

DENYSIV, Larissa

From: DENYSIV, Larissa
Sent: Thursday, 15 January 2015 1:48 PM
To: DL - ECEC_EC MANAGERS
Subject: Transfers and Exceptional Circumstances

Good afternoon

As discussed in the RASQ/ECM telelink prior to Christmas, A&R have been liaising with LALB with regard to the service transfer process. The following LALB advice has been obtained regarding exceptional circumstances and intervening in a service transfer.

[Section 42 - Legal professional privilege](#)

Released under FOI Act by DOE

Streamlining of the service transfer process

To assist with the streamlining of the service transfer process and improve consistency, A&R will coordinate all bulk transfers. On receipt of transfer notifications from an approved provider relating to services in multiple Regions, A&R will flag this with the relevant Regions when the notices are forwarded, to facilitate communication between decision-makers. Guidelines and templates to support the transfer process are also being revised and will be sent out to you later this month for feedback.

If you have any questions or feedback regarding the above, please contact Louise Doble, Principal Program Officer on 332 86795 or email louise.doble@dete.qld.gov.au.

Kind regards

Larissa Denysiv | A/Director

Approvals and Reviews

Regulation, Assessment and Service Quality Branch

Early Childhood Education and Care

Department of Education, Training and Employment

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Draft

Chapter 5 – Notifications of transfer of service approval or changes to a service or provider

1. Notification of transfer or change to an approved service or Approved Provider

An AP is required by sections 56, 173 and 174 of the National Law and Regulation 175 of the National Regulations to notify the RA when there is a change to information about a service.

In some cases, where the AP must notify the RA of a change to a service or AP, there is no decision to be made by the RA in respect of this notification (i.e. to grant or refuse a change).

Other types of notifications which are generally considered low risk and do not require a risk assessment include:

- NS02 Notification of Change to Nominated Supervisor
- SA12 Notification of Change of Information about an Approved Service – for example, changing the contact details for the service.
- PA08 Notification of Change to Information about Approved Provider – for example, changing the contact details of the AP.

Relevant work instructions for processing notifications of transfer of service approval or changes to a service or provider can be found in the following documents:

- Application Records Work Instruction
- Transfer Records Work Instruction
- Notification Records Work Instruction

2. Notification of transfer of service approval

2.1. Nature of notification

An AP can, with the approval of the RA, transfer a service approval to another AP. The National Law requires the transferring AP and the receiving AP to notify the RA of the proposed transfer. Regulatory Officers in Regional Offices are primarily responsible for processing notifications of transfer of service approval.

2.2. Prescribed requirements for notification of transfer of service approval

Prescribed requirements for the transfer of a service approval are found in section 59 of the National Law and Regulations 36 (centre-based service) and 37 (FDC service) of the National Regulations. These are set out in more detail in Table 13 below.

2.3. Timeframe for notifications of transfer of service approval

The RA must be notified of a transfer of service approval at least 42 days before the transfer is intended to take effect, unless the RA agrees to a lesser period of notice if it considers that exceptional circumstances exist.

In the event that intervention is required, notice of the decision to intervene must be given in writing at least 28 days before the date on which the transfer is intended to take effect.

Note that section 62(5) of the National Law provides that notice of the decision to intervene does not apply where the Regulatory Authority has not been notified of the intended transfer of a service approval in accordance with section 59.

If the RA has intervened it must, at least seven days before the date on which the transfer is intended to take effect, give a notice to each party advising of the decision.

3. Process for notification of transfer of service approval

3.1. Stage 1: Receipt of notification of transfer of service approval

A notification of transfer of service approval can be lodged online via the NQAITS or submitted via email, post or fax. Refer to:

- [Application Records Work Instruction and Transfer Records Work Instruction](#) for more information on processing the notification of transfer of service approval.

Once received, a Regulatory Officer will follow a procedure for the receipt of a notification of transfer of service approval. For more information in relation to his procedure, refer to:

- Transfer of Service Approval Process Guide (HPE 12/256675)
- Transfers in a Nutshell (HPE 16/351377).

The relevant forms associated with notification of the transfer of a service approval are as follows:

- [SA04 Notification of Transfer of Service Approval – Centre-Based](#)
- [SA05 Notification of Transfer of Service Approval – Family Day Care](#).

Process guidelines and templates which relate to notifications about the transfer of service approvals are at HPE 60/11/700.

3.2. Stage 2: Validation of notification of transfer of service approval

The validation process determines whether or not a notification is complete in terms of the required information. The Regulatory Officer undertakes the validation process. The Regulatory Officer should indicate that validation has commenced in the NQAITS. Refer to:

- [Application Records Work Instruction](#).

3.2.1. Step 1: Create a Decision Record

The Regulatory Officer completes the Notification of Transfer of Service Approval Decision Making Form (HPE 17/362902), and saves this record into the appropriate file in HPE Records Manager. This is the Decision Record. This Decision Record is used to document the validation and risk assessment processes. The Regulatory Officer should:

- review the information provided to determine whether the notification is complete, including all required prescribed information for a transfer of a service approval, as listed in Table 13 below.

Table 13: Prescribed requirements for consideration in validating a notification of transfer of service approval

Prescribed requirement	Provision
Name of service	NR r36(a) NR r37(a)
Service approval number	NR r36(b) NR r37(b)
Transferring AP: <ul style="list-style-type: none"> • name and contact details • provider approval number 	NR r36(c)(i)(ii) NR r37(c)(i)(ii)
Receiving AP: <ul style="list-style-type: none"> • name and contact details • provider approval number 	NR r36(d)(i)(ii) NR r37(d)(i)(ii)
Date on which the transfer is intended to take effect	NR r36(e) NR r37(e)
Details of any proposed changes in relation to the information required to be provided under Regulations 24 and 25 (centre-based service) and Regulation 26 (FDC service)	NR r36(f) NR r37(f)

If a notification does not include all of the prescribed information, the notification is considered incomplete. The Regulatory Officer will contact the notifier to request additional information, if required.

For more information in relation to the process for validating a notification of transfer of a service approval, including when APs may be asked to submit further information for assessment of a transfer notification, refer to:

- Transfer of Service Approval Process Guide (HPE 12/256675)
- [Application Records Work Instruction](#) – Recording when an Application is Incomplete.

Refer to:

- Template Letters/Emails (HPE 17/305768).

3.3. Stage 3: Conducting an initial risk assessment



The Regulatory Officer will undertake an initial risk assessment with consideration of the case-specific factors outlined in Table 14, using the information in the notification.

This initial risk assessment will be used to determine whether further information requests/inquiries are required to be undertaken by the RA, including determining whether the RA will be required to intervene in the transfer.

Each case-specific factor has been given a relative weighting by the RA in an effort to ensure the focus on risk is proportionate to the importance of each case-specific factor.

Not all case-specific factors will apply or there may be insufficient information about some case-specific factors to enable an assessment. In these instances, the Regulatory Officer should select 'not applicable' so as not to skew the results.

The Regulatory Officer will assess the risk associated with the case-specific factors (outlined in Table 14) using the RAT – Transfer of Approval (HPE 17/362521) and the Transfer of Service Approval Process Guide (HPE 12/256675).

Table 14: Case-specific factors for consideration in the initial risk assessment as part of a notification of transfer of a service approval

Case-specific factor	Significance
Compliance with the National Law – receiving AP	Very significant
Nature of proposed changes to service if transferred	Significant
Capability of receiving AP to operate the service as per National Law	Very significant
Ability of receiving AP to operate the service	Significant
ECEC service risk profile	Minor
Current service quality rating under NQS	Minor

The RAT – Transfer of Approval will elicit one of three outcomes:

RESPONSE LEVEL 1	RESPONSE LEVEL 2	RESPONSE LEVEL 3
<p>Applicant is unlikely to need to provide further information.</p> <p>Site visit unlikely to be required.</p> <p>Remaining assessment limited to confirming the validation and accuracy of the information.</p> <p>RA may not intervene, therefore consenting to the transfer of the service.</p>	<p>RA may potentially intervene in the transfer to seek further information from the applicant or Regional Office.</p> <p>Potentially undertake site visit.</p> <p>Potentially request applicant obtains expert advice in order to assess the notification.</p>	<p>RA will intervene to request further information from the applicant.</p> <p>Undertake site visit.</p> <p>Request applicant obtains expert advice in order to progress the transfer.</p>

Once the initial risk assessment has been completed, the Regulatory Officer will document the outcome in the Decision Record and save the RAT against the Decision Record in HPE Records Manager. The Regulatory Officer should also complete the validation section in the NQAITS.

Refer to:

- [Application Records Work Instruction](#).

For more information in relation to the process for assessing a notification of transfer of a service approval, refer to:

- [Transfer of Service Approval Process Guide \(HPE 12/256675\)](#).

Refer to:

- [Template Letter Notice of Decision to Intervention in Transfer of Service Approval \(HPE 17/417762\)](#)
- [Template Letters/Emails \(HPE 17/305768\)](#) [further templates to be inserted].

3.4. Stage 4: Assessment of notification

For all notifications, the Regulatory Officer will consider all of the information provided as part of the initial notification and any additional information received or gathered during the assessment, including:

- any adverse compliance history of the receiving AP in Queensland or another jurisdiction, or whether the applicant has previously had their provider approval suspended;
- an inspection of the proposed premises;
- an interview of the applicant;
- any exceptional circumstances;
- any other information the RA considers is reasonably required for the purposes of the assessment.

