

# M EDUCATION (EARLY CHILDHOOD SERVICES) REGULATIONS

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*SOURCE: Regulations 1-4, 20-29,40-59 Education (Early Childhood Services) Regulations 2008<sup>1</sup>*

## **Regulation 1 - Title**

These regulations are the Education (Early Childhood Services) Regulations 2008.

## **Regulation 2 - Commencement**

- (1) Regulation 41 comes into force on the day after the date on which the making of these regulations is notified in the Gazette.
- (2) The rest of these regulations come into force on 1 December 2008.

## **Regulation 3 - Interpretation**

In these regulations, unless the context otherwise requires,—  
**Act** means the Education Act 1989

**all-day licence** means a licence to operate a service that allows a child attending the service to attend for more than 4 hours (in total) on each day the service operates

**centre** means an early childhood education and care centre within the meaning of section 310 of the Act

**children**, in relation to an early childhood service, means the children attending or participating in the service; and *child* has a corresponding meaning

**contact person** means a person, nominated by a service provider to represent its management, who—

- (a) is able to respond to the Secretary as soon as practicable on any issue relating to licensing; and
- (b) has authority to act on behalf of the service provider when dealing with the Secretary; and
- (c) resides locally

**early childhood service** has the same meaning as in section 309 of the Act

**educator**, in relation to a licensed home-based education and care service, means the person who—

- (a) provides education and care and comfort directly to children in his or her care; and
- (b) attends to the health and safety of those children

**existing service** means an early childhood service in respect of which a licence is deemed to have been issued under section 319K(1) or 319L(1) of the Act

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<sup>1</sup> Refer to the legislation website: *Education (Early Childhood Services) Regulations 2008*

**licence** means a licence granted under these regulations

**licensed early childhood service** has the same meaning as in section 309 of the Act

**licensed home-based education and care service** has the same meaning as in section 309 of the Act

**licensed hospital-based education and care service** has the same meaning as in section 309 of the Act

**licensed service provider** means the holder of a licence; and, in relation to a licensed early childhood service, means the holder of a licence in relation to that service

**mixed licence** means a licence to operate a service—

- (a) that allows a child attending the service to attend—
  - (i) for more than 4 hours (in total) on those days the service operates in accordance with the requirements of an all-day licence; and
  - (ii) for 4 hours or less (in total) on those days the service operates in accordance with the requirements of a sessional licence; and
- (b) requires the service to comply with the requirements of—
  - (i) an all-day licence, on days when a child may attend for more than 4 hours (in total); and
  - (ii) a sessional licence, on days when a child may attend for 4 hours or less (in total)

**new service** means an early childhood service that is not an existing service

**person responsible** means,—

- (a) in relation to a licensed centre..., 1 or more persons nominated for the purpose by the service provider; being persons who are directly involved in, and primarily responsible for, the day-to-day education and care, comfort, and health and safety of the children; and
- (b) in relation to a licensed hospital-based education and care service, the person or persons who—
  - (i) have primary responsibility for—
    - (A) the education of children participating in the service; and
    - (B) ensuring supervision of children in the activity room used as part of the service; and
  - (ii) support the health and safety and care of the children; and
- (c) in relation to a licensed home-based education and care service, the co-ordinator who has primary responsibility for—
  - (i) overseeing the education and care, comfort, and health and safety of the children; and
  - (ii) without limiting subparagraph (i), providing professional leadership and support to educators within the service

**recognised qualification** means,—

- (a) in relation to a licensed service that is teacher led, an early childhood teaching qualification recognised by the New Zealand Teachers Council for registration purposes;
- (b) in relation to any other licensed service or any other licensed service of a kind specified by the Secretary, a qualification held by an adult providing education and care as part of that service which is recognised by the Secretary as a qualification for this purpose by notice in the *Gazette*

**Secretary** has the same meaning as in section 309 of the Act

**service provider** has the same meaning as in section 309 of the Act

**sessional licence** means a licence to operate a service that limits the hours during which every child attending the service can attend to no more than 4 hours (in total) on each day the service operates

#### **Regulation 4 - Application of these regulations to existing early childhood services**

These regulations do not apply in respect of any early childhood service deemed to be licensed under section 319K or 319L of the Act while it is deemed to be licensed under either of those provisions, except—

- (a) in respect of an application for a licence to operate such a service that is required to be made under these regulations; and
- (b) otherwise to the extent provided in the Act.

