

South Australia

Education and Early Childhood Services (Registration and Standards) Regulations 2011

under the *Education and Early Childhood Services (Registration and Standards) Act 2011*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Education and Early Childhood Services (Registration and Standards) Regulations 2011*.

2—Commencement

These regulations will come into operation on 1 January 2012.

3—Interpretation

- (1) In these regulations—

Act means the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

- (2) In these regulations, a reference to the granting of an approval or certificate includes a reference to an approval or certificate taken to be granted by the operation of the Act or the *Education and Care Services National Law (South Australia)*.

Part 2—Regulations relating to administration

4—Power of delegation—Minister

For the purposes of section 20(1) of the Act, the functions and powers under the following provisions of the Act are prescribed:

- (a) section 19;
- (b) section 22;
- (c) section 24;
- (d) section 62.

5—Prescribed childcare bodies

For the purposes of section 22(2)(e) of the Act, the following childcare bodies are prescribed:

- (a) Family Day Care Educators of South Australia Inc;
- (b) Out of School Hours Care Association (SA) Inc;
- (c) Community Children's Centres SA Incorporated;
- (d) Childcare South Australia Inc.

6—Prescribed designated entities

For the purposes of section 22(4)(b) of the Act, the following designated entities are prescribed:

- (a) Aboriginal Resource and Management Support Unit SA;
- (b) Advisory Committee on Non-Government Schools;
- (c) Association of Independent Schools of South Australia Incorporated;
- (d) Association of Independent Schools of South Australia—Primary Heads Reference Group;
- (e) Association of Independent Schools of South Australia—Secondary/Combined Heads Reference Group;
- (f) Association of Principals of Catholic Secondary Schools in South Australia;
- (g) Australian Children's Education and Care Quality Authority;

- (h) Australian Community Children's Services SA;
- (i) Australian Education Union (SA Branch);
- (j) Business SA;
- (k) Childcare SA Inc;
- (l) Community Children's Centres SA Inc;
- (m) Council for the Care of Children;
- (n) Early Childhood Australia;
- (o) Family Day Care Educators of SA Inc;
- (p) Federation of Catholic School Parent Communities;
- (q) Flinders University of South Australia;
- (r) Office of the Guardian for Children and Young People;
- (s) Independent Education Union (SA);
- (t) the Minister to whom the administration of the *Health Care Act 2008* is committed;
- (u) the Minister to whom the administration of the *Carers Recognition Act 2005* is committed;
- (v) the Minister to whom the administration of the *Training and Skills Development Act 2008* is committed;
- (w) Ministerial Advisory Committee: Students with Disabilities;
- (x) Multicultural Education Committee;
- (y) National Association of Mobile Services for Rural and Remote Families and Children Inc;
- (z) Network SA;
- (za) Out of School Hours Care (SA) Association Inc;
- (zb) Pitjantjatjara Yankunytjatjara Education Committee;
- (zc) Planning Committee for Non-Government Schools;
- (zd) Preschool Directors Association of SA Inc;
- (ze) Public Service Association of South Australia Inc;
- (zf) SACE Board of South Australia;
- (zg) Small Schools Association of South Australia;
- (zh) South Australian Association of School Parents' Clubs Incorporated;
- (zi) South Australian Area School Leaders Association;
- (zj) South Australian Association of State Schools Organisations Inc;
- (zk) South Australian Catholic Primary Principals Association;
- (zl) South Australian Commission for Catholic Schools Inc;
- (zm) South Australian Isolated Children's Parents' Association Incorporated;

- (zn) South Australian Primary Principals Association;
- (zo) South Australian Secondary Principals Association;
- (zp) South Australian Special Schools Principal's Association;
- (zq) Teachers Registration Board of South Australia;
- (zr) United Voice (formerly the Liquor, Hospitality and Miscellaneous Union SA);
- (zs) The University of Adelaide;
- (zt) University of South Australia.

7—Prescribed offences

For the purposes of section 23(4)(d) of the Act, the following offences are prescribed:

- (a) an offence of a sexual nature committed against, or in relation to, a minor;
- (b) an offence of dishonesty under the Act.