3.4.1. Adverse compliance history

Where the receiving AP holds or has previously held other service approvals, the Regulatory Officer will consider the information held by the RA about those services. This will include undertaking searches in the NQAITS and/or HPE Records Manager to gather the applicable information in relation to the compliance history of the AP.

In identifying any compliance associated with services operated by the AP, the Regulatory Officer may discuss the details with the relevant Regional Office. If related or affiliated services are held in other jurisdictions, the Regulatory Officer may make a request for information in accordance with information sharing requirements²⁰.

²⁰ section 271 of the National Law

Having considered the compliance history of any related or affiliated services, the Regulatory Officer will need to make an assessment of how the compliance history relevant to the related or affiliated service impacts on the risk in relation to the notification. The Regulatory Officer may consider the factors surrounding the compliance history, including the:

- seriousness of any compliance matters
- regularity of the offences under the NQF
- responsiveness of the AP in remedying any compliance matters
- outcome of the compliance issues identified
- timeframes surrounding the compliance.

3.4.2. Previous suspensions

Where the receiving AP has been suspended, the Regulatory Officer will consider what (if any) risk this poses in relation to the notification. This will include undertaking searches in the NQAITS and/or HPE Records Manager to gather the applicable information in relation to any previous suspensions. The Regulatory Officer may consider the factors surrounding the suspensions, including the:

- reasons for the suspension
- outcome of the suspension (e.g. imposed conditions)
- timeframe of the suspension and the timeframe since the suspension.

3.4.3. Inspecting the proposed service premises

The RA must be satisfied that the proposed premises will continue to be safe and suitable for the education and care of the proposed ages and number of children to be educated and cared for at any one time. A Regulatory Officer may conduct an inspection of the premises and request any additional information regarding any proposed alterations to the service premise.

3.4.4. Interview of the applicant

The Regulatory Officer may undertake an interview of the applicant. The purpose of an interview is to assist the decision maker in determining whether the receiving AP is capable of operating the service, having regard to their financial capacity and management capability to operate the service in a way that meets the requirements of the NQF.

In undertaking the interview, the Regulatory Officer will consider factors such as approach, location and structure, and will be mindful of any cultural issues while interacting with the AP. The Regulatory Officer will use a standard list of questions as a guide to ensure consistency, and will follow up any gaps in the response or seek clarification on any particular areas.

For more information in relation to undertaking an interview with an AP, refer to:

- Interview Tip Sheet (HPE 14/412470)
- Discussion Points for Interview – CBS Application for Service Approval (HPE 15/260443)
- Guide to Interview Questions for Family Day Care (HPE 16/114181).

Details of the interview are to be documented in the Decision Record, with reference to the assessment of interview responses table outlined in the decision letter.

Refer to:

- Attachment C – Summary of a Sample of the Interview Responses (HPE 14/412164).

3.4.5. Exceptional circumstances

The Regulatory Officer must determine whether the notification has been received within the 42 day timeframe.

If a lesser period has been requested, the Regulatory Officer, in consultation with the delegated decision maker, will consider the exceptional circumstances on a case-by-case basis, ensuring sufficient reasoning and evidence is provided to support exceptional circumstances.

It is important to note, in the event that a lesser period is agreed to under exceptional circumstances (i.e. less than 28 days before the date on which the transfer is intended to take effect), the RA is not able to request further information under Regulation 64 of the National Regulations.

For examples of exceptional circumstances, and further guidance for notifications of transfer of service approval, refer to the Transfer of Service Approval Process Guide (HPE 12/256675).

3.5. Stage 5: Conducting a second risk assessment



The Regulatory Officer will undertake a second risk assessment considering all of the information received at this point, including the notification, the initial risk assessment and further information gathered as a result of this.

As with the initial risk assessment, the Regulatory Officer will assess the risk associated with each case-specific factor (outlined in Table 15) using the RAT – Transfer of Approval (HPE 17/362521).

For each type of information that has been identified as a case-specific factor, the Regulatory Officer will reference the factors that may be relevant to that particular type of information, contained in the Transfer of Service Approval Process Guide (HPE 12/256675).

Table 15: Case-specific factors for consideration in the second risk assessment as part of a notification of transfer of a service approval

Case-specific factor	Significance
Compliance with the National Law – receiving AP	Very significant
Nature of proposed changes to service if transferred	Significant
Capability of receiving AP to operate the service as per National Law	Very significant
Ability of receiving AP to operate the service	Significant

The RAT – Transfer of Approval will elicit one of three outcomes:

RESPONSE LEVEL 1	RESPONSE LEVEL 2	RESPONSE LEVEL 3
Consent to transfer.	Consent to transfer and impose a condition on the service approval and/or request post-approval monitoring (within 3 months of actual transfer date).	Refuse consent to transfer.

Once the second risk assessment is complete, the Regulatory Officer will document the outcome in the Decision Record and save the completed RAT against the Decision Record in HPE Records Manager.

3.6. Stage 6: Making a recommendation to the delegate and the delegate making a decision

The Regulatory Officer will prepare a recommendation to the delegate indicating whether the notification should be accepted/consented or not accepted/refused. The Regulatory Officer documents the recommendation in the Decision Record. The Regulatory Officer completes the recommendation section in the NQAITS. Refer to:

- [Application Records Work Instruction](#).

For notifications of transfer of a service approval, the delegated decision maker is required to make a decision about whether to intervene and to either consent or refuse to consent to the transfer (sections 60 to 66 of the National Law).

The delegate makes the decision on the notification and, in the process of doing so, may refer back to the stages in the process and the outcomes of the risk assessments which have formed the basis of the recommendation.

The delegate documents the decision in the Decision Record. The delegate completes the decision section in the NQAITS. Refer to:

- [Application Records Work Instruction](#).

3.7. Stage 7: Notifying the Approved Provider and finalising the notification

The applicant is notified of the decision.

Refer to:

- Template Letters/Emails (HPE 17/305768).

For more information in relation to notifying the applicant of the decision and finalising the application, refer to:

- Transfer of Service Approval Process Guide (HPE 12/256675)
- [Application Records Work Instruction](#) – Record Notification of Outcome.

Fact Sheet for Approved Providers - Transfer of service approval

The Department of Education and Training and Employment (the Department) is the Regulatory Authority responsible for the regulation of Queensland education and care services under the National Quality Framework (NQF).

The NQF comprises the Education and Care Services National Law (National Law) and the Education and Care Services National Regulations (National Regulations) that apply nationwide to most long day care, family day care, outside school hours care and kindergarten services.

The Australian Children's Education and Care Quality Authority (ACECQA) is the national entity overseeing these important changes to education and care in Australia. A number of valuable resources including copies of the National Law and National Regulation are available on the ACECQA website.

Transfer of service approval

Under the Education and Care Services National Law (National Law) an approved provider can transfer a service approval to another approved provider. However, the transfer cannot occur without the consent of the Regulatory Authority.

Why transfer a service approval?

If an approved provider no longer intends to operate a service, transferring the service approval to another approved provider will usually allow a service to continue to operate and provide education and care to children.

The receiving approved provider must hold a provider approval prior to a transfer taking place and must be aware of the operational requirements for services under the National Law, including those relating to building and facilities, equipment, health safety and wellbeing, policies and procedures, educator qualifications and educator to child ratios.

Information relating to the operational requirements of an education and care service is available on the [Department's website](#) and the [ACECQA website](#).

Receiving approved providers are encouraged to seek their own legal advice to ensure they are aware of the legal requirements and responsibilities before submitting an application for provider approval/notification of transfer of service approval. Application forms are available from the [ACECQA website](#).

Failure to follow the correct process may result in the transfer being void (section 67) and could result in the suspension of provider approval (section 25(f) of the National Law).

How does a service approval transfer work? (sections 59-63 of the National Law)

The transferring approved provider and the receiving approved provider are required to jointly notify the Regulatory Authority of the intention to transfer the service approval *at least 42 days* before the transfer is intended to take effect. The Regulatory Authority may agree only in exceptional circumstances, to a shorter timeframe.

A notice of intention to transfer a service approval must:

- be in writing
- include the prescribed information
- include payment of the prescribed fee.

The approved providers can fulfil their obligation to notify the Regulatory Authority by using either form [SA04 Notification of transfer of service approval – Centre-based](#) or form [SA05 Notification of transfer of service approval – Family day care](#).

As noted above, a service approval cannot be transferred without the consent of the Regulatory Authority. If the notification is provided in accordance with section 59 of the National Law, consent to the transfer is assumed unless the Regulatory Authority intervenes and advises the approved providers otherwise (section

61). If the Regulatory Authority intervenes in a transfer, the transfer cannot proceed without its written consent.

How will approved providers know if the Regulatory Authority is intervening in a transfer? (section 62 of the National Law)

If the Regulatory Authority intends to intervene, both the transferring and receiving approved providers will receive notice of this decision, in writing, at least 28 days before the transfer is intended to take effect.

If the Regulatory Authority intervenes, the transfer may not proceed until a further notice is given.

The Regulatory Authority will intervene in a transfer if it is concerned with:

- the receiving approved provider's capacity to operate the education and care service, having regard to financial and management capability and any other matter considered relevant; or
- the receiving approved provider's history of compliance with the National Law; or
- any other matter relevant to the transfer of the service approval.

The Regulatory Authority has intervened – what happens next? (sections 64-66 of the National Law)

The Regulatory Authority may request further information from both approved providers to decide whether or not to consent to the transfer and may also make enquiries about the receiving approved provider.

