

NSW Department of Education

Service Transfers Policy

NSW Early Childhood Education and Care
Regulatory Authority

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Document Summary

- Policy establishes a framework to administer the ECE-QARS Documentation Control and Record/s Management processes.
- The Documentation & Records (D & R) framework guides compliance with statutory provisions, including the State Records Act 1998, and with business and quality system requirements.
- This policy outlines how the NSW Early Childhood Education and Care Regulatory Authority (NSW ECEC Regulatory Authority) exercises its function of considering notifications to transfer a service approval from one approved provider to another 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 the Education and Care Services National Regulations (NSW) (National Regulations).

1 Purpose

This policy outlines how the NSW Early Childhood Education and Care Regulatory Authority (NSW ECEC Regulatory Authority) 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 NSW ECEC Regulatory Authority 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 developmental outcomes of children being educated and cared for.

2 Application

2.1 Scope

This Policy applies to both in-scope and out-of-scope services in NSW.

2.2 In-scope services

In-scope services are regulated under the NQF, which includes the National Law, National Regulations, the [National Quality Standards](#) (NQS) and [National Approved Learning Frameworks](#). In-scope services include centre-based services, such as long day care, out of school hours care, preschools, and family day care services.

2.3 Out-of-scope services

Out-of-scope services (or State regulated services) are regulated under the [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#) (the State Law).

These include mobile and occasional care services. Following changes to the State Law in 2018, the National Law provisions apply to out-of-scope services.

3 Responsibilities

3.1 Implementation

The NSW Early Childhood Education and Care Regulatory Authority (NSW ECEC Regulatory Authority) is responsible for the implementation of this policy.

3.2 Transferring and receiving approved providers

Transferring and receiving approved providers must submit valid notification of an intended transfer of a service approval.

3.3 The NSW ECEC Regulatory Authority

The NSW ECEC Regulatory Authority must act according to its functions and powers under the National Law.¹ In exercising its functions and powers with respect to the transfer of service approvals, the NSW ECEC Regulatory Authority will be guided by this, and other relevant policies and procedures.

4 Guiding Principles

This policy is informed by the [Guiding Principles for Exercise of Regulatory Authority Powers Policy](#). Of these, the following are particularly relevant to transferring a service approval:

- The safety, health and wellbeing of children is the paramount concern in determining whether to intervene in a proposed transfer and in determining the outcome of any such intervention.
- Decisions will be made using the Department of Education's (the department) risk-based approach, which ensures transparent and defensible risk-based assessments of each notification while having regard to the key regulatory risks.
- The NSW ECEC Regulatory Authority is committed to proportionate and fair actions. Our primary concerns are the rights and best interests of children.
- The NSW ECEC Regulatory Authority will ensure its decisions regarding the transfer of a service approval are informed by evidence and only influenced by relevant factors. The NSW ECEC Regulatory Authority will assess each situation according to its own merits but will also aim to achieve consistency in its decision-making process.
- The NSW Regulatory Authority ECEC is committed to ensuring the integrity and reliability of its regulatory decisions by conducting activities related to considering

¹¹ Section [260](#) of the National Law.

notifications to transfer a service approval in accordance documented policies and procedures.

- Any staff involved in considering notifications to transfer a service approval will conduct themselves in accordance with the NSW Department of Education Code of Conduct, the Guiding Principles, and any other relevant policies and guidelines.
- The NSW ECEC Regulatory Authority will document and be answerable and accountable for its decisions and actions relating to the transfer of a service approval.

The NSW ECEC Regulatory Authority 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.

5 Policy

5.1 Notification requirements

For in-scope services, notifications must be submitted to the NSW ECEC Regulatory Authority through the National Quality Agenda IT System on the Australian Children’s Education and Care Quality Authority (ACECQA) website at <https://www.acecqa.gov.au/>.

For out-of-scope services, the [Notification of Transfer of Service Approval form](#) must be completed and emailed to assessments.ececd@det.nsw.edu.au.

Both the transferring approved provider and receiving approved provider must notify the NSW ECEC Regulatory Authority of the transfer at least 60 days before the intended transfer date.² This period may be reduced if the NSW ECEC Regulatory Authority determines that the circumstances are exceptional.³

² Section [59](#) of the National Law.

³ 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 NQF.

5.2 Assessing and determining a notification to transfer a service approval

5.2.1 Consent to transfer of a service approval

A service approval cannot be transferred without the consent of the NSW ECEC Regulatory Authority.⁴

The NSW ECEC Regulatory Authority 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.⁵

Once the regulatory authority 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.⁶

5.2.2 Intervention in a transfer of a service approval

The NSW ECEC Regulatory Authority 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.⁷

The NSW ECEC Regulatory Authority may request further information or undertake inquiries to make a fully informed decision.

The NSW ECEC Regulatory Authority may consider whether the receiving approved provider has the management and financial capability to operate an education and care

⁴ Section [60](#) of the National Law.

⁵ Section [61](#) of the National Law.

⁶ Section [67A](#) of the National Law

⁷ Section [62\(1\)](#) of the National Law.

service in accordance with the National Law. The NSW ECEC Regulatory Authority may consider matters such as the receiving approved provider's:

- 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);
- knowledge of the National Law and Regulations.