8—Prescribed peak bodies

For the purposes of section 29(2)(b) of the Act, the following peak bodies are prescribed:

- (a) South Australian Commission for Catholic Schools Inc;
- (b) Association of Independent Schools of South Australia Incorporated.

9—Power of delegation—Board

For the purposes of section 32(1) of the Act, the functions and powers under the following provisions of the Act are prescribed:

- (a) section 29(1)(a), (b) and (d);
- (b) section 30(2).

10—Annual report

For the purposes of section 40(2)(a), the annual report of the Board must contain the following information:

- (a) a report on consultation undertaken for the purposes of the Act during the relevant year and an assessment of the extent to which this has assisted the Board in the performance of its functions;
- (b) any information required to be included in the annual report under the *Education and Care Services National Law (South Australia)*;
- (c) any other information that the Minister may reasonably require to be included in the annual report.

Part 3—Regulations relating to *Education and Care Services National Law (South Australia)*

11—Declared certified supervisors

For the purposes of section 13(15)(e) of the Act, a person who was, immediately before the commencement of that section, a director in an out of school hours care service is declared to be included within the ambit of that subsection.

Part 4—Regulations relating to residual early childhood services

Division 1—Exemptions

12—Exemptions

- (1) The Board may, by notice in writing—
 - (a) exempt a person, or class of persons, subject to such conditions as the Board thinks fit and specifies in the notice, from specified provisions of the *Education and Care Services National Law (South Australia)* as they apply to, or in relation to, residual early childhood services; or
 - (b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.
- (2) A person who contravenes a condition of an exemption is guilty of an offence.
Maximum penalty: \$10 000.

Division 2—General provisions

13—Early childhood services

- (1) For the purposes of the definition of *in-home care services* in section 4 of the Act, services (not being a service that is an education and care service within the meaning of the *Education and Care Services National Law (South Australia)*) of the following kinds are in-home care services:
 - (a) a service comprising the provision of care to children in their own homes in the temporary absence of the children's parents or guardians;
 - (b) a service comprising the introduction of parents or guardians of children to a person who will care for the children in their own homes in the temporary absence of the children's parents or guardians,other than a service comprising—
 - (c) a personal arrangement (within the meaning of the *Education and Care Services National Law (South Australia)*); or
 - (d) a person engaged by a parent or guardian of a child to baby sit the child in the child's home; or

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- (e) a baby sitting, playgroup or child minding service that is organised informally by the parents of the children concerned; or
 - (f) care provided to a child by a person in accordance with a parenting order under the *Family Law Act 1975* or *Family Court Act 1997* of the Commonwealth; or
 - (g) care provided to a child in accordance with an approval under the *Children's Protection Act 1993*.
- (2) For the purposes of the definition of ***occasional care services*** in section 4 of the Act, a service (not being a service that is an education and care service within the meaning of the *Education and Care Services National Law (South Australia)*) comprising the care for fee or reward in a place other than a child's home of 4 or more children of preschool age or younger is an occasional care service (however, such a service will be taken not to be an occasional care service if a parent or guardian of the children remains on site and is available to care for their child if required).
- (3) For the purposes of the definition of ***rural and mobile care services*** in section 4 of the Act, services (not being a service that is an education and care service within the meaning of the *Education and Care Services National Law (South Australia)*) of the following kinds are rural and mobile care services:
- (a) a service comprising the care, in a community venue in a rural community, of not more than 7 children at a particular time, of whom—
 - (i) not more than 4 are children under school age; and
 - (ii) not more than 3 are school age children;
 - (b) a service providing care to children of preschool age or under at multiple locations and that transports its equipment and materials to those locations.
- (4) In this regulation—
- rural community*** means a community located outside of metropolitan Adelaide (within the meaning of the *Development Act 1993*).

14—Minimum requirements for supervisor

For the purposes of clause 3(1)(e) of Schedule 2 of the Act, a person must meet the following minimum requirements to be granted a supervisor certificate under section 112(c) of the *Education and Care Services National Law (South Australia)* as modified by that clause:

- (a) he or she must have adequate knowledge and understanding of the provision of education and care to children; and
- (b) he or she must have the ability to effectively supervise and manage a residual early childhood service.

