

Building and Plumbing Newsflash 511

Building standards for education and care,
and child care services

Purpose

To provide information to building certifiers regarding the assessment of education and care and child care services, with the building standards applicable from 1 January 2012.

Background

On 1 January 2012, the Department of Education, Training and Employment became responsible for the administration of the National Quality Framework in Queensland. The framework includes new legislation including the Education and Care Services National Law and the Education and Care Services National Regulations. This legislation applies to centre-based education and care services including most long day care centres, pre Prep, outside school hours care services, kindergartens and family day care.

As a result, the *Child Care Act 2002* was amended so that it no longer applies to education and care services covered by the National Law.

The department is also responsible for the administration of the Act and the *Child Care Regulation 2003*, which continue to apply to child care services that fall outside the scope of the National Law in Queensland. These services include, but are not limited to, ad hoc or casual care such as occasional care services, Commonwealth budget-based funding program services that do not receive the Child Care Benefit and services funded by the Queensland Government to provide limited hours care.

Legislation

Child care services regulated by the CCA

For child care services, Queensland Development Code Mandatory Part 5.4 – Child Care Centres has been amended to remove any reference to education and care services. The Code, with a publication date of 18 July 2012, applies to all planned or new child care centres or those undertaking building works (depending on when building approval was lodged).

Education and care services regulated by the National Quality Framework

To ensure the application of nationally consistent standards, an amended Building Code of Australia took effect nationally on 1 May 2012 (and on 6 August 2012 in Queensland) and applies to all planned or new Queensland centre-based education and care services or those undertaking building works (depending on when building approval was lodged).

In addition to complying with the Building Code of Australia, approved providers must demonstrate the premises comply with the physical environment requirements contained within regulations 103-115 of the National Regulations.

Interpretation

Existing education and care and child care services are required to comply with the building standards applicable when the application for building approval (or building works) for that service was originally lodged. Section 266 of the *Building Act 1975* precludes existing lawful buildings from having to be upgraded, subject to certain situations, when laws change. Unless an application for building approval is made, existing services are unable to alter the structure or footprint of their premises outside the constraints of the relevant version of the Queensland Development Code.

Building standards for child care services regulated by the Child Care Act

Planned or new child care services, or those undertaking building works, where a building approval application is lodged on or after 18 July 2012 are required to comply with Queensland Development Code MP 5.4 – Child Care Centres (published 18 July 2012). This applies to the following service types:

- Division A – Limited Hours Care Centres
- Division B – Child Care Centres (other than Limited Hours Care Centres).

Building standards and physical environment requirements for education and care services regulated by the National Quality Framework

Planned or new education and care services or those undertaking building works (depending on when building approval was lodged) must comply with the building standards contained within the Building Code of Australia. These include:

- sanitary facilities
- fencing
- personal washing facilities
- food preparation facilities
- nappy change facilities
- natural light.

In addition, education and care services must comply with the physical environment requirements contained within regulations 103-115 of the National Regulations which include:

- premises, furniture and equipment to be safe, clean and in good repair
- fencing and security
- furniture, materials and equipment
- laundry and hygiene facilities
- space requirements – indoor
- space requirements – outdoor
- toilet and hygiene facilities
- ventilation and natural light
- administrative space
- nappy change facilities
- outdoor space – natural environment
- outdoor space – shade
- premises designed to facilitate supervision.

The design and layout of an early childhood education and care environment can have a significant impact on the delivery of education and care programs and practices. When making decisions about the design and layout, consideration should be given to meeting all seven of the quality areas outlined in the National Quality Standard (particularly Quality Area 3 – Physical Environment) contained within Schedule 1 of the National Regulations.

Use of verandas as indoor space

Regulation 107(4) of the National Regulations enables the area of a veranda to be included in calculating the area of indoor space only with the written approval of the department. A veranda is defined as a porch, balcony, usually roofed and often partially enclosed, extending along the outside of a building which is attached or adjoining the building. This provision is intended to afford flexibility to services to use additional spaces to enhance the educational program to improve outcomes for children. It not intended that verandas be used as primary indoor play space.

An approved provider of an existing service may also apply to the department to use a veranda as indoor space, although compliance with the building requirements in place at the time of the original certification must be maintained.

The department will determine applications for verandas to be included as indoor space on a case-by-case basis, with the onus on the approved provider to demonstrate suitability. Approval in Queensland is subject to evidence from a building practitioner which demonstrates that despite the use of the veranda as indoor space, the premises still comply with the relevant building standards. A building practitioner may request for example, the installation of waterproof blinds to ensure the space can be considered as indoors.

The department may also take into consideration additional factors including, but not limited to, the design and layout of the space to ensure that the space is adequate and usable by children, is protected from the elements, is functional to support the implementation of a program and is able to be supervised to ensure children's safety.

Applications to increase the maximum number of children at a service

The majority of existing services licensed under the Child Care Act transitioned into the National Quality Framework as declared approved services. The definitions within the Queensland Development Code refer to the 'licensed capacity' or the maximum number of children to whom child care may be provided under a licence issued under the Act. This definition outlines that the licensed capacity may not be set at more than 75. This maximum capacity continues to apply to child care services regulated by the Act.

While the Child Care Act had a 75 place limit, the National Quality Framework legislation does not have a maximum number of children that can be educated and cared for at any one time. Services can apply for an amendment to increase their approved places over the previous 75 place limit.

A decision to allow an increase in the maximum number of children may impact on the ability of a service to comply with local planning and development requirements. These may include specific ratios of car spaces, traffic installations, maximum land lot sizes or maximum allowable occupancy rates at the premises.

Given these important planning and development factors, the department will only consider an application to amend a service approval to increase the maximum number of children beyond 75 if the approved provider can provide written evidence from the relevant local authority that it will not render the service in breach of any planning and development requirements. The approved provider must also demonstrate the following via written evidence from a building practitioner:

- ongoing compliance with the relevant version of the Queensland Development Code
- that the indoor and outdoor space and amenities offered at the premises align with those required under the relevant version of the Code for example, 3.25 metres squared of indoor space per child, 7 metres squared of outdoor space per child, a ratio of one child sized water closet suite and one washbasin per 10 children at the premise etc.

When determining the application, the department will also take into account:

- compliance with all aspects of the National Law and National Regulations
- the safety and wellbeing of children is not compromised.

Managing day-to-day operational changes at the premises

The approved provider can make decisions about the day-to-day operation of the service for example, caring for infants in a room other than the nursery where the sleep room is located, provided that:

- the premises are not altered (without any required building approval)
- compliance with all aspects of the National Law and National Regulations is evident
- the safety and wellbeing of children is not compromised.

Renovations

In relation to building works, a building certifier has discretion to apply any relevant version of the Queensland Development Code to the whole of the existing building if the:

- proposed works would otherwise compromise the safety of the occupants
- work exceeds 50 per cent by volume of the original building (section 81 of the *Building Act 1975*).

An approved provider is unable to elect to alter their premise to meet different parts of different standards to take advantage of favourable components.

Alternative solutions

For the purposes of the application of the Queensland Development Code, the department will retain the role as concurrence agency which has the power defined in the *Sustainable Planning Regulation 2009* to assess whether the 'alternative solution' proposed in the application meets the intent of the performance criteria and is acceptable.

Contact for further information

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