### **Part 1 – Licensing**

*[Regulations 5-19 omitted]*

#### **Regulation 20 - Consents under Resource Management Act 1991**

The Secretary must not grant any licence for an early childhood education and care centre unless satisfied that the use of the premises in respect of their use as a centre complies with the Resource Management Act 1991.

#### **Regulation 20A – Requirements for premises of centre and hospital-based education and care service**

- (1) Before granting any licence for a centre or hospital-based education and care service, the Secretary must be satisfied that the premises comply with this regulation.
- (2) The premises must—
  - (a) be situated on a single site; and
  - (b) be for the exclusive use of the centre or the hospital-based education and care service.
- (3) If the premises comprise 2 or more components,—
  - (a) each component must be immediately adjacent and connected to at least 1 other component; and
  - (b) children must have safe access to each component.
- (4) In this regulation,—

**component** means any land or building that forms part of the premises

**premises** means the premises from which the centre will operate, or from which the hospital-based education and care service will be provided.

#### **Regulation 21 - Kinds of licence**

Every licence must be—

- (a) a licence to operate a centre; or
- (b) a licence to provide a home-based education and care service; or
- (c) a licence to provide a hospital-based education and care service.

## **Regulation 22 - Classes of licence, conditions, and other matters**

- (1) Every licence must be—
  - (a) a probationary licence granted under regulation 11; or
  - (b) a full licence granted under regulation 13; or
  - (c) a full or probationary licence that has been reclassified as a provisional licence under regulation 15; or
  - (d) a transitional licence referred to in section 319K(5) or 319L(5) of the Act; or
  - (e) a temporary relocation licence granted under regulation 18.
- (2) Every licence for a centre or a hospital-based education and care service must be—
  - (a) an all-day licence; or
  - (b) a sessional licence; or
  - (c) a mixed licence; or
  - (d) *revoked*
- (3) Every licence for a centre.... must authorise the provision of education and care that is—
  - (a) teacher led; or
  - (b) parent led; or
  - (c) both teacher led and parent led during any week but only 1 kind on any 1 day.
- (4) A licence for a home-based education and care service or a hospital-based education and care service may only authorise the provision of teacher led education and care.
- (5) Every licence may be subject to any special conditions imposed by the Secretary—
  - (a) that are designed to ensure that the service provider complies with any relevant requirements or conditions imposed by or under any other enactment:
  - (b) limiting the numbers of children, or of children of particular ages, that may attend or participate in the service during all or any specified times:
  - (c) imposing additional requirements about the supervision to be provided to children attending or participating in the service.
  - (d) limiting the use of a defined activity space to a specified number of children while maintaining the minimum space requirements set out in [Schedule 4](#) for each child

### **Regulation 22A – Limitations for centres and hospital-based services providing services for children under 2 years**

- (1) This regulation applies in respect of—
  - (a) early childhood education and care centres; and
  - (b) hospital-based education and care services.
- (2) No more than 25 children under 2 years may attend any centre or hospital-based education and care service at the same time without the Secretary’s approval (which may be given under subclause (3)).
- (3) The Secretary may approve up to 75 children under 2 years to attend any centre or hospital-based education and care service at the same time if—
  - (a) the centre or hospital-based education and care service is providing or intends to provide its services exclusively for children under 2 years; and
  - (b) the Secretary is satisfied that all the children will be adequately cared for; and
  - (c) the Secretary is satisfied that the centre or hospital-based education and care service is able to maintain a ratio of 1 adult to every 5 children (as indicated in Schedule 2) with the increased number of children.

### **Regulation 23 - Limitation on mixed ages in centres and hospital-based services**

- (1) This regulation applies in respect of—
  - (a) early childhood education and care centres.....; and
  - (b) hospital-based education and care services.
- (2) If children aged under 2 years and 2 years or over attend the same centre or participate in the same hospital-based education and care service, no more than 50 children may attend at the same time without the Secretary's approval.
- (3) The Secretary may approve, for any centre or hospital-based education and care service intending to have a mixture of children aged under 2 years and 2 years or over, a maximum roll of 150 if—
  - (a) the number of children under 2 years who will be attending does not exceed 75; and
  - (b) the Secretary is satisfied that the service will be organised in a way that—
    - (i) ensures all the children will be adequately cared for; and
    - (ii) reflects the different needs of the children attending.
- (4) The Secretary may at any time, by notice in writing to the service provider, withdraw or amend an approval given under subclause (3) if satisfied that it is necessary to do so to ensure that all children will be adequately cared for.
- (5) A notice issued under subclause (4) comes into force on a date specified in the notice (being a date that is at least 21 days after the notice is given).