15—Prescribed class of person—granting supervisor certificate

For the purposes of clause 3(1)(f) of Schedule 2 of the Act, the following classes of person are prescribed for the purposes of section 114(1) of the *Education and Care Services National Law (South Australia)* as modified by that clause:

- (a) principals of registered schools;

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Part 4—Regulations relating to residual early childhood services

Division 2—General provisions

- (b) persons in charge of campuses of registered schools;
- (c) teachers;
- (d) directors of education and care services operated under the *Education and Care Services National Law (South Australia)*;
- (e) any other class determined by the Minister by notice in the Gazette.

16—Prescribed documents

- (1) For the purposes of clause 3(1)(h) of Schedule 2 of the Act, the documents that an approved provider must keep are such documents as may be specified by the Board from time to time.

Note—

Clause 3(1)(h) of Schedule 2 modifies section 175(1) of the *Education and Care Services National Law (South Australia)* as it applies to residual early childhood services.

Regulation 33(3) provides that the record keeping requirements under Chapter 4 of the national regulations, as it applies to residual early childhood services, do not apply to residual early childhood services.

- (2) An approved provider must keep a record referred to in subregulation (1)—
 - (a) for a period of not less than 3 years (or such longer period as may be specified by the Board); and
 - (b) in a place, and in a manner, that complies with any requirements determined by the Board for the purposes of this subregulation.

17—Service approvals

For the purposes of clause 30(e) of Schedule 3 of the Act, a family day care service provided under the *Children's Services Act 1985* immediately before the commencement of that clause (other than a family day care service that is an education and care service within the meaning of the *Education and Care Services National Law (South Australia)*) is declared to be included in the ambit of that clause.

18—Prescribed class of persons—certified supervisors

For the purposes of clause 31(1)(f) of Schedule 3 of the Act, the following classes of person are declared to be included within the ambit of that subclause:

- (a) a person who was, immediately before the scheme commencement day, licensed as a baby sitting agency under the *Children's Services Act 1985*;
- (b) a person who was, immediately before the scheme commencement day, approved as a family day care provider under the *Children's Services Act 1985*.

Division 3—Regulations applying to residual early childhood services in place of national regulations

Subdivision 1—Preliminary

19—Interpretation

- (1) In this Division, a term or phrase that is defined in the *Education and Care Services National Law (South Australia)* or the national regulations has the same meaning as in that Law or those regulations (as the case requires).
- (2) In this Division, a reference to the *Education and Care Services National Law (South Australia)* will be taken to be a reference to that Law as it applies to residual early childhood services.

20—Certain requirements under *Education and Care Services National Law (South Australia)* to be determined by Board

If the *Education and Care Services National Law (South Australia)* requires a matter to be prescribed by, or determined in accordance with, the national regulations, and the matter is not the subject of a regulation under this Division, then the Board may prescribe or determine the matter according to its discretion (including, to avoid doubt, by not requiring compliance with the provision).

Subdivision 2—Provider approvals

21—Applications for provider approvals etc

- (1) The prescribed information in respect of an application under the *Education and Care Services National Law (South Australia)* for—
 - (a) a provider approval; or
 - (b) an amendment of a provider approval; or
 - (c) voluntary suspension of a provider approval; or
 - (d) a provider approval made under section 39(5) of the *Education and Care Services National Law (South Australia)*; or
 - (e) a provider approval made under section 40 of the *Education and Care Services National Law (South Australia)*,

is such information as may be determined by the Board from time to time.

- (2) An application must be accompanied by the appropriate fee as set out in Schedule 1.
- (3) In determining the information required in relation to an application, the Board should have regard to the requirements (if any) for similar applications under the *Education and Care Services National Law (South Australia)* and the national regulations as applying to education and care services.

22—Maximum period of suspension of provider approval

The prescribed maximum period of suspension of a provider approval under section 27(a) or 33(1)(a)(ii) of the *Education and Care Services National Law (South Australia)* is 12 months.