If the NSW ECEC Regulatory Authority decides to intervene, it will notify both parties of the decision at least 28 days before the intended date of transfer.⁸

If the NSW ECEC Regulatory Authority has intervened, the transfer cannot go ahead unless and until the NSW ECEC Regulatory Authority has given written consent.⁹

5.2.3 Decision after intervention

After intervening in a transfer, the NSW ECEC Regulatory Authority will determine whether to consent, or refuse consent, to the transfer and will notify each party of the outcome.¹⁰ Consent to the transfer of a service approval can be given subject to certain conditions.

⁸ Sections [62\(2\)-\(5\)](#) of the National Law.

⁹ Section [63](#) of the National Law.

¹⁰ Sections [65](#) and [66](#) of the National Law.

The NSW ECEC Regulatory Authority must notify both parties of its decision at least 10 days before the intended date of transfer.¹¹ If it has not made a decision in this time, it must do so within a further 28 days.¹²

5.2.4 Void transfers

A transfer of a service approval is void if it takes place without the consent of the NSW ECEC Regulatory Authority, violates the NSW ECEC Regulatory Authority'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.¹³

5.2.5 Confirmation of transfer

The transferring approved provider and receiving approved provider must give written notice to the NSW ECEC Regulatory Authority within two days of the transfer taking effect specifying the date of the transfer.¹⁴

5.3 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.

5.3.1 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 NSW ECEC Regulatory Authority with plans and calculations

¹¹ Section [66](#) of the National Law.

¹² Section [66](#) of the National Law.

¹³ Section [67](#) of the National Law.

¹⁴ Section [68](#) of the National Law.

from a building practitioner to confirm that the service can meet the space requirements (Regulation 107 & 108).

The NSW ECEC Regulatory Authority 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.¹⁵ The receiving approved provider may apply for a waiver of the space requirements. For information about waivers, see the NSW ECEC Regulatory Authority's [Waivers Policy](#).

5.3.2 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.

5.4 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.¹⁶

Parental consent is needed before the transferring approved provider shares enrolment records with the receiving approved provider.¹⁷

5.5 Review

A person who is affected by the NSW ECEC Regulatory Authority's refusal to consent to the transfer of a service approval can apply for a review of the decision.¹⁸

¹⁵ Regulations [107](#) and [108](#) of the National Regulations.

¹⁶ Sections [69](#) of the National Law.

¹⁷ Regulation [184](#) of the National Regulations.

¹⁸ 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](#).

6 Approval

Approved by: Nicholas Backo

Designation: R/Executive Director, NSW Early Childhood and Care Education Regulatory Authority

Signed: 

Dated: 2 October 2024

7 Document History

Table 1: Document information

Policy title	Service Transfers Policy
Current version	3.0
Policy number	DOC24/2609413
Approved by	R/Executive Director, NSW Early Childhood Education and Care Regulatory Authority
Approval date	2 October 2024
Audience	External/publicly available

Table 2: Document version history

Version	Date	Author	Change description
1.0	17 August 2020	Director, Regulatory Strategy and Performance	N/A
2.0	17 March 2021	Director, Regulatory Strategy, Policy and Practice	N/A
3.0	2 October 2024	Regulatory Strategy, Policy and Practice	Existing policy document updated

	to include changes to the National Law and Regulations in October 2023
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Table 3: Document accountability

Role	Name
Policy Owner	Regulatory Strategy, Policy and Practice
Policy Contact	ececd@det.nsw.edu.au

Table 4: Document consultation

Version	Date	Stakeholder	Change description
3.0	April 2024	QPRS	Input on Section 1.2
3.0	April 2024	RSPR	Aligning policy with D&R framework
3.0	June 2024	Legal	Full review
3.0	June 2024	Approvals	Input on Section 4.1
3.0	July 2024	Approvals	Input on Section 4.1
3.0	July 2024	CST	Full review
3.0	July 2024	RSPR	Aligning policy with D&R framework

Table 5: Key relevant legislation and regulation that determines, influences or defines this policy.

Year of enactment	Title of legislation
2010	<i>Children (Education and Care Services) National Law (NSW) No 104a of 2010</i>
2011	<i>Education and Care Services National Regulations (2011 SI 653)</i>
2011	<i>Children (Education and Care Services) Supplementary Provisions Act 2011 No 70</i>
2019	<i>Children (Education and Care Services) Supplementary Provisions Regulation 2019</i>

8 Appendices

8.1 Appendix A

Table 6: Regulation 36 of the Education and Care Services National Regulations 2011 (National Regulations)

Checklist of information required for service transfer notification – centre-based services
<input type="checkbox"/> Name of education and care service
<input type="checkbox"/> Service approval number
<input type="checkbox"/> The transferring approved provider's name and contact details and provider approval number
<input type="checkbox"/> The receiving approved provider's name and contact details and provider approval number
<input type="checkbox"/> The date on which the service transfer is intended to take effect
<input type="checkbox"/> The details of any proposed changes in relation to the information required to be provided under Regulations 24 and 25 of the National Regulations

8.2 Appendix B

Table 7: Regulation 37 of the Education and Care Services National Regulations 2011 (National Regulations)

Checklist of information required for service transfer notification - family day care services
<input type="checkbox"/> Name of the family day care service
<input type="checkbox"/> Service approval number
<input type="checkbox"/> The transferring approved provider's name and contact details and provider approval number
<input type="checkbox"/> The receiving approved provider's name and contact details and provider approval number
<input type="checkbox"/> The date on which the service transfer is intended to take effect
<input type="checkbox"/> The details of any proposed changes to the information required to be provided under Regulation 26 of the National Regulations

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