### **Regulation 24 - Issue of licences**

- (1) Subject to subclause (2) and regulations 26, 27, and 28, licences may be in any form the Secretary thinks fit.
- (2) Every licence must state—
  - (a) the full name of the service provider operating the early childhood service for which the licence is issued and the name of the service;
  - (b) the full name of the contact person;
  - (c) if it is a probationary licence, the fact that it is a probationary licence and its expiry date;
  - (d) if it is a provisional licence, the fact that it is a provisional licence, and the conditions that must be satisfied, and the dates by which they must be satisfied, before a full licence or probationary licence, as the case requires, may be returned;
  - (e) if it is a full licence, the fact that it is a full licence....;
  - (f) if it is a transitional licence, the fact that it is a transitional licence, the conditions of the licence, and the date of its expiry;
  - (g) if it is a temporary relocation licence, the fact that it is a temporary relocation licence, the conditions of the licence, and the date of its expiry;
  - (h) whether the licence has been granted for a centre, home-based education and care service, or hospital-based education and care service;
  - (i) the maximum numbers of children in respect of which the service is to operate;
  - (j) the date of issue of the licence;
  - (k) any special conditions of the licence.

### **Regulation 25 – Licensing fee**

- (1) The Secretary must not issue a licence unless the service provider has paid the Secretary a fee of \$2,756.25.
- (2) The fee is inclusive of goods and services tax.
- (3) Subclause (1) does not apply to the issue of a licence in respect of a service at a time when it has (by virtue of section 319K or 319L of the Act) continuously been deemed to be licensed as an early childhood service since immediately before the commencement of these regulations.

## **Regulation 26 - Additional requirements relating to licences for centre**

- (1) Every licence for a centre must state—
  - (a) whether the licence authorises the provision of education and care that is teacher led or parent led or a mixture of both....:
  - (b) whether it is an all-day licence, sessional licence, or mixed licence....:
  - (c) the premises for which the licence is granted:
  - (d) the maximum number of children who may attend the centre at any one time, which may not exceed—
    - (i) 150, if all the children who may attend the centre at any one time are 2 years or over:
    - (ii) 25, if all the children who may attend the centre at any one time are under 2 years, unless a higher maximum number (not exceeding 75) is authorised by the Secretary under regulation 22A(3):
    - (iii) 50, if children of mixed ages may attend the centre at any one time, unless a higher maximum number (not exceeding 150) is authorised by the Secretary under regulation 23(3):
  - (e) that—
    - (i) no children under 2 years may attend the centre; or
    - (ii) no children 2 years or over may attend the centre; or
    - (iii) children of mixed ages may attend the centre:
  - (f) the hours and days the service is authorised to be provided.
- (2) Every licence for a centre relates only to the licensed service provider named in the licence and to the premises for which it has been issued.
- (3) Nothing in subclause (1)(d) and (e) limits or affects the power of the Secretary to attach to a licence (under regulation 22(5)) conditions relating to the maximum numbers of children or of children of particular ages who may attend a centre at any one time.
- (4) The service provider for a centre must ensure that at all times the numbers and ages of children comply with—
  - (a) the maximum numbers stated in the centre's licence under subclause (1)(d) and (e); and
  - (b) any relevant special conditions attached to the licence under regulation 22(5).

## **Regulation 27 - Additional requirements relating to licences for hospital-based education and care service**

- (1) Every licence for a hospital-based education and care service must state—
  - (a) the hospital for which the licence is granted:
  - (b) the hours and days of intended operation:
  - (c) whether it is an all-day, sessional, or mixed licence:
  - (d) the maximum number of children who may attend the centre at any one time, which may not exceed—
    - (i) 150, if all the children who may attend the centre at any one time are 2 years or over:
    - (ii) 25, if all the children who may attend the centre at any one time are under 2 years, unless a higher maximum number (not exceeding 75) is authorised by the Secretary under regulation 22A(3):
    - (iii) 50, if children of mixed ages may attend the centre at any one time, unless a higher maximum number (not exceeding 150) is authorised by the Secretary under regulation 23(3):
  - (e) that—
    - (i) no children under 2 years may attend the service; or

- (ii) no children 2 years or over may attend the service; or
  - (iii) children of mixed ages may attend the service.
- (2) Every licence for a hospital-based education and care service relates only to the licensed service provider named in the licence and to the hospital for which it has been issued.
- (3) Nothing in subclause (1)(d) and (e) limits or affects the power of the Secretary to attach to a licence (under regulation 22(5)) conditions relating to the maximum numbers of children or of children of particular ages who may participate in the service at any one time.
- (4) The service provider for a licensed hospital-based education and care service must ensure that at all times the numbers and ages of children comply with—
  - (a) the maximum numbers stated in the services's licence under subclause (1)(d) and (e); and
  - (b) any relevant special conditions attached to the licence under regulation 22(5).