This may include: reviewing the receiving approved provider's history of operating a service in accordance with the National Law, interviewing the receiving approved provider, or requesting a copy of the service's policies and procedures or other documentation related to changes in the operation of the service.

After intervening, the Regulatory Authority will advise the approved providers at least seven days before the proposed transfer date of its decision to:

- consent to the transfer; or
- refuse to consent to the transfer; or
- suspend making a decision until further information is received for consideration; or
- take additional time to make a decision on the transfer and advise the approved providers of the decision within 28 days.

Confirmation of transfer (section 68 of the National Law)

Both approved providers are responsible for giving the Regulatory Authority notice that the transfer has taken place within two days of the transfer happening. When providing confirmation of the transfer taking place, approved providers must also confirm the actual date of the transfer.

After the transfer is confirmed, the Regulatory Authority will issue an amended service approval to the receiving approved provider. In the event that a pending transfer is terminated, both parties are requested to advise the Regulatory Authority in writing.

Letting parents know (section 69 of the National Law)

The receiving approved provider **must** advise parents of every child enrolled at the service, in writing, that the service approval is being transferred.

This notice must be given to parents at least two days before the transfer takes effect.

In addition, under regulation 184 of the National Regulations, records relating to children currently enrolled in the service must be transferred to the receiving approved provider on the day of the transfer and the prior consent of a child's parent is required for this transfer of records.

What else should the receiving approved provider consider?

Once the transfer has taken place, the receiving approved provider should consider reviewing and updating certain documents relating to the service such as:

- Quality Improvement Plan;
- policies and procedures;
- forms (including enrolment, incident, accident, injury, medication).

The Department may visit a service at any time, including after a transfer has occurred, to ensure the service is being operated in accordance with legislative requirements, to provide support or to determine whether a re-rating of the service is required.

Funding information

Queensland Kindergarten Funding Scheme

The Queensland Kindergarten Funding Scheme (QKFS) is designed to help providers offset the cost of implementing and delivering an approved kindergarten program.

A range of services can apply for funding under the Queensland Kindergarten Funding Scheme (QKFS):

- community kindergarten services
- kindergarten services operated by non-state schools
- long day care services
- limited hours care services.

Additional information about the QKFS is available on the [Queensland Government business and industry portal](#) and on the Early Childhood Education and Care [QKFS Frequently Asked Questions site](#).

Child Care Benefit (CCB) and Child Care Rebate (CCR)

The Australian Government assists families with the cost of education and care (including long day care) through CCB and CCR, administered by the Australian Government Department of Education. For information on the requirements to be approved for this funding, refer to the [Department's website](#).

More information

Information relating to the operation of an education and care service is available on the [Department's website](#) and the [ACECQA website](#).

For further information regarding transferring an education and care service in Queensland, contact your local [Regional Office](#), Department of Education, Training and Employment.



Transfer of service approval

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Why transfer a service approval?

If an approved provider no longer intends to operate a service, transferring the service approval to another approved provider will usually allow a service to continue to operate and provide education and care to children.

The receiving approved provider must hold a provider approval prior to a transfer taking place and must be aware of the operational requirements for services under the National Law, including those relating to building and facilities, equipment, health safety and wellbeing, policies and procedures, educator qualifications and educator to child ratios.



Information relating to the operational requirements of an education and care service is available on the Department's website and the ACECQA website.

Receiving approved providers are encouraged to seek their own legal advice to ensure they are aware of the legal requirements and responsibilities before submitting an application for provider approval/notification of transfer of service approval. Application forms are available from the ACECQA website.

Failure to follow the correct process may result in the transfer being void (section 67) and could result in the suspension of provider approval (section 25(f) of the National Law).

How does a service approval transfer work? (sections 59-63 of the National Law)

The transferring approved provider and the receiving approved provider are required to jointly notify the Regulatory Authority of the intention to transfer the service approval at least 42 days before the transfer is intended to take effect. The Regulatory Authority may agree only in exceptional circumstances, to a shorter timeframe.

A notice of intention to transfer a service approval must:

- be in writing
- include the prescribed information
- include payment of the prescribed fee.

The approved providers can fulfil their obligation to notify the Regulatory Authority by using either form SA04 Notification of transfer of service approval – Centre based or form SA05 Notification of transfer of service approval – Family day care.

As noted above, a service approval cannot be transferred without the consent of the Regulatory Authority. If the notification is provided in accordance with section 59 of the National Law, consent to the transfer is assumed unless the Regulatory Authority intervenes and advises the approved providers otherwise (section 61). If the Regulatory Authority intervenes in a transfer, the transfer cannot proceed without its written consent.

How will approved providers know if the Regulatory Authority is intervening in a transfer? (section 62 of the National Law)

If the Regulatory Authority intends to intervene, both the transferring and receiving approved providers will receive notice of this decision, in writing, at least 28 days before the transfer is intended to take effect.

If the Regulatory Authority intervenes, the transfer may not proceed until a further notice is given.

The Regulatory Authority will intervene in a transfer if it is concerned with:

- the receiving approved provider's capacity to operate the education and care service, having regard to financial and management capability and any other matter considered relevant; or
- the receiving approved provider's history of compliance with the National Law; or
- any other matter relevant to the transfer of the service approval.

The Regulatory Authority has intervened – what happens next? (sections 64-66 of the National Law)

The Regulatory Authority may request further information from both approved providers to decide whether or not to consent to the transfer and may also make enquiries about the receiving approved provider.

This may include reviewing the receiving approved provider's history of operating a service in accordance with the National Law, interviewing the receiving approved provider, or requesting a copy of the service's policies and procedures or other documentation related to changes in the operation of the service.

After intervening, the Regulatory Authority will advise the approved providers at least seven days before the proposed transfer date of its decision to:

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For further information regarding transferring an education and care service in Queensland, contact your local Regional Office, Department of Education and Training.



Information correct at time of publication, February 2015. Photography: Lime



STERN, Craig

From: GORDON, Anne
Sent: Tuesday, 11 October 2016 5:07 PM
To: DL - ECEC A&R
Subject: FW: Amendments and Transfers of Service Approvals
Attachments: Transfers in a Nutshell.tr5; ST009 - Decision on application to amend service approval.tr5; Action 11 - Refocusing Qld Regulation – Transfers Amendments.docx

FYI...

From: O'MALLEY, Catherine
Sent: Tuesday, 11 October 2016 5:06 PM
To: DL - ECEC Regional Directors; DL - ECEC_EC MANAGERS
Cc: DENYSIV, Larissa; LOUDEN, Susan; GORDON, Anne
Subject: FW: Amendments and Transfers of Service Approvals

Dear Colleagues

Further to the email I sent yesterday (see below), I wish to clarify the following:

1. The current delegations regarding amendments remain.

2. Amendments and FDC services

My email related to amendment applications for family day care service approvals. In accordance with the previous advice sent out in August by Larissa Denysiv (Action 11 of the agreed Key Outcomes and Actions as part of REFOCUSING QUEENSLAND REGULATION – NEXT 90 DAYS (**attached**)), Regional Officers are requested to seek the advice of the Approvals and Reviews team if any amendment to (FDC) educator numbers or geographical locations is received and prior to agreeing to such an amendment. By undertaking these checks centrally, we are ensuring as the Regulatory Authority that we are regulating in accordance with the current risk presented by some operators in this particular sector.

Given there are legislative timeframes involved, please ensure any requests for advice are completed through the Regional Office Enquiry form (TRIM REF: 14/353274) sent to the Regulation mailbox (cpub0@det.qld.gov.au) for the attention of Approvals and Reviews and indicating the urgency of your request. Approvals and Reviews will make contact with the RO regarding the matter within a **maximum of 3 working days** of the receipt date of the Regional Enquiry.

3. Amendments and Service Waiver applications

In instances where an amendment application is received by the Region and this is directly associated with a service waiver application received by Central Office, it is expected that the Regional Office will closely liaise with Central Office to ensure the legislative timeframes for the respective decisions will be met by the Regulatory Authority.

4. Transfers

Central Office will continue to validate all transfer notifications for ALL service types. Central Office is able to perform cross checks on the relevant persons/entities seeking the transfer and is able to vett any potential legal issues with LALB regarding proposed legal entities that may be involved (e.g. a trust arrangement or partnership). Please seek advice from Approvals and Reviews as outlined in the Action 11 document, including where 'exceptional circumstances' may exist or where intervention in the transfer is necessary. The Regional Office Enquiry process should be followed when seeking advice.

If you have any further questions regarding the above information, please contact Larissa Denysiv, Director, Approvals and Reviews on 332 86910 or email Larissa.Denysiv@det.qld.gov.au.

Kind regards

Catherine O'Malley
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From: O'MALLEY, Catherine
Sent: Monday, 10 October 2016 12:29 PM
To: DL - ECEC Regional Directors; DL - ECEC_EC_MANAGERS
Cc: DENYSIV, Larissa; LOUDEN, Susan; GORDON, Anne
Subject: Amendments and Transfers of Service Approvals

Dear colleagues

Amendments

As previously requested, please notify Central Office of any application received in the regional office for any applications for proposed amendments. This can be done via email to the Regulation mailbox (cpub0@det.qld.gov.au).

Please also find attached an updated template for amendment decision letters.

