prescribed information.

4.2.3 Requirements that may be waived - service and temporary waivers

Any waiver or substitution must still maintain child paramountcy ensuring the rights and best interests of children are considered, applications may be subject to additional conditions set by the regulatory authority. The below table sets out the Regulations that may be waived.

Regulations that may be waived	
Regulation	Requirements
72A	Location of principal office of family day care service
Physical environment	
NQS (in Schedule 1 of the National Regulations)	Standards and elements set out in Quality Area 3 (Physical Environment) and Quality Area 4 (Staffing Arrangements)
104	Fencing

107	Indoor space
108	Outdoor space
110	Ventilation and natural light
117	Glass (Family Day Care only)
Staffing	
120	Educators who are under 18 to be supervised (Centre-based only)
123	Educator to child ratios – centre-based services (Centre-based only)
124	Number of children who can be educated and cared for (Family Day Care only)
126	Centre-based services – general educator qualifications
127	Family day care educator qualifications (Family Day Care only)
128	Family day care co-ordinator qualifications (Family Day Care only)
130	Requirement for early childhood teacher centre-based services fewer than 25 approved places (Centre-based services only)
131	Requirement for early childhood teacher – centre-based services 25 or more approved places but fewer than 25 children
136	First aid qualifications (temporary waivers only)
272 (NSW Only)	For centre-based services with 30 or more preschool aged children, Regulation 272 prescribes the minimum number of ECTs required at all times, dependent on number of children (e.g. 1 ECT for 30–39 children; 2 for 40–59; 3 for 60–79; 4 for 80+). Where an ECT is absent (e.g. illness, short-term leave), the service may, in certain circumstances, substitute a suitably qualified person (e.g. diploma-qualified educator or primary teacher) but only under the transitional/alternative staffing arrangements.
Additional requirements for Centre-based services	
Division 2 Part 4.3	(Centre-based services only) 111 Administrative space 112 Nappy change facilities 113 Outdoor space – natural environment 114 Outdoor space – shade

Ch.7	Any jurisdiction-specific, transitional or saving provisions that apply in place of the regulations outlined above. For example, regulation 272 applies in NSW in place of regulations 132-135
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4.3 Assessing an Application

The Commission will assess complete and valid applications for service or temporary waivers on a case-by-case consideration to the following matters (as also largely outlined in the Guide to the National Quality Framework, published by the Australian Children's Education and Care Quality Authority (ACECQA)).

In assessing an application for a waiver, the Commission will also consider any waivers currently in place and how this may affect the safety and well-being of children at the service. For example, if the Commission receives an application for a staffing waiver, the Commission will consider any existing staffing waivers in place and will determine if granting a further waiver is in the best interest of the children being educated and cared for at the service.

Regulations that may be waived	
General matters	<ul style="list-style-type: none"> • The measures being taken or to be taken to protect the rights and best interests, safety, health and wellbeing of children being educated and cared for by the service while the proposed waiver would be in place. • Whether the service can meet the objectives of the regulations by alternative means. • The benefits to families, children and communities of having the service operate. • The service's Quality Improvement Plan. • The number and age range of children enrolled at the service. • Attempts made by the approved provider to comply with the requirement(s). • The compliance history of the approved provider and/or the service and any related approved providers. • Unusual or unforeseen circumstances, such as natural disasters. • Whether the issue is ongoing (i.e., longer than 12 months) and requires a service waiver, rather than a temporary waiver, or circumstances have changed, and a temporary waiver is required instead of a service

	<p>waiver.</p> <ul style="list-style-type: none"> • The service’s history of assessment and rating outcomes.
Staffing waivers	<ul style="list-style-type: none"> • Staff details, including rosters and qualifications. • Evidence of recruitment e.g., advertising and the outcomes of a recruitment attempt. • Evidence of progress towards relevant qualifications. • Strategies in place to attract, upskill and retain staff. • What the service is doing to meet the immediate shortfall. • Impact on programming, educational outcomes and experience of children.
Physical environment waivers (including indoor and outdoor spaces)	<ul style="list-style-type: none"> • Access to indoor and outdoor spaces, or facilities e.g., toilets. • Building and floor plans by a certified building practitioner. • Photos of relevant spaces e.g., simulated outdoor space. • Details of renovations • Impact on programming, educational outcomes and experience of children. • A statement from the applicant about ‘exceptional circumstances’ • The location of the premises, such as a high density area, or Central Business District. • The availability of alternative sites in the area that may provide appropriate indoor or outdoor space. • Any proposed design of the indoor or outdoor space, such as indoor space being used as simulated outdoor space. • At the discretion of the Commission, an Authorised Officer may visit the service premises to view the relevant spaces and gather additional information.
FDC principal office in the same jurisdiction as FDC service approval	<ul style="list-style-type: none"> • Family day care services are in Local Government Areas in adjacent jurisdictions (e.g., Albury/Wodonga) • Strategies in place to ensure educators will be adequately supported and monitored.