**Regulation 28 - Additional requirements for licensed home-based education and care service**

- (1) A service provider who operates a licensed home-based education and care service must—
  - (a) maintain a list of the homes used in connection with the service and make it available on request to the Secretary; and
  - (b) ensure that the requirements of these regulations are being complied with in respect of each home used in connection with the service; and
  - (c) ensure that he, she, or it can cease to provide the service at any home in respect of which the requirements of these regulations are not being satisfied; and
  - (d) ensure that he, she, or it has access to all premises while children are participating in the service at those premises.
- (2) The person responsible for a licensed home-based education and care service must—
  - (a) contact each educator engaged in the service at least once per fortnight; and
  - (b) visit each educator engaged in the service at least once per month; and
  - (c) take all reasonable steps each month to observe each child participating in the service while that child is receiving education and care.
- (3) Subclause (2) does not apply in respect of a home-based education and care service during any period when the service is closed for a fortnight or longer.

**Regulation 29 - Effect of licence**

- (1) The holder of a licence issued under these regulations is the service provider (whether or not the application is made by the service provider in person or another person or persons on behalf of the service provider).
- (2) A licence to operate a centre or to provide hospital-based education and care is a licence that applies in respect of the premises or hospital identified in the licence.
- (3) A licence to provide home-based education and care—
  - (a) must authorise the provision of education and care at 1 or more premises; but
  - (b) need not identify any particular premises at which the education and care is to be provided.

## **Part 2 – Standards**

### *Subpart 1—Preliminary*

#### **Regulation 40 - Outline and purpose of Part**

- (1) Subpart 2 requires each licensed service provider.... to comply with each of the following minimum standards:
  - (a) the curriculum standard: general (see regulation 43):
  - (b) the qualifications, ratios, and service-size standard: general (see regulation 44):
  - (c) the premises and facilities standard: general (see regulation 45):
  - (d) the health and safety practices standard: general (see regulation 46):
  - (e) the governance, management, and administration standard: general (see regulation 47).
- (2) *Revoked.*
- (3) The purpose of the minimum standards is to ensure the education, care, health, comfort, and safety of children attending licensed early childhood services.

#### **Regulation 41 - Minister may prescribe criteria**

- (1) The Minister, after consultation with those organisations that appear to the Minister to be substantially affected by these regulations, may prescribe criteria to be used by the Secretary to assess compliance with the minimum standards imposed by regulations 43 to 47, or any of those standards.
- (2) The Minister may, in the document prescribing the criteria, and in relation to the minimum standard imposed by regulation 45 (premises and facilities standard), provide that during any specified period 1 or more of the prescribed criteria that relate to that standard do not apply to an existing service.
- (3) If the Minister prescribes criteria under subclause (1), the Secretary must publish a notice in the *Gazette*—
  - (a) stating that the criteria have been prescribed; and
  - (b) setting out the criteria in full or stating where a copy of the criteria may be obtained by members of the public.
- (4) By way of explanation and elaboration, the purpose of criteria prescribed by the Minister is to enable those criteria to be used by the Secretary to assess whether service providers have complied with the minimum standards prescribed under regulations 43 to 47.
- (5) In this regulation *specified period* means a period specified by the Minister that does not expire after 30 November 2020.

### *Subpart 2—Standards for licensed services*

#### **Regulation 42 - Application of subpart: general**

This subpart applies to each licensed service provider.