You may also refer to the Practice Guide on Determining Applications to Amend Family Day Care Service Approvals published on the ECEC AO Portal for further information on the relevant considerations when determining an amendment application for a family day care service.

Transfers

To support Regions in processing transfer notifications, Central Office currently validates notifications to ensure that:

- the receiving approved provider for any intended transfer holds provider approval before a notification of transfer is submitted;
- the notification of transfer is appropriately signed by both parties; and

- the notification is submitted at least 42 days prior to the intended transfer date. If the notification is received with less than 42 days' notice, the parties are requested to nominate a new intended transfer date or provide details of the exceptional circumstances (under section 59(1)(b) NL).

For any new notifications of transfer received by Central Office, we will endeavour to identify any 'red flags' in relation to the receiving approved provider. Any relevant information will be shared as part of notifying the relevant Region of the receipt of the transfer notification. The delegated decision-maker in the Region will still be responsible for assessing the notification and determining whether grounds exist to intervene (refer to the attached 'Transfers in a Nutshell' for further information).

If you have any questions or concerns regarding the above, please contact Larissa Denysiv, Director, Approvals and Reviews on 332 86910 or email Larissa.Denysiv@det.qld.gov.au for further information.

Thank you.

Kind regards

Catherine O'Malley
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SERVICE APPROVALS - TRANSFERS, AMENDMENTS AND EXTENSIONS
REFOCUSING QUEENSLAND REGULATION – NEXT 90 DAYS

In accordance with **Action 11** of the agreed Key Outcomes and Actions as part of REFOCUSING QUEENSLAND REGULATION – NEXT 90 DAYS, the Approvals and Reviews team would like to provide a reminder about the following actions relating to Service Approvals:

(A) TRANSFERS

1. Please continue to refer to the *'Transfers in a Nutshell'* document - TRIM Ref 16/351377.
2. Though initial notifications are received by Central Office, the decision regarding whether to intervene/consent to a transfer sits with Regional Offices.
3. **To ensure consistency of practice, you are to seek advice* from Approvals and Reviews in the following circumstances prior to communicating with the AP and making a decision. Please seek advice as early as possible, taking into account the relevant legislative timeframes:**
 - (i) Where the transferring and receiving Approved Providers have jointly notified the Regulatory Authority within a period less than the **42** calendar days prescribed under the legislation and Regional Office needs to consider whether there are **'exceptional circumstances'**; AND
 - (ii) Where **intervention** in a transfer is required because the Regulatory Authority is concerned about any of the matters **prescribed under section 62** of the National Law.

(B) AMENDMENTS

1. The following information/guidance is available on the following topics :
 - >**Practice Guide 04/16** - Determining an Application from an Approved Provider to Amend Family Day Care Service Approvals
 - >**Regional Email # 222 (TRIM Ref: 16/324463)**-Amendment of details on provider approval and service approval certificates
 - >**Conditions Approved to be used on Service Approvals and exemplars for Waivers – approved wording of conditions (TRIM Ref: 16/65758)****To ensure consistency of practice, please seek advice* from Approvals and Reviews if you are unsure.**
In particular, if you are considering an amendment to (FDC) educator numbers or geographical locations please seek advice* prior to agreeing to an amendment application by an Approved Provider or if imposing an amendment in your capacity as the Regulatory Authority. When seeking advice, please factor in the relevant legislative timeframes.

(C) EXTENSIONS (s.51(3)National Law) – Please seek advice* as early as possible from Approvals and Reviews, taking into account the relevant legislative timeframes.

1. Ensure a timely response to any application for extension – the AP will be in breach of s.51(3) if they are not operating at the 6 month mark unless an extension has been granted
2. A practice guide and relevant templates are currently being developed by Approvals and Reviews.
3. Extension applications are to be decided by Regions on a case-by-case basis.

4. An application for an extension can be based on a number of reasons, the more common one being that a current application for the Child Care Benefit (CCB) from the Commonwealth is on foot. Please note Approvals and Reviews are able to cross-check directly with the Commonwealth as to the status of any CCB application.

*Given there are legislative timeframes involved, please ensure any requests for advice are completed through the Regional Office Enquiry form (**TRIM REF: 14/353274**) for the attention of Approvals and Reviews and indicating the urgency of your request.

Approvals and Reviews will make contact with the RO regarding the matter within a **maximum of 3 working days** of the receipt date of the Regional Enquiry.

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TRANSFERS IN A NUTSHELL

It is essential that you familiarise yourself with the relevant provisions of the legislation concerning transfers of service approvals:

- Sections 58 – 69, 81 - 82 Education and Care Services National Law Act (NL)
- Regulations 36 - 38 Education and Care Services National Regulations (NR)

Notification

The transferring Approved Provider and the receiving Approved Provider **must jointly notify** the Regulatory Authority (RA) of the transfer:

- At least **42 calendar days** before the transfer is intended to take effect; or
- Within a lesser period agreed to by the RA, if the RA considers there are **exceptional circumstances**. (s. 59 NL)

Possible examples of exceptional cases could be:

A case where a management committee may have to be dissolved and there is a receiving AP willing to take on the transfer of the service approval. In that case the RA may allow a lesser notification period in a case where the RA is confident about the capacity and capability of the receiving AP to operate the service.

A case where the continued safe operation of the service necessitates a short timeframe for transfer and the RA is confident about the capacity and capability of the receiving AP to operate the service.

Further discussion of exceptional circumstances is provided at Attachment 1.

Presumption of consent

A RA can be taken to have consented to a transfer of service approval ONLY in cases where the transferring AP and the receiving AP have jointly notified the RA of the proposed date of transfer in accordance with s. 59 namely:

- *At least 42 calendar days before the proposed date of transfer; OR*
- *A lesser period agreed to by the RA because of exceptional circumstances.*

This presumption of consent can only be applied in a case where at least 28 calendar days before the proposed date of transfer, the RA has **not** notified the parties that it intends to intervene under section 62.

In cases where they have not provided the required amount of notice of the proposed transfer date, Approvals and Reviews in Central Office will advise both the transferring Approved Provider and the receiving Approved Provider that:

- ***Any transfer is void if there is no consent of the Regulatory Authority. (s 67 NL)***
- ***The notification of the transfer of the Service Approval was not submitted at least 42 days before the date of the intended transfer and therefore does not attract the presumption of***

consent under section 59, unless the Regulatory Authority considers there are exceptional circumstances to warrant a lesser notification period being applied.

- *The parties must either provide details of the exceptional circumstances for consideration of the decision-maker (which may not be accepted) or provide written notice of a new intended transfer date, in accordance with section 59.*

Intervention

The RA may intervene in a transfer if the RA is concerned about any of the following:

- Whether the receiving Approved Provider is capable of operating the service having regard to its financial capacity and management capability and any other matter the RA considers relevant - , it is reasonable for the RA to intervene if the receiving AP has limited (or no) experience in the provision of education and care under the National Law raising concerns about capability – i.e. the RA intervenes on the basis it is ‘concerned’ (s.62(c) NL);
- The receiving Approved Provider’s history of compliance with the National Law as applying in a participating jurisdiction, including in relation to any other ECEC service it operates;
- Any other matter relevant to the transfer of the service approval. (s. 62 NL). This includes where further information is required (s.64 NL) related to the transfer (eg right to occupy, public liability insurance) .

Notice of the decision to intervene must be given in writing at least 28 days before the date on which the transfer is intended to take effect. (s. 62 NL). The written notice must contain the information outlined in regulation 38.

In the usual case (42 day notification period) the RA then has only 14 days to decide whether to intervene, or not, if it is to provide 28 days’ notice of the intervention.

This means that notifications of transfer must be given the appropriate priority when they are received in the Regional Office, otherwise the RA may miss the opportunity to intervene in cases that would warrant such intervention.

To assist Regional Officers, on receipt of a transfer notification, Central Office will conduct searches of the NQAITS and, where possible, identify any issues or potential ‘red flags’ that may indicate intervention is required.

Following Intervention:

If the RA has intervened, it can decide to:

- consent to the proposed transfer (including with conditions) or
- refuse to consent to the proposed transfer. (s. 65 NL)

If the RA has intervened it must, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party advising that:

- The RA consents to the transfer;
- The RA refuses to consent to the transfer;

- The RA has suspended further consideration of the transfer until further information is provided;
- The RA has not yet made a decision and the RA will make a decision within 28 days.

Streamlining of the service transfer process

To assist with the streamlining of the service transfer process and improve consistency, Approvals and Reviews in Central can coordinate all bulk transfers. On receipt of transfer notifications from an approved provider relating to services in multiple Regions, A&R will flag this with the relevant Regions when the notices are forwarded, to facilitate communication between decision-makers.

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It should be noted at the outset that the timeframe of 42 days' notice is provided for in legislation. Any move away from that legislated timeframe needs to be given careful consideration.

The issue of whether the particular circumstances of a proposed transfer are 'exceptional' must be determined on a 'case by case' basis after considering the specific facts and circumstances.

It is not the case that there would be many circumstances that would meet the category of "exceptional". As such forming the view that circumstances are exceptional should be relatively rare.

Delegated decision-makers are required to form a view and ensure that there is sufficient reasoning/evidence to support that view. The decision maker should conduct a risk assessment about the circumstances of each case on their own merits.