Subdivision 3—Service approvals

23—Applications for service approvals etc

- (1) The prescribed information in respect of an application under the *Education and Care Services National Law (South Australia)* for—
 - (a) a service approval; or
 - (b) an amendment of a service approval; or
 - (c) voluntary suspension of a service approval,is such information as may be determined by the Board from time to time.
- (2) An application must be accompanied by the appropriate fee as set out in Schedule 1.
- (3) In determining the information required in relation to an application, the Board should have regard to the requirements (if any) for similar applications under the *Education and Care Services National Law (South Australia)* and the national regulations as applying to education and care services.

24—Additional grounds for refusal to grant service approval

The Board may refuse to grant a service approval on the following grounds:

- (a) the Board is not satisfied that the applicant is capable of operating the proposed service in a way that meets the requirements of the *Education and Care Services National Law (South Australia)* or these regulations;
- (b) in the case of a centre-based service—the Board is not satisfied that the applicant is entitled to occupy the premises proposed as the place at which the service will operate.

25—Condition on service approval—insurance

A service approval is granted subject to a condition that the approved provider must hold the following insurance in respect of the residual early childhood service:

- (a) a current policy of insurance providing adequate cover for the residual early childhood service against public liability with a minimum cover of \$10 000 000;
- (b) a policy of insurance or an indemnity against public liability provided by the Government in respect of the residual early childhood service.

26—Condition on service approval—entitlement to occupy premises

A service approval for a centre-based service is granted subject to the condition that the service continues to be entitled to occupy the premises at which the residual early childhood service operates.

27—Condition on service approval—in-home care services and family day care services

A service approval for a residual early childhood service that is an in-home care service or a family day care service is granted subject to a condition that the approved provider must comply with any standards or requirements determined by the Board from time to time in relation to the operation of such services.

28—Prescribed information—notifications

- (1) The prescribed information for notices under the following sections of the *Education and Care Services National Law (South Australia)* is such information as may be determined by the Board from time to time:

- (a) section 56;

Note—

Section 56 relates to a change of nominated supervisor.

- (b) section 59.

Note—

Section 59 relates to the transfer of a service approval for a centre-based service.

- (2) In determining the information required in relation to a notice, the Board should have regard to the requirements (if any) for similar notices under the *Education and Care Services National Law (South Australia)* and the national regulations as applying to education and care services.

29—Maximum period of suspension of service approval

The prescribed maximum period of suspension of a service approval under sections 72(a) and 79(1)(a)(ii) of the *Education and Care Services National Law (South Australia)* is 12 months.

Subdivision 4—Supervisor certificates

30—Applications for supervisor certificates etc

- (1) The prescribed information in respect of an application under the *Education and Care Services National Law (South Australia)* for—

- (a) a supervisor certificate; or
(b) an amendment of a supervisor certificate; or
(c) voluntary suspension of a service approval,

is such information as may be determined by the Board from time to time.

- (2) An application must be accompanied by the appropriate fee as set out in Schedule 1.
- (3) In determining the information required in relation to an application, the Board should have regard to the requirements (if any) for similar applications under the *Education and Care Services National Law (South Australia)* and the national regulations as applying to education and care services.

31—Maximum period of suspension of supervisor certificate

The prescribed maximum period of suspension of a supervisor certificate under section 125(a)(i) of the *Education and Care Services National Law (South Australia)* is 12 months.

32—Process for certified supervisor to be placed in day to day charge of residual early childhood service

For the purposes of section 162(1)(c) or 164(1)(c) of the *Education and Care Services National Law (South Australia)*, a certified supervisor is placed in day to day charge of a residual early childhood service if—

- (a) the approved provider or the nominated supervisor for the service designates the certified supervisor as the certified supervisor in day to day charge; and
- (b) the certified supervisor accepts the designation in writing.

Subdivision 5—Operational requirements

33—Certain parts of national regulations to apply to residual early childhood services

- (1) Subject to this regulation and to any modification of the national regulations made by or under the Act, Chapter 4 of the national regulations applies to residual early childhood services as if they were education and care services within the meaning of the *Education and Care Services National Law (South Australia)*.
- (2) Chapter 4 of the national regulations (as it applies pursuant to subregulation (1)) does not apply to, or in relation to, a residual early childhood service that is an in-home care service or a family day care service.