### **Regulation 43 - Curriculum standard: general**

- (1) The curriculum standard: general is the standard that requires every licensed service provider to whom this regulation applies to—
  - (a) plan, implement, and evaluate a curriculum that is designed to enhance children's learning and development through the provision of learning experiences and that is consistent with any curriculum framework prescribed by the Minister that applies to the service; and that—
    - (i) responds to the learning interests, strengths, and capabilities of enrolled children; and
    - (ii) provides a positive learning environment for those children; and
    - (iii) reflects an understanding of learning and development that is consistent with current research, theory, and practices in early childhood education; and
    - (iv) encourages children to be confident in their own culture and develop an understanding, and respect for, other cultures; and
    - (v) acknowledges and reflects the unique place of Maori as tangata whenua; and
    - (vi) respects and acknowledges the aspirations of parents, family, and whanau; and
  - (b) make all reasonable efforts to ensure that the service provider collaborates with the parents and, where appropriate, the family or whanau of the enrolled children in relation to the learning and development of, and decision making about, those children; and
  - (c) obtain information and guidance from agencies with expertise in early childhood learning and development, to the extent necessary, to—
    - (i) support the learning and development of enrolled children; and
    - (ii) work effectively with parents and, where appropriate, family or whanau.
- (2) Each licensed service provider to whom this regulation applies must comply with the curriculum standard: general.

### **Regulation 44 - Qualifications, ratios, and service-size standard: general**

- (1) The qualifications, ratios, and service-size standard: general is the standard that requires every licensed service provider to whom this regulation applies—
  - (a) to comply with the applicable requirements of Schedule 1 (which relates to qualification requirements for adults); and
  - (b) to comply with the applicable requirements of Schedule 2 (which relates to adult-to-child ratios); and
  - (c) to comply with the applicable requirements of Schedule 3 (which relate to service-sizes); and
  - (d) to ensure that, at all times while children attend the service—
    - (i) those children, and the adults providing education and care who supervise them, are supervised by a person responsible; and
    - (ii) there is 1 person responsible for every 50 children.
- (2) Each licensed service provider to whom this regulation applies must comply with the qualifications, ratios, and service-size standard: general.
- (3) For the purposes of applying the requirement of Schedule 1, for 50% of the required staff at a teacher led early childhood service to hold a recognised qualification,—
  - (a) 1 member of the required staff of a teacher led early childhood service who is enrolled in a course of study that, if passed, will result in the award of a recognised qualification within 12 months may be counted as holding a recognised qualification:
  - (b) a person who holds a recognised qualification and is rostered to work at more than 1 early childhood service may be counted as a member of the required staff at no more than 2 early childhood services to which the qualification requirements apply:

- (c) if the application of Schedule 1 results in a number of required staff who must hold a recognised qualification that is less than a whole number, the number must be rounded up to the next whole number.
- (4) In this regulation and in Schedule 1,—
  - excluded service** means,—
    - (a) a kohanga reo affiliated to Te Kohanga Reo National Trust or a playcentre affiliated to the New Zealand Playcentre Federation (other than a kohanga reo or playcentre that has been approved by the Secretary, after consultation with Te Kohanga Reo National Trust or the relevant playcentre association, as a centre that is to comply with the qualification requirements for a teacher led centre); and
    - (b) *Revoked*
    - (c) a home-based education and care service
  - required staff** means,—
    - (a) in relation to a teacher led early childhood service (other than an early childhood service in respect of which a probationary licence is in force), the total number of adults required to satisfy the minimum adult-to-child ratios in Schedule 2 that apply in respect of the maximum number of children who may attend or participate in the early childhood service at any one time (as specified in the licence for the centre):
    - (b) in relation to a teacher led early childhood service in respect of which a probationary licence is in force, the total number of adults necessary to satisfy the minimum adult-to-child ratios in Schedule 2 that apply in respect of the maximum number of children for the time being enrolled to attend or participate in the early childhood service at any one time

**teacher led service** means any early childhood service that is not an excluded service.

**Regulation 44A – Spare capacity for children under 2 can in certain cases be set off against number of children 2 or over in determination of adult-child ratios**

- (1) In subclause (2),—
  - service affected** means a licensed early childhood education and care centre, or licensed hospital-based education and care service, attended by 3 or more children, of whom at least 1 is under 2 years old and at least 1 is 2 years old or older
  - spare under-2 capacity**, in relation to a service affected where the number of children under 2 years old attending is not a threshold number, means the difference between the number attending and the nearest higher number that is a threshold number
  - threshold** number means 5, 10, 15, 20, or 25.
- (2) For the purposes of regulation 44(1)(b), a licensed service provider to which regulation 44 applies that does not otherwise comply with the applicable minimum staffing requirements of Schedule 2 in relation to a service affected must be treated as complying with those requirements in relation to the service if—
  - (a) the number of children under 2 years old attending the service is not a threshold number; and
  - (b) the staffing is equal to or greater than the sum of—
    - (i) the applicable minimum staffing requirement for the number of children under 2 years old attending the service; and
    - (ii) the applicable minimum staffing requirement for the number of children 2 years old and over who would be attending the service if the number actually attending were reduced by the service's spare under-2 capacity.