Some questions that you may like to consider in forming a view about whether the circumstances are 'exceptional' include:

- Is the situation unusual, not typical? (a situation that cannot ordinarily be planned for in advance. (Not situations where the AP has 'forgotten' or is simply seeking to rush a transfer through or it is more convenient/less costly to the AP for any relevant legal expenses)
- Is the safety, health and wellbeing of children attending education and care services at risk?
- Is it in the best interests of the children at the service to ensure continuity by transferring the service to a new approved provider?

The following list of circumstances may be considered exceptional depending on the specific details of each situation:

- The receiving Approved Provider and the transferring Approved Provider have the same persons with management or control;
- The transferring Approved Provider has gone into liquidation;
- The transferring Approved Provider wants to disband / dissolve the legal entity prior to the 42 days;
- The committee members of the transferring Approved Provider resigned suddenly;
- The transferring Approved Provider is leaving the industry due to illness/death in the family etc.

Specific examples that may not necessarily be "exceptional"

The settlement date for a contract taking effect prior to the expiration of the required 42 day notification period should not necessarily be considered as an exceptional circumstance (on its own and in the usual case) as a settlement date is something that can be (and should be) planned in advance, taking into account all relevant legislative requirements. Transferring Approved Providers and receiving Approved Providers (and their legal advisers) need to take account of the required notification period under the NL when negotiating settlement dates.

The transferring Approved Provider going on an extended overseas holiday should not in the usual case be considered an exceptional circumstance as generally such an event is also able to be planned well in advance.

The issue of high workloads, staff leave/work schedules in the Regulatory Authority would be very difficult to justify as relevant factors in determining whether exceptional circumstances exist.

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NOTIFICATIONS OF TRANSFER OF SERVICE APPROVALS

A practical guide

Including HPERM references and detailed processes for RA officers

Released under FOI Act by DOE

Last updated: 23 October 2018

PURPOSE OF GUIDE

The purpose of this guide is to detail the relevant requirements and considerations related to processing a notification of transfer of service approval under the Education and Care Services National Law (National Law). It incorporates the information that was contained in the previous "Transfers in a Nutshell" document. Please note that document is no longer in use.

Under the National Law, an Approved Provider can, with the consent of the Regulatory Authority (RA), transfer a service approval to another Approved Provider. The relevant provisions of the National Law and Education and Care Services National Regulations (National Regulations) concerning the transfer of a service approval are:

- Sections 58 – 69, 81 - 82 of the National Law (NL)
- Regulations 36 - 38 of the National Regulations (NR)

ROLES – RASQ (Approvals & Review) AND REGIONAL OFFICE

RASQ will perform the intake function for notifications of transfers of service approval and will also be involved in an advisory capacity.

Regional offices hold the delegation in relation to assessment of, and decisions on, all **notifications of transfer of service approval**.

It is important to always check the most current Instrument of Delegation online via the legislative delegations on OnePortal to ensure the relevant delegation is held by the decision maker.

STAGE 1 - RASQ

1) Intake

The transferring approved provider and the receiving approved provider must jointly notify the RA of the intention to transfer the service approval at least 42 days before the transfer is intended to take effect. The RA may agree only in exceptional circumstances, to a shorter timeframe.

A service approval cannot be transferred without the consent of the RA. If a notification is provided in accordance with section 59 of the National Law, consent to the transfer is assumed unless the RA intervenes (section 61 National Law).

Where the RA has intervened, it must make a decision after intervention whether to consent to the transfer (section 65 National Law).

Notification of transfer

The transferring approved provider and the receiving approved provider must jointly notify the RA of the proposed transfer by lodging a Notification of Transfer via the online public portal.

Receipt of the transfer notification is automatically acknowledged via the public portal.

Approvals & Review, RASQ:

- Receive notifications through the public portal and save a copy in the transfer HPERM folder (60/16/16470).
- Create the decision record (HPERM 17/362902) and RAT (HPERM 17/362521) in the relevant HPERM file

Under section 59 of the NL, the transferring approved provider and the receiving approved provider **must jointly notify** the RA of the transfer:

- At least **42 calendar days** before the transfer is intended to take effect*
***Please see Notes section below on Calculation of Timeframes**
- Within a lesser period agreed to by the RA, if the RA considers there are **exceptional circumstances***(s.59 NL). **Evidence of exceptional circumstances must be supplied at the time of notification.**
***Please see Notes below on Exceptional Circumstances.**

Ensure you are utilising calendar bring-ups throughout the process to ensure NO legislated timeframes re missed!!

To ensure consistency of process by the Regulatory Authority, where there are two or more transfers to either the same receiving approved provider or from the same transferring approved provider, RASQ should record these details as part of the Decision Record and contact the relevant regional offices to recommend that they discuss their approach to help ensure consistency of process and reduce duplication of any further information required where possible for the parties. For example, having the Receiving Approved Provider confirm in writing (as relevant) that they intend to rely on the same information as part of their response to requests for further information.

Bulk Transfers

If the transferring Approved Provider has notified of a proposed **'bulk' transfer** i.e. where there are multiple notifications (at least 5 or more) from an Approved Provider relating to services located in multiple Regions, RASQ (Approvals and Review) will assist as a central coordination point.

Approvals and Review RASQ will:

- Check whether the receiving Approved Provider holds current provider approval.
 - If the receiving organisation is **not an Approved Provider**, return the notification advising that it cannot proceed until the application for provider approval is made and determined (refer **Invalid Notification of Transfer – 17/441544**).
- **Check the date of transfer.**
 - If the notification states that the transfer has already occurred, notify both parties that the transfer is void and request a new notification of transfer be submitted with an intended date of transfer that satisfies the requirements under the NL (refer **Invalid Notification of Transfer – 17/441544**).
 - If the notification was received less than 42 days before the transfer is intended to take effect, notify both parties (refer **Invalid Notification of Transfer – 17/441544** and request:
 - A new notification of transfer of Service Approval be submitted with an intended date of transfer that is at least 42 calendar days from the date the RA is notified of the proposed transfer date; or
 - A new notification of transfer of Service Approval be submitted along with evidence regarding why the RA should agree to a lesser period of notice i.e. why the circumstances should be considered as being 'exceptional'. Evidence of exceptional circumstances is required to be supplied at the time of notification.
- **Check if the notification contains all of the information required** (see Regulations 36 (Centre-based services) and 37 (FDC services)) and is complete, including:
 - (a) PA09 – Transferring Provider Declaration (Service Approval) from the transferring Approved Provider ensuring that it is signed by approved PMCs; and

(b) payment of the prescribed fee.

When reviewing the notification, consider the prescribed information that must be included as outlined in Regulation 36 of the National Regulations. Note this refers to the matters contained in Regulations 24 to 26 which includes details of any changes proposed by the receiving approved provider in relation to these. For example:

- i. The Receiving Provider has the right to occupy (Regulation 25(g)) – **Contact the Receiving Approved Provider and flag that this is part of the prescribed information required under Regulation 36 and that the Region will contact them about this.** Advise the Region of this when transferring the notification,
 - ii. Changes to the hours of operation –advise the Region of this when transferring the notification; or
- o **Conduct relevant searches** of receiving Approved Provider e.g. ASIC searches, checks with Australian Government, compliance or issues with persons with management or control – including that a current Queensland blue card is held or current application has been submitted for a blue card (not required if recently approved).
If the Receiving Approved Provider is from another jurisdiction, under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) they will be carrying on a 'regulated business' and require a Queensland Blue Card. If they hold a current working with children check from another jurisdiction already, evidence of having made an application for a Queensland Blue Card will suffice in order for the Region to progress further assessment of the Notification. Save under the notification of transfer and advise the regional office if any concerns are identified.
- o **RASQ is to notify the Regional Office via email that the notification has been received**
- o Send an email to the Regional Office and provide the relevant HPERM reference, noting that information about the Receiving Approved Provider can be found in the Decision Record (refer Notification of Transfer of Service Approval - RASQ Email to Regions - 18/487748).
- o **RASQ enters the validation start and end date and the assessment start date in NQAITS.**

2) Transfer of notification from RASQ to Regional Office

Note: A notification is ready to be transferred from RASQ to the Regional Office if the notification has been validated, that is;

- o The intended transfer date is in the future and meets required minimum 42-day timeframe or a lesser period has been agreed to by the RASQ, evidenced by exceptional circumstances;
- o The notification is signed by the transferring approved provider seeking the transfer;
- o The receiving organisation is an Approved Provider; AND
- o Payment (fee) has been processed (Schedule 2 of the National Regulations).

Note: The transferring provider is required to submit a 'PA09 - Transferring provider declaration'. This must be uploaded by the receiving provider when they lodge the notification of transfer through the Public Portal.

Note: RASQ will not make judgments about the quality of evidence provided, as this may interfere with the role of the delegated decision makers.

When a notification of transfer is lodged through the NQAITS, although it is technically a joint submission, it is the receiving Approved Provider who submits the notification of transfer. As part of the online submission process, the receiving Approved Provider must upload a Notification of Transfer of Service Approval – Transferring Provider and which must contain The PA09 – Transferring provided declaration.

A **cancelled** service approval cannot be transferred.

A **suspended** service approval may be transferred (sections 30(5) & 76 of the National Law).

Where a provider approval **is to be** cancelled under section 33 of the National Law, the provider may apply to the RA under Part 3 for consent to transfer a service approval held by the provider (refer to sections 33 & 81-82 of the National Law).

STAGE 2 – REGIONAL OFFICE

1. Allocation

Regional Office:

- receives the notification via the NQA ITS and allocates to relevant officer as per Region's process;
- in accordance with RASQ email confirming the HPERM number, the relevant Regional officer will relate the file alternatively within the regional service file.