4.3.1 Concurrence

In September 2017, the introduction of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP) brought about the process of Concurrence.

When a development application is non-compliant with space requirements, namely, Regulation 107 or 108, and potentially includes a simulated environment as a remediation measure, the relevant Local Council will refer the application to the Commission to seek concurrence on the application prior to the construction of the service premises. The Commission will assess the development application and advise the Local Council whether it will grant concurrence. A grant of concurrence means the Commission is satisfied that, based on the plans provided, a waiver could be granted at the time of service approval.

The service waiver must still be applied for and assessed at the time of service approval to ensure that the premises is safe for the children to use and that there has been no significant departure from the measures outlined in the development application. However, the Commission will have regard to whether concurrence was granted to the development application prior to the building being completed.

4.3.2 Service Waiver

In addition to the matters outlined above, the Commission may consider either or both of the following:

- Whether the education and care service is able to meet the prescribed element or elements of the National Quality Standard and the national regulations by alternative means that satisfy the objectives of those elements.
- Any matters disclosed in the application that are relevant to the application for the service waiver (section 90 of the National Law), which includes:
 - (90a1) whether there are special circumstances disclosed in the application that reasonably justify the grant of the service waiver
 - (90b) any other matter the Commission thinks fit.

4.3.3 Temporary Waiver

In addition to the matters outlined above, the Commission must have regard to whether special circumstances disclosed in the application reasonably justify the granting of a waiver (section 97 of the National Law).

4.4 Extension of Existing Temporary Waiver

Prior to the expiry of a temporary waiver, an approved provider may apply to the Commission to extend the temporary waiver (Section 98 of the National Law). The Commission cannot extend a temporary waiver without an application from the approved provider.

In considering an application to extend a temporary waiver, the Commission may have regard to the same matters as for the initial temporary waiver application as well as any changes or new information.

- Section 98(3) of the National Law provides that:

The Commission may extend the temporary waiver for a period of up to 12 months.

Circumstances in which the Commission may consider extending a temporary waiver include, but are not limited to:

- Where a staff member has not yet attained their relevant qualification due to a reason outside of the control of the approved provider;

- Where works to provide physical space to meet the requirements of the National Law are underway, but have not yet been completed due to a reason outside of the approved providers' control;
- Other exceptional circumstances outside of the control of the approved provider in which it would be reasonable to provide an extension of the temporary waiver.

The Commission will only extend a temporary waiver for the minimum possible reasonable time.

4.5 Making a Decision on an Application

The Commission may either grant or refuse an application for a service waiver ([Section 91 of the National Law](#)) or an application for a temporary waiver ([Section 98 of the National Law](#)).

4.5.1 Granting a waiver

Where the Commission grants a waiver, it will issue or re-issue the service approval specifying:

- The elements and/or National Regulations to which the waiver applies;
- Any conditions placed on the waiver;
- In the case of a temporary waiver, the period of the waiver

The Commission will set the duration of a temporary waiver, with a maximum duration of 12 months. In determining this period, the Commission may consider the following matters:

- Any risk posed to the safety, health and wellbeing of children attending the education and care service;
- Any risk posed to the educational and developmental outcomes for children attending the education and care service;
- The length of time for which the waiver will be required e.g., the length of an Early Childhood Teacher (ECT) course, or the time taken to complete renovation work.

The Commission may place a condition on a waiver at the time of granting the waiver. Thereafter, at any time, the Commission may remove or vary any condition placed on the waiver. Further information can be found in the Conditions on Approvals and Waivers Policy.

While a temporary waiver is in force, the approved education and care service is taken to comply with regulations set out in the National Regulations or a prescribed element of the National Quality Standard for a specified period of time.

4.5.2 Refusing a waiver

The Commission may refuse to grant a waiver where the application cannot satisfy the requirements by an alternate means or where it can, but to do so would not be in the best interests of the children in care.

The Commission will notify the applicant in writing of the decision and the reasons for the decision. A decision to refuse a waiver is not a reviewable decision. For further information, see the [Review of Decisions Policy](#).

4.5.3 Revoking a waiver

The Commission may revoke a service or temporary waiver at its discretion (sections 92(1) and 99 of the National Law). An approved provider may also apply to the Commission to revoke a service waiver that applies to a service which it operates (Section 92 of the National Law). Although there is no provision under the National Law for an approved provider to apply to revoke a temporary waiver, the Commission will consider any written request from the approved provider to revoke a temporary waiver.