#### **Regulation 45 - Premises and facilities standard: general**

- (1) The premises and facilities standard: general is the standard that requires every licensed service provider to whom this regulation applies—
  - (a) to use premises and facilities that, having regard to the number and age range of the children attending the premises, provide sufficient and suitable space for a range of activities, facilities for food preparation, eating, sleeping, storage, toileting, and washing, and sufficient and suitable heating, lighting, noise control, ventilation, and equipment to support—
    - (i) appropriate curriculum implementation by the service provider; and
    - (ii) safe and healthy practices by the service provider; and
  - (b) to comply with the requirements of Schedule 4 (which relates to activity spaces).
- (2) Each licensed service provider to whom this regulation applies must comply with the premises and facilities standard: general.

#### **Regulation 46 - Health and safety practices standard: general**

- (1) The health and safety practices standard: general is the standard that requires every licensed service provider to whom this regulation applies to—
  - (a) take all reasonable steps to promote the good health and safety of children enrolled in the service; and
  - (b) take all reasonable precautions to prevent accidents and the spread of infection among children enrolled in the service; and
  - (c) take all reasonable steps to ensure that the premises, facilities, and other equipment on those premises are—
    - (i) kept in good repair; and
    - (ii) maintained regularly; and
    - (iii) used safely and kept free from hazards; and
  - (d) take all reasonable steps to ensure that appropriate procedures are in place to deal with fires, earthquakes, and other emergencies.
- (2) Each licensed service provider to whom this regulation applies must comply with the health and safety practices standard: general.

#### **Regulation 47 - Governance, management, and administration standard: general**

- (1) The governance, management, and administration standard: general is the standard that requires every licensed service provider to whom this regulation applies to ensure that—
  - (a) the service is effectively governed and is managed in accordance with good management practices; and
  - (b) the service provider regularly collaborates with—
    - (i) parents and family or whanau of children enrolled in the service; and
    - (ii) the adults responsible for providing education and care as part of the service; and
  - (c) appropriate documentation and records are—
    - (i) developed, maintained, and regularly reviewed; and
    - (ii) made available where appropriate—
      - (A) at any reasonable time on request by a parent of a child enrolled in the service; and
      - (B) at any time on request by any person exercising powers or carrying out functions under Part 26 of the Act; and
  - (d) adequate information is made available to parents of enrolled children and, where appropriate, to the families or whanau of those children about the operation of the service; and

- (e) all reasonable steps are taken to provide staff employed or engaged in the service with adequate professional support, professional development opportunities, and resources.
- (2) Each licensed service provider to whom this regulation applies must comply with the governance, management, and administration standard: general.

*Subpart 3—Standards for limited attendance centres (Revoked)*

*Subpart 4—Miscellaneous*

**Regulation 54 - Miscellaneous variations to operation of minimum standards**

- (1) A licensed hospital-based education and care service is,—
  - (a) in relation to any matter covered by requirements in the Health and Disability Services (Safety) Act 2001 (the *HDSS Act*) or standards made under or referred to in that Act that are also covered by the requirements of standards imposed by these regulations, deemed to comply with the standards imposed by these regulations if the service complies with—
    - (i) the requirements of the HDSS Act; and
    - (ii) any standards made under or referred to in that Act; but
  - (b) required to comply with standards imposed by these regulations to the extent that they deal with matters not covered in the HDSS Act and any standards made under or referred to in that Act.
- (2) The Secretary may direct a service provider to staff a service otherwise than in accordance with regulation 44(1)(b) and Schedule 2..... by increasing the level or kind of staffing required beyond that required by Schedule 2 if the Secretary considers it necessary to do so, having regard to—
  - (a) the needs and ages of the children; and
  - (b) the design and construction of the premises where the service operates.
- (3) The Secretary may direct that the outdoor area requirements that apply to a centre under regulation 45(1)(b) and Schedule 4 be relaxed in a manner and to an extent specified by the Secretary, or dispensed with, if no child attends the centre for more than 2 hours on any one day.
- (4) The service provider of a licensed home-based education and care service must ensure that—
  - (a) no more than 2 children aged under 2 years receive education and care, as part of the service, in the same home at the same time, unless they are siblings; and
  - (b) if more than 3 siblings aged under 2 years are receiving education and care, in the same home at the same time, there are 2 educators present.
- (5) If there is any inconsistency between this regulation and any of regulations 41 to 47, this regulation prevails.