2. Review

The Regional Office will review the notification including details of any proposed changes in relation to the information required under Regulations 24-26.

Note: Check the statutory timeframes and check the current Instrument of Delegation to confirm the delegated officer for deciding the notification.

(A) If notification is submitted in accordance with section 59 of the NL (42 days' notice or RA considers circumstances are exceptional and agrees to a lesser period)



Exceptional Circumstances

Consider proof of exceptional circumstances in accordance with Section 62(b) of the National Law. It is not the case that there would be many circumstances that would meet the category of "exceptional". As

such, forming the view that circumstances are exceptional should be relatively rare and must be done on a case by case basis (after considering the specific facts and circumstances).

For example, the Approved Provider is ill and no longer able to operate the service and it is in the best interests of the children at the service to ensure continuity by transferring the service to a new Approved Provider. Delegated decision-makers are required to form a view and ensure that there is sufficient reasoning/evidence to support their view. The decision maker should conduct a risk assessment about the circumstances of each case on their own merits.

If in doubt, ensure you consult in a timely manner with RASQ (Approvals and Review) in considering whether exceptional circumstances exist. **Timeliness is important** given the statutory timeframes involved and that legal advice may need to be obtained in relation to a matter.

The following questions may assist the decision maker to form a view about whether the circumstances are 'exceptional':

- a) Is the situation unusual, not typical? (one that cannot ordinarily be planned for. i.e. not situations where the AP has 'forgotten' or is simply seeking to rush a transfer through or it is more convenient/less costly to the AP for any relevant legal expenses)
- b) Is the safety, health and wellbeing of children attending education and care services at risk?
 - i) Is it in the best interests of the children at the service to ensure continuity by transferring the service to a new Approved Provider?
 - ii) Is the service located in an area of disadvantage and would any disruption to operation of the service possibly result in non-attendance of children?
- c) What are the timeframes for the proposed transfer? Is there time for the RA to intervene?

The following is a list of circumstances that may be considered exceptional, depending on the specific details of each situation:

- i) Where a management committee (Approved Provider) has to be dissolved suddenly and there is a receiving AP willing to take on the service approval. In that case the RA may allow a lesser notification period where the RA is confident about the capacity and capability of the receiving AP to operate the service;
- ii) The transferring Approved Provider has gone into liquidation/is in receivership;
- iii) The transferring Approved Provider wants to disband / dissolve the legal entity prior to the 42 days – the reasons for this form part of the RA's considerations;
- iv) The committee members of the transferring Approved Provider have resigned suddenly;
- v) The transferring Approved Provider is leaving the industry due to illness/death in the family etc.

The RA must be confident about the capacity and capability of the receiving Approved Provider to operate the service. This may require intervention by the RA if concerns are held by the RA in relation to the matters set out in section 62 of the NL.

Please see section on Intervention below.

Specific examples that may not necessarily be "exceptional":

1. The settlement date for a contract taking effect prior to the expiration of the required 42-day notification period should not necessarily be considered as an exceptional circumstance (on its own and in the usual case) as a settlement date is something that can be (and should be) planned by the parties in advance, taking into account all relevant legislative requirements. Transferring approved providers and receiving approved providers (and their legal advisers) need to take account of the required notification period under the NL when negotiating settlement dates.

2. The transferring Approved Provider going on an extended overseas holiday should not be considered an exceptional circumstance as generally such an event is also able to be planned well in advance.

Note: The issue of high workloads, staff leave/work schedules in the RA are not relevant factors in determining whether exceptional circumstances exist.

Decide whether to agree to a lesser period

Decide whether to:

1. Agree to lesser period of notice (refer HPERM 17/444832 – agree to lesser period in exceptional circumstances); OR
2. Not agree to a lesser period of notice - notify both parties and request a new date for the intended transfer of Service Approval, at least 42 calendar days from the date the RA is notified of the proposed transfer date, along with written confirmation approving the new transfer date from both the transferring and receiving Approved Providers (Refer HPERM 17/445573 – Require 42 days).

Presumption of Consent OR Intervention

The delegated decision-maker will need to:

1. Calculate the timeframe in accordance with section 31, Part 5, Schedule 1 NL and consider whether intervention is required and whether the RA has the opportunity to intervene in the transfer (at least 28 days before the intended transfer date); **AND EITHER**
2. Consent to the transfer to proceed without intervention but make the consent subject to the conditions that right to occupy and evidence of insurance are supplied within X days of the transfer taking effect (Note this is **Presumed Consent – please read implications below***); **OR**
3. Intervene and consent to the transfer with conditions (including specifying transfer effect date); **OR**
4. Intervene and request additional information or make further inquiries. Once additional information is received and/or investigation is complete, the RA will decide whether to consent to the transfer with conditions or refuse consent.

The Regulatory Officer will undertake an initial risk assessment with consideration of the case-specific factors, using the information in the notification.

Once the initial risk assessment has been completed, the Regulatory Officer will document the outcome in the Decision Record and save the Risk Assessment Tool (RAT) against the Decision Record in HPE Records Manager. The Regulatory Officer should also complete the validation section in the NQAITS.

This initial risk assessment will be used to determine whether further information requests/inquiries are required to be undertaken by the RA, including determining whether the RA will be required to intervene in the transfer.

Each case-specific factor has been given a relative weighting by the RA in an effort to ensure the focus on risk is proportionate to the importance of each case-specific factor.

Not all case-specific factors will apply or there may be insufficient information about some case-specific factors to enable an assessment. In these instances, the Regulatory Officer should select 'not applicable' so as not to skew the results.

Case-specific factors for consideration in the initial risk assessment as part of a notification of transfer of a service approval

Case-specific factor	Significance
Compliance with the National Law – receiving AP	Very significant
Nature of proposed changes to service if transferred	Significant
Capability of receiving AP to operate the service as per National Law	Very significant
Ability of receiving AP to operate the service under the NQF	Significant
ECEC service risk profile	Minor
Current service quality rating under NQS	Minor

Comment [DL1]: Check components re capability and ability?? Intent when re worded these?

The Regulatory Officer will assess the risk associated with the case-specific factors using the RAT – Transfer of Approval (HPE 17/362521).

The RAT – Transfer of Approval will elicit one of three outcomes:

RESPONSE LEVEL 1	RESPONSE LEVEL 2	RESPONSE LEVEL 3
<p>Applicant is unlikely to need to provide further information.</p> <p>Site visit unlikely to be required.</p> <p>Remaining assessment limited to confirming the validation and accuracy of the information.</p> <p>RA may not intervene, therefore consenting to the transfer of the service.</p>	<p>RA may potentially intervene in the transfer to seek further information from the applicant or Regional Office.</p> <p>Potentially undertake site visit.</p> <p>Potentially request applicant obtains expert advice in order to assess the notification.</p>	<p>RA will intervene to request further information from the applicant.</p> <p>Undertake site visit.</p> <p>Request applicant obtains expert advice in order to progress the transfer.</p>

Comment [KK2]: I'm not sure that a site visit by the region at this point would ever be warranted in response to the transfer. I think it would actually be risky for the RA to do so.

Presumption of Consent

A **presumption of consent** can only be applied in a case where at least 28 calendar days before the proposed date of transfer, the RA has not notified the parties that it intends to intervene under section 62.

Note however despite presumed consent, that RASQ flagged earlier with the receiving approved provider that the right to occupy is part of the prescribed information (Regulations 36(f) and 25(f)) required for a transfer notification and the Region would be following this up with them (see earlier section on Transfer of notification from RASQ to Regional Office). The Receiving Approved Provider must also have the required public liability insurance in place.

As these documents are usually not available until closer to the transfer effect date, where there is presumed consent to the transfer, such consent **should be made subject to the conditions** that the Receiving Approved Provider supply the right to occupy and evidence of insurance within XX days of the transfer taking effect.

Note: The RA is taken to have consented to the transfer if:

- both parties (transferring and receiving Approved Provider) have given notification in accordance with section 59 (must be in writing, include the prescribed information and payment of fee and be received at least 42 days before the transfer is intended to take effect, except in exceptional circumstances); and
- 28 days before the transfer is intended to take effect, the RA has not notified the parties that it intends to intervene.

Intervention

Under section 62 of the NL, the RA may intervene in a transfer if the RA is concerned about any of the following:

- Whether the receiving Approved Provider is capable of operating the service having regard to its financial capacity and/or management capability and any other matter the RA considers relevant – for example, in relation to management capability, “relevant matters” are similar those which apply to a new service approval application, including the receiving Approved Provider’s fitness and propriety (e.g. whether they hold a Queensland Blue Card) or level of experience in, and capability to operate a service of this nature in this jurisdiction (or other arrangements proposed to ensure that the service is operated in accordance with the National Law such as engagement of a management company) – Refer to Assessing applications for Service Approval - A practical guide (15/202069) and Assessing the Capability of an Approved Provider – Consideration of Management Company (15/161011);
- The receiving Approved Provider’s history of compliance with the National Law as applying in a participating jurisdiction, including in relation to any other ECEC service it operates.
- Any other matter relevant to the transfer of the service approval (e.g. if the service is located in a multi-storey building and the receiving AP has not operated a service in a multi-storey building previously and the RA is concerned whether they can ensure safe fire evacuation of children.