Note—

Regulation 27 permits the Board to set operational requirements for in-home care services or family day care services by way of conditions imposed on their service approval.

- (3) A provision of Chapter 4 of the national regulations that imposes a requirement in relation to the keeping or making of records does not apply to, or in relation to, a residual early childhood service.

Note—

Regulation 16 sets out what records must be made by approved providers and how they must be kept.

Division 4—Standards

34—Standards applying to residual early childhood services

- (1) For the purposes of clause 3(2) of Schedule 2 of the Act, the standards approved or adopted by the Board from time to time for the purposes of that subclause is prescribed.
- (2) To avoid doubt, a particular standard may apply to all residual early childhood services or a specified class of residual early childhood services.

Part 5—Regulations relating to schools

35—Education services—exclusions

For the purposes of the definition of *education services* in section 3(1) of the Act, the following services are declared not to be included in the ambit of that definition:

- (a) lessons or coaching in, or providing for participation in, a linguistic, cultural, recreational, religious or sporting activity;
- (b) private tutoring.

36—Full fee paying overseas students—exclusions

For the purposes of section 3(3) of the Act, the following students or classes of students are, in respect of the specified activities, declared not to be full fee paying overseas students:

- (a) a student or class of students referred to in section 3(3)(a) of the Act receiving lessons or coaching in, or providing for participation in, a linguistic, cultural, recreational, religious or sporting activity;
- (b) a student or class of students referred to in section 3(3)(a) of the Act receiving private tutoring;
- (c) a student or class of students taking part in a student exchange program organised by a registered school.

37—Prescribed bodies

For the purposes of section 43(3) of the Act, the following bodies are prescribed:

- (a) Advisory Committee on Non-Government Schools;
- (b) Association of Independent Schools of South Australia Incorporated;
- (c) Association of Independent Schools of South Australia—Primary Heads Reference Group;
- (d) Association of Independent Schools of South Australia—School Group Representatives Committee;
- (e) Association of Independent Schools of South Australia—Secondary/Combined Heads Reference Group;
- (f) Association of Principals of Catholic Secondary Schools in South Australia;
- (g) Australian Education Union (SA Branch);
- (h) Federation of Catholic School Parent Communities;
- (i) Independent Education Union (SA);
- (j) Ministerial Advisory Committee: Students with Disabilities;
- (k) Multicultural Education Committee;
- (l) Pitjantjatjara Yankunytjatjara Education Committee;
- (m) Planning Committee for Non-Government Schools;
- (n) SACE Board of South Australia;

- (o) Small Schools Association of South Australia;
- (p) South Australian Association of School Parents' Clubs Incorporated;
- (q) South Australian Area School Leaders Association;
- (r) South Australian Association of State Schools Organisations Inc;
- (s) South Australian Catholic Primary Principals Association;
- (t) South Australian Commission for Catholic Schools Inc;
- (u) South Australian Isolated Children's Parents' Association Incorporated;
- (v) South Australian Primary Principals Association;
- (w) South Australian Secondary Principals Association;
- (x) South Australian Special Schools Principal's Association;
- (y) Teachers Registration Board of South Australia;
- (z) United Voice (formerly the Liquor, Hospitality and Miscellaneous Union SA).

38—Certificate of registration

For the purposes of section 45 of the Act, a certificate of registration must be in a form approved by the Board.

39—Records to be kept by registered schools

- (1) For the purposes of section 56(1)(b) of the Act, a registered school is required to keep such records as the Board may determine for the purposes of this subregulation.
- (2) A registered school must keep a record referred to in subregulation (1)—
 - (a) for a period of not less than 7 years (or such longer period as may be specified by the Board); and
 - (b) in a place, and in a manner, that complies with the requirements (if any) determined by the Board for the purposes of this subregulation.

Part 6—Miscellaneous

40—Fees

- (1) The fees for the purposes of the Act (including fees payable by, or in relation to, residual early childhood services for a matter under the *Education and Care Services National Law (South Australia)* as it applies to those services) are as set out in Schedule 1.

Note—

Clause 2(4) of Schedule 2 of the Act provides that the fees set under the *Education and Care Services National Law (South Australia)* do not apply to residual early childhood services.