**Regulation 55 - Secretary may request health reports**

In determining whether the premises and facilities standard set out in regulation 45 [or the health and safety practices standard set out in regulation 46] has been or is likely to be complied with, the Secretary may direct the service provider of a licensed service to obtain a report from the Director-General of Health or a person nominated by the Director-General of Health for that purpose.

### **Regulation 56 - Ill-treatment of children**

- (1) In order to ensure that the standards set out in this Part are complied with, the service provider of a licensed service and any educator who provides education and care for a licensed home-based education and care service must comply with subclause (2) if the service provider or educator has reasonable grounds to believe that a person employed or engaged in the service, or any other person,—
  - (a) has physically ill-treated or abused a child or committed a crime against children; or
  - (b) in guiding or controlling a child, has subjected the child to solitary confinement, immobilisation, or deprivation of food, drink, warmth, shelter, or protection.
- (2) The service provider and the educator must ensure that—
  - (a) the person is excluded from coming into contact with the children participating in the service or, as the case requires, the children being educated by the educator; and
  - (b) if satisfied that it is necessary to do so to ensure that no child is ill-treated, ensure that the person is excluded from the service and does not enter or remain in any premises where the service is provided while it is being provided, or as the case requires, is excluded from the home and does not enter it or remain in it while the educator is providing education and care.

### **Regulation 57 - Health and safety of children**

- (1) In order to ensure that the standards set out in this Part are complied with, the service provider of a licensed service and any educator who provides education and care for a licensed home-based education and care service must comply with subclause (2), if the service provider or educator has reasonable grounds to believe that a person employed or engaged in the service, or any other person,—
  - (a) is in a state of physical or mental health that presents any risk of danger to children; or
  - (b) has an infectious or contagious disease or condition.
- (2) The service provider and the educator must ensure that—
  - (a) the person is excluded from coming into contact with the children participating in the service or, as the case requires, the children being educated by the educator; and
  - (b) if satisfied that it is necessary to do so to ensure that no child becomes ill, ensure that the person is excluded from the service and does not enter or remain in any premises where the service is provided while it is being provided or, as the case requires, is excluded from the home and does not enter it or remain in it while the educator is providing education and care.
- (3) This regulation does not apply in respect of a licensed hospital-based education and care service to which the Health and Disability Services (Safety) Act 2001 applies.

### **Regulation 58 - Collection of children from centres and home-based education and care services**

- (1) The service provider of a centre must ensure that no child leaves the centre with any person, unless the person—
  - (a) has the role of providing day-to-day care for the child; or
  - (b) is authorised in writing to take the child by a person who has the role of providing day-to-day care for the child.
- (2) The service provider of a home-based education and care service must ensure that no child leaves the care of the educator with any person, unless the person—
  - (a) has the role of providing day-to-day care for the child; or
  - (b) is authorised in writing to take the child by a person who has the role of providing day-to-day care for the child.

**Regulation 59 - Further obligations in relation to hospital-based education and care**

The service provider for a licensed hospital-based education and care service must ensure that all children receiving education and care as part of the service remain under the care of the hospital.

## Schedule 1 – Qualification requirements

Regulation 44(1)(a)

Service	Requirement
All services...	Person responsible must hold recognised qualification
All services recognised as a teacher led service (as defined in regulation 44(4)) must hold recognised qualification.	50% of required staff (including person responsible) must hold recognised qualification.

## Schedule 2 – Adult-to-child ratios (minimum)

Regulation 44(1)(b)

Early childhood education and care centres and hospital-based education and care services	Age of children attending	Number of children attending	Minimum staffing
All day	Under 2 years old	1-5	1
		6-10	2
		11-15	3
		16-20	4
		21-25	5
	2 years old and over	1-6	1
		7-20	2
		21-30	3
		31-40	4
		41-50	5
		51-60	6
		61-70	7
		71-80	8
		81-90	9
		91-100	10
		101-110	11
		111-120	12
		121-130	13
		131-140	14
		141-150	15
Sessional	Under 2 years old	1-5	1
		6-10	2
		11-15	3
		16-20	4
		21-25	5
	2 years old and older	1-8	1
		9-30	2
		31-45	3
		46-60	4
		61-75	5
		76-90	6
		91-105	7
		106-120	8
		121-135	9
		136-150	10