- To intervene in a transfer, the RA must give notice in writing **at least 28 days before the intended transfer date** (section 62 of the National Law). The delegated decision-maker therefore has less than 14 days to decide whether to intervene, or not. **Any notifications of transfer must be given priority when they are received by the Regional Office.**

The written notice must contain the information outlined in Regulation 38. If you intend to intervene for the purposes of deciding whether to consent to the transfer, you **must** consult with RASQ (as legal advice may be required in relation to the notice – please ensure this is done in a timely manner to ensure statutory timeframes will be met!). The Region must complete a **Regional Enquiry – Transfer – Intention to Intervene** (template 16/550428) and send this to the Regulation inbox cpub0@det.qld.gov.au seeking advice from RASQ (Approvals and Review) on the intervention.

In the usual case (42-day notification period) the RA then **has only 14 days** to decide whether to intervene, or not, if it is to provide 28 days’ notice of the intervention.

This means that notifications of transfer must be given the appropriate priority when they are received in the Regional Office, otherwise the RA may miss the opportunity to intervene in cases that would warrant such intervention.

Request for Further Information

Section 64 of the NL provides that **when the RA intervenes** under section 62 NL it may request further information from the transferring Approved Provider or receiving Approved Provider for the purposes of

deciding whether to consent to the transfer. The RA may also undertake further inquiries in relation to the receiving Approved Provider.

Note that the RA needs to intervene to be able to request further information.

As part of the request for further information, the RA may request evidence of the Receiving Approved Provider's right to occupy and relevant public liability insurance.

In this regard, note that RASQ flagged earlier with the receiving approved provider that the right to occupy is part of the prescribed information (Regulations 36(f) and 25(f)) required for a transfer notification and the Region would be following this up with them (see earlier section on **Transfer of notification from RASQ to Regional Office**)

It is highly unlikely the Receiving Approved Provider will have evidence of the right to occupy and public liability insurance well in advance of the proposed transfer effect date. The RO should establish this during discussions with the Receiving Approved Provider whether evidence of the right to occupy and public liability insurance can be provided at this point. If the Receiving Approved Provider confirms they are in a position to provide these documents, the RO, as part of the **Notice of decision to intervene in transfer of service approval and request for further information**, will need to request evidence of these. If the Receiving Approved Provider confirms that such documents do not presently exist and are not expected in the immediate future, the RO should flag that that any possible consent it may grant under s.65 of the NL may be conditioned, requiring that these documents be provided within XX days of the transfer effect date.

See Receiving Approved Provider Notice of Decision to Intervene in Transfer of Service Approval and further information request (HPERM 17/417762) notifying of the decision to intervene in transfer (cc transferring Approved Provider).

Considerations

If the decision to intervene is based on information regarding previous non-compliance, afford natural justice by providing the receiving Approved Provider an opportunity to respond. As part of your inquiries, you may request information about the receiving Approved Provider's compliance history from Regulatory Authorities in other jurisdictions (HPERM 14/281007). Contact details for other Regulatory Authorities can be obtained via the ACECQA website. If there is a history of significant or serious non-compliance and the Approved Provider is unable to satisfy the decision maker that it is capable of operating a service in compliance with the National Law despite the historical non-compliance, this may be grounds to refuse to consent.

Consider if additional information is required and whether this can be requested in writing (e.g. receiving approved provider's proposed policies and procedures and proposed configuration of the service) or whether an interview with the receiving Approved Provider is also required in the circumstances.

Interview

Under section 64(b) NL the RA may undertake inquiries in relation to the receiving approved provider for that purpose.

If you are not satisfied with the responses received to the request for further information or require further clarification or the receiving AP has no experience operating a service of this type and/or in this jurisdiction, as part of your inquiries, you may consider conducting an interview. **Please ensure you consult with RASQ (Approvals and Review) if you are considering interviewing a receiving Approved Provider as part of the intervention process so that RASQ can provide support with questions, etc.**

For further information about assessing the capability of a receiving Approved Provider including conducting interviews, refer to the *Assessing applications for Service Approval - A practical guide* (HPERM 15/202069) and *Assessing the Capability of an Approved Provider – Consideration of Management Company* (15/161011).

Withdrawal of Transfer

If the transferring and receiving approved providers formally advise they no longer wish to proceed with the transfer, the Regional Office needs to issue the Letter acknowledging withdrawal (refer to HPERM 14/202781). Update NQA ITS accordingly.

Eligibility for a refund will be considered on a case-by-case basis, depending on when in the process the withdrawal advice is received (and how much work has been undertaken by the RA). Please consult with Approvals and Review, RASQ if the parties are seeking a refund.

STAGE 3 – 2nd Risk Assessment (Regional Office cont.)

The Regulatory Officer will undertake a second risk assessment considering all of the information received at this point, including the notification, the initial risk assessment and any further information gathered from further information requests.

As with the initial risk assessment, the Regulatory Officer will assess the risk associated with each case-specific factor (outlined in Table 15) using the RAT – Transfer of Approval (HPER 17/362521).

For each type of information that has been identified as a case-specific factor, the Regulatory Officer will reference the factors that may be relevant to that particular type of information.

Case-specific factors for consideration in the second risk assessment as part of a notification of transfer of a service approval

Case-specific factor	Significance
Compliance with the National Law – receiving AP	Very significant
Nature of proposed changes to service if transferred	Significant
Capability of receiving AP to operate the service as per National Law	Very significant
Ability of receiving AP to operate the service under the MQF	Significant

The RAT – Transfer of Approval will elicit one of three outcomes:

RESPONSE LEVEL 1	RESPONSE LEVEL 2	RESPONSE LEVEL 3
Consent to transfer with conditions including conditioning transfer effect date.	Consent to transfer and impose conditions on the service approval and/or request post-approval monitoring (within 3 months of actual transfer date).	Refuse consent to transfer.

Following Intervention

If the RA has intervened, it can decide to:

- consent to the proposed transfer (including with conditions) or
- refuse to consent to the proposed transfer. (s. 65 NL)

If the RA has intervened it must, at least 7 days before the date on which the transfer is intended to take effect, **give a notice** to each party advising that:

- The RA consents to the transfer and, if so, any conditions that should be imposed on the consent. For example, specifying the transfer effect date, requiring that the receiving AP provide a copy of evidence of the right to occupy and/or public liability insurance for the service at the time of notifying the Department that the transfer has occurred; OR
- The RA refuses to consent to the transfer; OR
- The RA has suspended further consideration of the transfer until further information is provided – for example, the Receiving Approved Provider has applied for, but has not yet been issued a current Queensland Blue Card); OR
- The RA has not yet made a decision and the RA will make a decision within 28 days (s.66(1)(d) NL). This provision should be used by exception and consultation with RASQ should occur if the Region is intending to rely upon this section).

Change in proposed transfer effect date – Notifying outcome 7 days before transfer

NOTE: the legislation DOES NOT provide for an extension of the proposed transfer effect date

1. If during the period of intervention and prior to the RA notifying of its decision, the parties have alerted the RA that the proposed transfer effect date will change and can provide a definite date that is later than that originally proposed **and** if the RA is satisfied it should consent to the transfer, this new definite date should be confirmed with the parties in writing and be stipulated as a condition of the consent to transfer. Note that this decision should be based on risk. It would be reasonable* for example to consent to an altered transfer date no more than 3 weeks subsequent to the originally proposed date. **OR**

Comment [DL3]: To develop new template

2. If during the period of intervention and prior to the RA notifying of its decision, the parties have alerted the RA that for example, they have had an unforeseen issue with the bank impacting the sale of the business and they cannot immediately provide a definite future transfer date. The RA should notify the parties under section 66(1)(d) that the RA has not yet made a decision on the transfer and that the RA will make a decision on the transfer within 28 days. The transfer may not proceed until a further notice is given under this section consenting to the transfer.

Comment [DL4]: To develop new template

The parties should be advised they need to confirm the new transfer date in writing to the RA in within the 28 day period so that it can be stipulated as a condition of the service approval if the RA consents to the transfer. They should also be advised that if they fail to provide a date within the period, the RA will refuse to consent to the transfer.

If similar circumstances to the above occur, Regions must contact Approvals and Review, RASQ immediately by telephone for guidance.

3. If after the notification of the outcome (to consent with conditions – including a condition stipulating the original transfer date) has been issued 7 days before the transfer, the parties advise the RA that the transfer effect date needs to be pushed out and the RA is satisfied that the proposed date is reasonable* based on risk (including consideration of what circumstances could change in the interim), the decision maker will need to exercise their power to amend their decision under section 23 of Part 4 of Schedule 1 of the National Law to consent with the relevant conditions, including specifying the new transfer effect date as a condition on the amended decision to consent.

Comment [DL5]: Insert relevant template reference

What is 'reasonable'?? – As stated above, a proposed new transfer date should be reasonable. For example a transfer 3 months later than the original proposed transfer date is NOT reasonable. The parties should be advised that the RA would not consent to the

transfer on this new date and the parties would need to submit a fresh notification of transfer, including specifying the new date proposed as part of that new notification.

The RA's decision is made upon circumstances in place at a particular point in time and therefore, the longer the period into the future a transfer effect date is, the more likely other circumstances may change (e.g. persons with management or control could change);

Any change to the transfer effect date should only be permitted once. If parties are seeking more than one change of date, they need to be advised that the RA will not consent to the transfer and a new notification will need to be submitted with the required 42 days' notice.