The Commission will consider revoking a waiver where:

- The operation of the waiver is ineffective in ensuring compliance with the objectives of the National Law;
- The grounds on which the service waiver was granted no longer apply;
- The approved provider is not complying with the waiver, including any conditions on the waiver;
- The operation of the service due to the waiver has created a risk to the safety, health, and wellbeing, or to the developmental outcomes, of children being educated and cared for at the service, and the approved provider has not adequately addressed the risks.

Regulation 43 of the National Regulations prescribes the timeframes in respect to revoking a service waiver. Where the Commission has decided to revoke a service waiver, the revocation will take effect 14 days after the Commission notifies the approved provider of its decision to revoke the waiver.

Where the approved provider has submitted an application to revoke the service waiver, the revocation will take effect 14 days after the Commission notifies the approved provider of its approval of the application.

Whether the Commission or the approved provider initiates the revocation, the Commission may modify the 14 day prescribed period with the agreement of the approved provider. As the National Law and Regulations do not stipulate timeframes in respect to the revocation of a temporary waiver, the Commission will apply the same timeframes as outlined above for the revocation of a service waiver.

Where the Commission revokes a waiver, the service may be non-compliant with the relevant regulations. This may lead to further compliance action being taken against the approved provider.

4.5.4 Out-of-Scope Services

In May 2019, the Supplementary Provisions were amended to align with the requirements of the National Law and Regulations, with some modifications. Where the National Law applies, the provisions are referred to as the “National Law Alignment Provisions.” Section 14A of the Supplementary Provisions states that the National Law Alignment Provisions provide for the grant of service waivers and temporary waivers and provide for other matters relating to waivers. As such, approved providers of occasional care and mobile services can apply for a service or temporary waiver, with some modifications to the prescribed elements for mobile services. Regulations 104, 107, 108, 110 and 112–114 are not prescribed elements for mobile services, which means mobile services cannot apply for a waiver from these regulations.

If a mobile education and care service is to be provided on premises that do not comply with Regulation 80 and any of the regulations outlined above, the approved provider must submit a venue management plan, and have it approved by the Commission. If the Commission

approves the venue management plan, the service is taken to comply with the regulations addressed in the plan.

A venue management plan is a plan describing how the safety and wellbeing of children attending the particular premises where a mobile education and care service is being provided will be ensured despite the premises not complying with specified provisions of the National Law and/or Regulations.

Service approval for mobile education and care services will only be provided with an approved venue management plan.

While an approved venue management plan is in force, and the mobile education and care service complies with it, the service is taken to comply with the provisions of the National Law and/or Regulations that are specified in the venue management plan.

5 Appendices

Checklist 1: Information required for service waiver application
<input type="checkbox"/> Name of education and care service
<input type="checkbox"/> Service approval number
<input type="checkbox"/> Name and contact details of the contact person for the application
<input type="checkbox"/> A statement that specifies: <ul style="list-style-type: none"> a) the elements of the National Quality Standards and/or the National Regulations for which the service waiver is sought and b) the way in which the service does not, or will not, comply with the specified elements and/or National Regulations.
<input type="checkbox"/> Reasons the service is unable to comply, and details and any evidence of any attempts made to comply with the specified elements and/or National Regulations, or any other reasons why the service seeks the waiver.
<input type="checkbox"/> Measures being taken, or to be taken, to protect the rights, best interests and safety, health and wellbeing of children being educated and cared for by the service while the waiver is in force.
<input type="checkbox"/> Additional information that may be required for the Commission to make an informed decision. For example, a service waiver may require site plans and unencumbered space calculations.

Checklist 2: Information required for SA 08 temporary waiver application
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<input type="checkbox"/> Name of education and care service
<input type="checkbox"/> Service approval number
<input type="checkbox"/> Name and contact details of the contact person for the application
<input type="checkbox"/> A statement that specifies: <ul style="list-style-type: none"> a) the elements of the National Quality Standards and/or the National Regulations for which the temporary waiver is sought and b) the way in which the service does not, or will not, comply with the specified elements and/or National Regulations.
<input type="checkbox"/> Reasons the service is unable to comply, and details and any evidence of any attempts made to comply with the specified elements and/or National Regulations.
<input type="checkbox"/> Period for which the temporary waiver is sought and the reasons for seeking that period (cannot exceed 12 months)
<input type="checkbox"/> Details of steps being taken, or that will be taken, to comply with the elements and/or regulations
<input type="checkbox"/> Measures being taken, or to be taken, to protect the wellbeing of children being educated and cared for by the service while the temporary waiver is in force.
<input type="checkbox"/> Additional information that may be required for the Commission to make an informed decision. For example, an ECT waiver will require evidence of adequate recruitment attempts, details of the ECT nominee and evidence of their enrolment in an ACECQA-approved ECT course.