Early childhood education and care centres and hospital-based education and care services	Age of children attending	Number of children attending	Minimum staffing
All day or sessional		Up to 3 children of mixed ages	1
		More than 3 children of mixed ages	sum of minimum staffing requirement for relevant number of children under 2 years old (as set out above) and minimum staffing requirement for relevant number of children of or over 2 years old (as set out above)

Service type	Ages of children attending	Number of children attending	Number of adults required (minimum)
Home-based education and care service	Under 2	1-2	1
	2 years old or over	1-4	1
	Mixed	1-4	1

### Who counts as adult or child when applying ratios

- 1 For every service, a person must be 17 years or older and involved in duties other than food preparation and serving, administrative duties, and maintenance to count as an adult.
- 2 However, in every service (except a home-based education and care service), a person does not count as an adult, while at lunch, or while having a break, or during non-contact times.
- 3 For every service (except a home-based education and care service), a person present aged under 6 years counts as a child.
- 4 For a home-based education and care service, a person present aged under 6 years counts as a child unless the person is enrolled at school and is the child of an educator providing education and care at the home.
- 5 In the case of a centre, every child present (including the child of the service provider or person responsible or supervisor or staff member) of any age also counts as a child.

### **Adult-to-child ratios are subject to exceptions**

The adult-to-child ratios described in this schedule are subject to—

- (a) special rules about siblings set out in regulation 54(4); and
- (b) any increase authorised by the Secretary under regulation 22A(3) or 23(3) relating to the maximum number of children who may attend.

### **Spare capacity for children under 2 can be set off against number of children 2 or over in some circumstances**

Regulation [44A](#) allows some mixed-age early childhood education and care centres and hospital-based education and care services to take spare capacity for children under 2 into account in determining the staffing required for children aged 2 or over.

## Schedule 3 – Service-size (maximum)

Regulation 44(1)(c)

Service	Number of children attending
Early childhood education and care centre ... and hospital-based education and care service	No more than 150 children aged 2 years and over attending at any one time
	No more than 25 children under 2 years attending at any one time unless otherwise approved by the Secretary under regulation 22A(3).
	No more than 50 children attending at any one time if children are a mixture of those under 2 years and those 2 years and over, unless otherwise approved by the Secretary under regulation <a href="#">23(3)</a>
Early childhood education and care centre ...	No more than 16 children attending overnight
Home-based education and care service	No more than [80] children attending at any one time

### Who counts as child when applying schedule

- 1 For every service (except a home-based education and care service), a person present aged under 6 years counts as a child.
- 2 For a home-based education and care service, a person present aged under 6 years counts as a child unless the person is enrolled at school and is the child of an educator providing education and care at the home.
- 3 In the case of a centre, every child present (including the child of the service provider or person responsible or supervisor or staff member) of any age also counts as a child.

### Schedule to be read in conjunction with other requirements

The service-size rules in this schedule must be read in conjunction with the more detailed rules set out in—

- regulation 22A (which deals with centres and hospital-based education and care services that provide services for children under 2 years); and
- regulation 23 (which deals with children of mixed ages in the same centre or hospital-based education and care service); and
- regulations 26(1)(d) and (e) and 27(1)(d) and (e) (which deal with licensing requirements for centres and hospital-based education and care services in relation to children under 2 years and children 2 years and over).

## Schedule 4 – Activity spaces (minimum)

Service	Activity space required
Early childhood education and care centre ...	Indoor—2.5 sq m per child Outdoor—5 sq m per child or a minimum number of sq m per child determined under regulation <a href="#">54(3)</a>
Home-based education and care service	Indoor—10 sq m in one area
	Outdoor—must have some outdoor space
Hospital-based education and care service	Indoor space requirement for activity rooms—1 space of at least 20 sq m of usable space that is readily accessible by the children participating in the service that is large enough for 40% of the maximum number of children stated on the service’s licence and that gives each child at least 2.5 sq m of space
	Outdoor—outdoor space is not required

### What is indoor activity space

Indoor space for all services is calculated by excluding the space occupied by all fittings, fixed equipment, and stored goods and excludes passage ways, toilet facilities, staff rooms, specific sleeping areas for children under 2 years of age, and other areas not available for play.