

# Qualified educator lunch break waiver

Fact Sheet | February 2012

## Waivers under National Law

From 1 January 2012 long day care, family day care, outside schools hours care and preschools (or kindergartens) will operate under the National Quality Framework and meet the requirements of the *Education and Care Services National Law Act 2010* (National Law) and the *Education and Care Services National Regulations 2011* (National Regulations). Section 87 and 94 of the National Law allow services to apply for a waiver from the requirement to comply with prescribed element(s) of the National Quality Standard and the National Regulations.

Some Victorian licensed children's services will continue to operate under the *Children's Services Act 1996* and *Children's Services Regulations 2009* and will continue to have access to exemptions under this legislation (refer to Victorian Exemptions Fact Sheet [www.education.vic.gov.au/ecsmanagement/educareservices/vcs/resources](http://www.education.vic.gov.au/ecsmanagement/educareservices/vcs/resources)).

Prior to 1 January 2012, a qualified staff member lunch break exemption was available to Victorian education and care services that either met the broad exemption eligibility criteria or were granted an individual exemption by the Minister for Children and Early Childhood Development. On 31 December 2011 all qualified staff member lunch break exemptions granted under the Victorian *Children's Services Act 1996* expired.

## 2012 provisions for services requiring qualified educator lunch break waiver

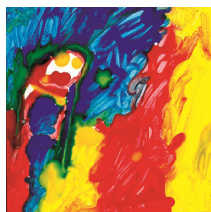
Services that have transitioned to the National Quality Framework may continue to operate under the qualified staff member lunch break exemption until **31 March 2012**. If the approved service is unable to comply with the diploma qualified educator ratio requirements of the National Law and National Regulations after 31 March 2012, the approved provider must apply to the Department of Education and Early Childhood Development (Department) for a temporary waiver or service waiver.

The *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011* includes provisions for breaks where each educator in a centre-based service may take a break of up to 30 minutes per day. (For more detail refer to the *Guide to the Education and Care Services National Law and Education and Care Services National Regulations 2011* on the Australian Children's Education and Care Quality Authorities (ACECQA) website: <http://acecqa.gov.au/links-and-resources/national-quality-framework-resources>.)

An approved service utilising this breaks provision must consider meeting the needs of the children (section 168), maintaining adequate supervision (section 165) and ensuring every reasonable precaution is taken to protect children from harm and hazards (section 167).

Where an educator has a half hour 'break' it would be expected that they be replaced by another educator so that the requirements of the National Law and National Regulations are met. The educator replacing a diploma qualified educator taking a half hour break would not need to be a diploma qualified educator.

The break provisions may mean that some services do not require a qualified educator lunch break waiver in the future. For more information on break provisions for Victorian approved services see the frequently asked questions page on the Department's website: [www.education.vic.gov.au/ecsmanagement/educareservices/nqf](http://www.education.vic.gov.au/ecsmanagement/educareservices/nqf).



## Qualified educator lunch break waiver conditions

Services that are unable to meet the requirements for diploma educator staff ratios over a qualified educator's lunch break may apply for a waiver.

A qualified educator lunch break waiver is subject to the following conditions:

- the qualified educator must be replaced by an educator to maintain required child/educator ratios; and
- the qualified educator on lunch break must remain on the premises of the service and be directly and immediately available to care for children as the need arises; and
- the waiver can only be applied during the lunch break period.

It is the responsibility of all services to ensure that the children being cared for or educated by the service are adequately supervised and their developmental needs are met at all times. .

## How do I apply for a waiver?

All waiver applications are subject to a prescribed fee of \$100.

Applications for a waiver must be made in writing and submitted to the Department of Education and Early Childhood Development. Application forms are available from the Service Approval forms section of the ACECQA website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

For more information regarding the waiver application process a Waivers Fact Sheet is available on the Department of Education and Early Childhood Development website: [www.education.vic.gov.au/ecsmanagement/educareservices/nqf](http://www.education.vic.gov.au/ecsmanagement/educareservices/nqf).

## Where can I find more information?

More information and facts sheets regarding the National Quality Framework, National Law and National Regulations can be found at [www.education.vic.gov.au/ecsmanagement/educareservices/nqf](http://www.education.vic.gov.au/ecsmanagement/educareservices/nqf) or [www.acecqa.gov.au](http://www.acecqa.gov.au)

The Department of Education and Early Childhood Development Quality Assessment and Regulations Division can be contacted on 1300 307 415 or by email at [csrr@edumail.vic.gov.au](mailto:csrr@edumail.vic.gov.au).