Checklist 3: Evidence that may support a waiver application	
Waiver area	Checklist of evidence
Physical Environment: General	<ul style="list-style-type: none"> • Plans covering risk management, supervision strategy and revised use of space (Regulation 42(g)) • Relevant space plans, diagrams, or photographs (Regulation 42(g)) • Evidence of how the environment would be adapted, facilities and/or equipment that would be used to promote quality experiences in natural environments, if the application is granted (Regulation 42(g)) • Information on programming and practices to facilitate access to quality experiences in natural environments (Regulation 42(g)) • Facilities and equipment to engage and develop gross motor skills (Regulation 42(g))
Physical environment: Insufficient indoor/outdoor space	<ul style="list-style-type: none"> • Outline of the space reduction being requested, the reason, what areas of the program will be impacted and how the service will ensure children’s safe access to reduced indoor/outdoor space (Regulations 42(e), (f), (g)) • Where renovations are being undertaken, evidence: <ul style="list-style-type: none"> • of what areas of the program will be impacted • of how the service will minimise the impact of any works on the children • of a risk assessment and how the service will ensure children cannot access any unsafe areas during the renovations • of how the service will manage the movement of tradespeople through the service • that temporary fencing (if required) meets the requirements of regulation 104 of how the service will evaluate the effectiveness of meeting the needs of the children whilst the works are being undertaken (Regulations 42(e), (f), (g)).

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<p>Physical Environment: Simulated Outdoor</p>	<ul style="list-style-type: none"> • Details of the outdoor space the service intends to use including a map identifying this space in relation to the service (Regulation 42(g)) • For excursions, a copy of the service’s policies and procedures in relation to excursions, including procedures for complying with the requirements for risk assessment and authorisations set out in regulations 100-102 (Regulation 42(g)) • Copy of the service’s policies and procedures for the supervision of children using the outdoor space (Regulation 42(g)) • Copy of the completed risk assessment for taking children to the outdoor space (Regulation 42(g))
<p>Physical Environment: Simulated Indoor</p>	<ul style="list-style-type: none"> • Details of the additional indoor space the service intends to use as outdoor space including a map/ plans identifying this space in relation to the service (Regulation 42(g)) • Area measurements for the space (Regulation 42(g))
<p>Staffing: General</p>	<ul style="list-style-type: none"> • A plan illustrating how education program and practice meets the outcomes of the approved learning framework.
<p><u>Staffing – Requirement for ECT / Diploma level qualified educator</u></p>	<ul style="list-style-type: none"> • Details of your service (Regulation 45(a)(b)) • Evidence that you have advertised to recruit an ECT in the last 3 months (Regulation 45(f)(h)) • Details of why your attempts to recruit an ECT were unsuccessful (Regulation 45(e)) • Information about the ECT nominee for the temporary waiver and verified WWCC (Regulation 45(i)) • Evidence that the nominee is currently enrolled in an ACECQA-approved ECT course (Regulation 45(h)) • Evidence of satisfactory progression for previously approved nominees and/or extension of waiver applications (Regulation 45(h)) • Evidence of diploma or 50% completion of ECT course (Regulation 45(h)) • Details of previously approved waivers (Regulation 45(h)) • The Commission may ask the applicant to provide further information to make an informed decision (Law 96)

<p><u>Extensions of temporary waivers</u></p>	<ul style="list-style-type: none"> Extensions for temporary waivers must relate to the same elements and/or regulations and circumstances for which the initial waiver was granted. When considering the extension application, the Commission will consider the continued attempts made by the service to comply with the elements and/or regulations and why the attempts have not resolved the service's noncompliance.
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6 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

7 Approval

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

Designation: The Commissioner/Executive Director, NSW Early Learning Commission

Dated: 26 February 2026

8 Document history

Table 1. Document information

Document title	Waiver Policy
Document type	Policy
Version number	1.0

9 Terms and definitions

Table 2. Terms and definitions

Term	Definition
Application of Exceptional Circumstances	There is no absolute definition of exceptional circumstances. Under the National Law, the notion of exceptional circumstances applies to a range of situations, such as family day care venues or temporary relocations. The Commission considers whether or not exceptional circumstances exist on a case-by-case basis. Exceptional circumstances are limited to circumstances that are

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unusual, not typical, or unable to be foreseen or planned for in advance.

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