Consent to the transfer of service approval with conditions

- o The Regional Office will:
 - a) Update the decision record;
 - b) finalise and submit to the ECM/TL to sign:
 - iii. Decision Record (17/362902)
 - iv. Decision on Transfer of Service Approval - Transfer Approved (13/369009)
- o The delegated decision maker:
 - a) consider and approve/not approve the Decision Record
 - b) consider any requests for conditions or proposed changes on the Service Approval or application for temporary or service waiver by the receiving Approved Provider
 - c) Notify the transferring and receiving providers in writing of the consent to transfer at least seven calendar days before the transfer is intended to take effect including the transfer date and any conditions. (Decision on Transfer of Service Approval - Transfer Approved - 13/369009)

OR

Refuse to consent to the transfer of service approval

- o The Regional Office will:
 - a) liaise with RASQ prior to proceeding with a refusal of consent to transfer Service Approval
 - b) inform the transferring and receiving Approved Provider of the RA's decision to refuse to consent to transfer and reasons for refusal **at least seven calendar days** before the transfer is intended to take effect (Decision on Transfer of Service Approval- Refused - 13/369013).

Note: Under Section 190 of the National Law, a decision to refuse to consent to the transfer of a service approval is a **reviewable decision**.

STAGE 4 - (Regional Office cont.)

1) After transfer, if applicable.

If consent is given/taken to be given by the RA, on receipt by the RA of notice from the transferring and receiving Approved Providers (**within 2 days** after the transfer takes effect as per s68 of the NL) specifying the date of the transfer –

The Regional Office will:

- i) Review the notice including transfer date and confirm whether all of the conditions on the transfer have been complied with, for example confirming whether the required documentation

has been received, and the transfer occurred on the date consented to by the RA. If any of the conditions on the transfer have not been complied with, refer to RASQ for further advice via Regional Enquiry to cpub0@ged.qld.gov.au

- ii) Prepare and submit to the delegated decision maker the Decision Record with a completed recommendation, the Transfer of service approval completed enclosing updated certificate covering letter (HPERM 17/447163), along with the updated Service Approval Certificate (HPERM18/354134 centre-based or 18/354124 family day care) which states the date of transfer and re-issue date of the service approval and includes any relevant conditions (Refer to Conditions Approved to be Used on Service Approvals HPERM 17/180561).

Section 68 of the NL - written notice of confirmation of transfer MUST be provided to the RA within 2 days after the transfer takes effect, specifying the date of transfer. NOTE THERE IS A PENALTY PROVISION FOR FAILURE TO ADHERE TO THIS REQUIREMENT.

Accordingly, if the parties fail to provide such notice the decision maker must follow up with the parties to find out what has occurred and Regions must contact Approvals and Review, RASQ immediately by telephone for guidance (the matter may need to be referred to LALE for advice).

Note: If a service is transferred to a new provider, any waivers that are current will remain in place. However, the RA might decide to more closely monitor the service after it is transferred, to confirm the grounds on which the waiver was issued still exist.

Any existing conditions on the service approval will not change unless the receiving Approved Provider applies for an amendment.

- iii) Send the signed Transfer of service approval completed enclosing amended certificate covering letter (HPERM 17/447163) along with a printed copy of the amended Service Approval Certificate (HPERM18/354134 centre-based or 18/354124 family day care) to the receiving Approved Provider (The transferring Approved Provider should only receive a copy of the transfer of service approval letter). There is no prescribed legislative timeframe within which to send the amended certificate and covering letter however best practice is to send within 1-2 days of receiving the confirmation of transfer written notice.
- iv) Enter the transfer details into the NQA ITS.
- v) Consider whether a follow-up visit is required (to check any waivers, staffing changes, responsible persons, information displayed, updated QIP, policies and procedures, etc) and whether the service, if assessed and rated, requires reassessment.

Note: Under Regulation 184, the transferring Approved Provider must transfer the documents required under Regulation 177 to the receiving provider if they relate to children currently enrolled at the service. The transfer of these documents must not occur without the permission of a parent of the child.

Templates

Templates for use by the RA which relate to service approval transfers are as follows:

Template Description	HPERM reference
Invalid Notification of Transfer	17/441544
Notification section 66 transfer of service approval decision 28 days	18/41846
Denied Consent to Exceptional Circumstances to transfer of service approval	17/445573
Consent to Exceptional Circumstances to transfer of service approval	17/444832
Notice of Decision to Intervene in Transfer of Service Approval	17/417762
Consent without Intervention to transfer of service approval	17/445721
Notice of Decision to Intervene and Consent to transfer with conditions	17/462317
Notice of Decision to Consent with Conditions to transfer of service approval where RA has not intervened	17/556695
Notice of Decision to Consent with Conditions to transfer of service approval where RA has intervened	17/463009
Notice of Decision to Refuse to transfer service approval	17/447286
Transfer of service approval completed enclosing service approval	17/447163
Certificate for Centre Based Service	18/354134
Certificate for Family Day Care Service	18/354124
Notification of Transfer – Decision Record	17/362902
Transfer checklist	13/132244
Transfer – request for compliance history of receiving AP from other RAs	14/281007

Related documentation:

Assessing applications for Service Approval - A practical guide

Assessing the Capability of an Approved Provider – Consideration of Management Company

15/20206
9
15/16101
1

NQF e-bulletin

Welcome to the *NQF e-bulletin*, the department's e-newsletter to support early childhood education and care services to implement the National Quality Framework.

Service transfers

When considering the transfer of your service to another Approved Provider, it is essential that the transferring Approved Provider and the receiving Approved Provider (and their advisers) are familiar with the relevant provisions of the legislation that apply to these transactions:

- Sections 58 – 69, 81 - 82 Education and Care Services National Law Act (NL)
- Regulations 36 - 38 Education and Care Services National Regulations (NR)

Notification

There is a legislated requirement for a 42-day period of notification to the Regulatory Authority. Under the National Law, the transferring Approved Provider and the receiving Approved Provider **must jointly notify** the Regulatory Authority (RA) of the transfer:

- **at least 42 calendar days** before the transfer is intended to take effect; or
- within a lesser period agreed to by the RA, if the RA considers there are **exceptional circumstances** (s.59 NL).

The issue of whether exceptional circumstances exist must be considered by the Regulatory Authority on a case-by-case basis.

Exceptional circumstances are limited to circumstances that are unusual, not typical or unable to be foreseen or planned for in advance.

A case where the settlement date on a contract of sale is less than the 42-day notification period should not in the usual case be considered an exceptional circumstance. This is because the settlement date on a contract is *able* to be negotiated in advance.

Parties to the contract (and their advisers) need to take into account all legislated requirements affecting the contract. In this case the 42-day notification period must be considered when negotiating the settlement date.

Possible examples of exceptional cases could be:

- A case where a management committee may have to be dissolved and there is a receiving Approved provider willing to take on the transfer of the service approval. In that case the Regulatory Authority may allow a lesser notification period in a case where it is confident about the capacity and capability of the receiving Approved Provider to operate the service.
- A case where the continued safe operation of the service necessitates a short timeframe for transfer and the Regulatory Authority is confident about the capacity and capability of the receiving Approved Provider to operate the service.

Presumption of consent

A service approval cannot be transferred without the consent of the relevant Regulatory Authority (s.60 NL). Without such consent the transfer is void (s.67 NL)

The Regulatory Authority can be taken to have consented to a transfer of service approval **ONLY** in cases where the transferring Approved Provider and the receiving Approved Provider have jointly notified the relevant Regulatory Authority of the proposed date of transfer in accordance with section 59 of the National Law, namely:

- *At least 42 calendar days before the proposed date of transfer; OR*
- *A lesser period agreed to by the RA because of exceptional circumstances.*

This presumption of consent can only be triggered in a case where at least 28 calendar days before the proposed date of transfer, the Regulatory Authority has **not** notified the parties that it intends to intervene under section 62.

Intervention

The Regulatory Authority may intervene in a transfer if the Regulatory Authority is concerned about any of the following:

- whether the receiving Approved Provider is capable of operating the service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
- the receiving Approved Provider's history of compliance with the National Law as applying in a participating jurisdiction, including in relation to any other ECEC service it operates;
- any other matter relevant to the transfer of the service approval. (s.62 NL)

Written notice of the decision to intervene must be given at least 28 days before the date on which the transfer is intended to take effect (s.62 NL). The written notice must contain the information outlined in Regulation 38.

If the Regulatory Authority has intervened, it can *decide* to:

- consent to the proposed transfer (including with conditions) or
- refuse to consent to the proposed transfer. (s.65 NL)

If the Regulatory Authority has intervened it *must*, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party advising that:

- the Regulatory Authority consents to the transfer (including with conditions); OR
- the Regulatory Authority refuses to consent to the transfer; OR
- the Regulatory Authority has suspended further consideration of the transfer until further information is provided; OR
- the Regulatory Authority has not yet made a decision, and the Regulatory Authority will make a decision within 28 days.

More information

- The requirements and timeframes around transfers are critical to the validity of a transfer. This information is provided to alert Approved Providers to these requirements.
- Approved Providers are encouraged to obtain their own advice if they are proposing to enter into a transfer arrangement.
- Contact your local regional office.

Visit our website | Contact us | Subscribe to A to Z of Early Childhood monthly e-newsletter for more information about early childhood education and care initiatives in Queensland. To subscribe to the NQF e-bulletin, email us with your contact details with 'subscribe' in the subject line or 'unsubscribe' if you no longer wish to receive this email newsletter. |April 2015 |