- (2) The Board may waive or remit the whole or any part of a fee payable under the Act.

Schedule 1—Fees

Item	Fee
Items related to residual early childhood services	
Application fee for provider approval	\$200
Application fee for service approval	\$400
Fee for notice of transfer of a service approval (section 59 of <i>Education and Care Services National Law (South Australia)</i>)	\$100
Application for exemption (section 17 of Act or regulation 12)	no fee
Application fee for supervisor certificate	\$30
Items related to schools	
Copy of schools register (section 41(6) of Act)—	
(a) for electronic copy of register	\$65
(b) for a hard copy of register	\$5 per page
Registration on schools register (section 43(4)(b) of Act)	\$300
Reinstatement fee (section 48(5)(b) of Act)	\$0
Endorsement of registration (section 49(2)(c) of Act)—	
(a) if the school is a primary school	no fee
(b) if the school is a secondary school with—	
(i) not more than 10 students	\$500
(ii) more than 10 but not more than 20 students	\$1 000
(iii) more than 20 students	\$2 000
Copy of register of prohibition orders (section 65(6) of Act)—	
(a) for electronic copy of register	\$65
(b) for a hard copy of register	\$5 per page

Schedule 2—Further transitional and savings provisions

1—Board to be comprised of Minister during initial transitional period

- (1) Despite a provision of the Act, the following provisions apply in relation to the Board during the initial transitional period:
 - (a) the Board will be taken to be comprised of the Minister;
 - (b) before the Board delegates a function or power under the Act, the Board must consult with—
 - (i) if the subject matter of the proposed delegation relates only to a particular sector—the prescribed peak body for that sector; or
 - (ii) in any other case—each prescribed peak body;
 - (c) subject to this clause, the Board must defer any proceedings under Part 7 of the Act until after the initial transitional period ends;

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- (d) a requirement under section 45(1) of the Act that the Board issue to a school a certificate or certificates of registration in the prescribed form need not be complied with until 14 days after the end of the initial transition period (and section 45(2) of the Act does not apply to a school until the Board has complied with that requirement in relation to that school).
- (2) However, the Board may hear and determine proceedings under Part 7 of the Act if the Board is of the opinion that the matter is urgent, or that it is otherwise appropriate that the matter be heard during the initial transitional period (and, in that case, section 60(2) to (6) (inclusive) of the Act do not apply to the proceedings and the Board may determine its own procedures).
- (3) To avoid doubt, nothing in this clause prevents the Governor from appointing a member of the Board under section 22 of the Act prior to the end of the initial transitional period.

Note—

However, the Board will continue to be comprised of the Minister until all necessary appointments have taken effect, or the initial transitional period ends, whichever happens first.

- (4) In this clause—

education and care service means an education and care service within the meaning of the *Education and Care Services National Law (South Australia)*;

initial transitional period means the period commencing on 1 January 2012 and finishing on—

- (a) 28 February 2012; or
- (b) if the Governor appoints all members of the Board under section 22 of the Act—on the date on which the last such appointment takes effect,

whichever is the sooner;

prescribed peak body means—

- (a) in the case of the Catholic education sector—the South Australian Commission for Catholic Schools Inc; or
- (b) in the case of the independent education sector—the Association of Independent Schools of South Australia Incorporated; or
- (c) in the case of the early childhood services sector—each of the following bodies:
- (i) Family Day Care Educators of South Australia Inc;
- (ii) Out of School Hours Care Association (SA) Inc;
- (iii) Community Children's Centres SA Incorporated;
- (iv) Childcare South Australia Inc.

2—Requirement to hold certain licences under *Children's Services Act 1985*

A requirement under the *Children's Services Act 1985* that a child care centre that is a registered children's services centre be licensed will be taken to be satisfied if the child care centre holds a service approval to operate a service of the relevant kind under the *Education and Care Services National Law (South Australia)* (including as that Law applies to residual early childhood services).

Note—

See the definition of children's services centre in section 3, as well as Part 3 Division 4, of the *Children's Services Act 1985*

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2011	279	<i>Gazette 15.12.2011 p5059</i>	1.1.2012: r 2