

The Early Childhood **Regulatory Authority**

# Unencumbered indoor and outdoor space

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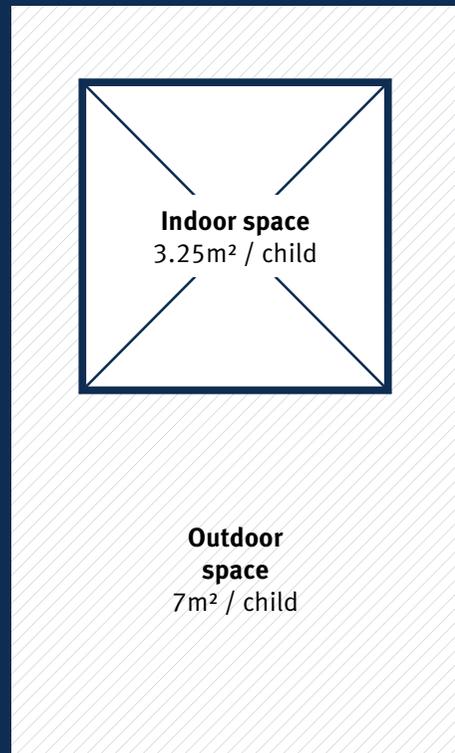


## Unencumbered indoor and outdoor space

Provision of indoor and outdoor space is essential to supporting a child's learning. The requirements for these spaces are outlined in the *Education and Care Services National Regulations* (National Regulations) and this guide has been developed to provide further information about approved providers' obligations.

Approved providers operating centre-based premises (or family day care venues) must provide minimum amounts of unencumbered indoor and outdoor space for each child, with:

- at least 3.25m<sup>2</sup> per child of unencumbered indoor space (*regulation 107(2)*); and
- at least 7m<sup>2</sup> per child of unencumbered outdoor space (*regulation 108(2)*).



**'Indoor' and 'outdoor' have ordinary meanings, and can be defined as:**

- **Indoor:** "occurring, used, etc., in a house or building, rather than outdoors" (Macquarie Dictionary);
- **Outdoor:** "occurring or used in the open air" (Macquarie Dictionary); "done, situated, or used out of doors" (Oxford English Dictionary); and "existing, happening, or done outside, rather than inside a building" (Cambridge Dictionary).

A space may only be counted once when calculating the area of unencumbered indoor or outdoor space.

Indoor and outdoor spaces need to align with the objectives and guiding principles of the *Education and Care Services National Law* (National Law) including:

- ensuring the safety, health and wellbeing of children;
- improving children's educational and developmental outcomes;
- the rights and best interests of the child are paramount; and
- best practice is expected in the provision of education and care (*section 3*).

The regulatory authority operates in line with these objectives and guiding principles (*section 4*).

When interpreting a provision of the National Law relating to indoor and outdoor space, the interpretation that will best achieve the purpose or objectives of the National Law will be preferred to any other interpretation (*schedule 1, clause 7*).

Where the total amount of unencumbered indoor and outdoor space per child allow for different numbers of children, the lower number is the maximum number that a service may educate and care for.



**Outdoor space**  
6 children

**Maximum: 6 children**

**When applying for service approval for a centre-based service, you will need to provide a number of documents including:**

- a floor plan prepared by a building practitioner showing the unencumbered indoor and outdoor spaces to be used at the service; and
- unencumbered square metre calculations carried out by a building practitioner of these spaces (*regulation 25(1)(b)*).

These can be separate or combined documents (e.g. one document containing shaded plans, clearly identifying the included unencumbered spaces from the excluded spaces and their unencumbered measurements).

Space requirements are based on total unencumbered space available at a premises, not per room or outdoor space. However, you may be required to provide detailed measurements for each room and outdoor area in order to identify spaces that may not be considered unencumbered. Programming should make the most of available spaces to achieve quality outcomes for each child. All spaces must be safe, suitable, well-maintained, and appropriate for a child's development.

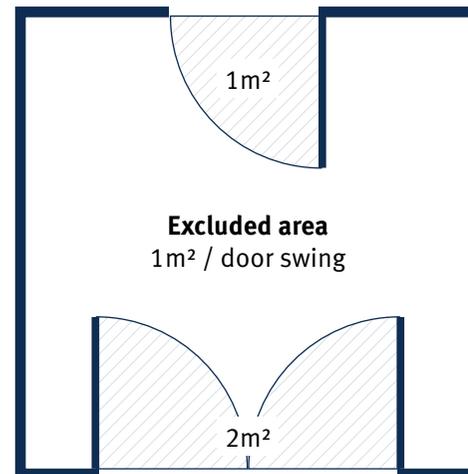


### Areas that are excluded from unencumbered indoor space measurements include (regulation 107(3)):

- passageways or thoroughfares (including door swings);
- toilets and hygiene facilities;
- nappy changing areas;
- bottle preparation areas;
- any area permanently set aside for the use or storage of cots;
- permanent storage areas;
- staff or administration rooms;
- kitchens, unless the kitchen is primarily to be used by children as part of an educational program provided by the service; and
- any other space that is not suitable for children.

## Indoor space requirements

Excluded areas for passageways or thoroughfares should be calculated by a building practitioner.



To be compliant, a minimum of 1m<sup>2</sup> per door swing into a play/activity room is to be excluded from unencumbered indoor space (i.e. 2m<sup>2</sup> for double door swings).

No express exclusion exists for thoroughfare areas around sliding doors but precautions must be taken to protect children within areas of traffic, regardless of the type of door (swing, sliding or otherwise). Any space unsuitable for education and care should be excluded from measurements.

A deduction is not needed for high shelves, which are inaccessible for children and do not encroach on play space.

Items such as fixed or movable cupboards; shelving or lockers; walk-in store rooms and refrigerators are considered storage, as these items or spaces are considered functional, rather than space where children can play and use as part of the program.

Children's moveable furniture items (e.g. tables and chairs, small bookshelves or cabinets for storing equipment and toys) are not considered storage.

Kitchen areas cannot be counted as unencumbered space, unless they're primarily to be used by children (i.e. the kitchen is an educational kitchen). The [ACECQA Guide to the National Quality Framework \(NQF\)](#) provides a number of factors to determine whether a kitchen is primarily used by children as part of an educational program. Kitchen facilities and food preparation areas should be protected by a door or gate with childproof latches to prevent unsupervised access by children younger than five. These barriers, doors and gates indicate the area to be excluded from unencumbered space measurements.

To be considered unencumbered indoor space, the space must be used exclusively by the education and care service at the time it is operating – not shared with other ad-hoc care facilities or schools.

## Verandahs as indoor space

A verandah that is included in calculating the area of outdoor space cannot also be included in indoor space. Only with the written approval of the regulatory authority may a verandah be included in calculating the area of indoor space (regulation 107(4)). This is subject to evidence from a building practitioner demonstrating that the verandah meets the requirements under the relevant building code to be classed as indoor space.

The verandah needs to be suitable as indoor space, including: physical elements of the space (such as flooring, roofing and shape), climate control (such as fans, heating, air-conditioning) and weather protection.

## Outdoor space requirements

Outdoor spaces must allow children to explore and experience nature, such as trees, sand and natural vegetation (*regulation 113*).

Approved providers must ensure their education and care program is based on – and delivered in accordance with – an approved learning framework (*section 168(1)*). The two nationally approved learning frameworks that outline practices that support and promote children’s learning (*regulation 254(1)*) are:

- [\*Belonging, Being and Becoming: The Early Years Learning Framework for Australia\*](#) (EYLF) – for children from birth to five years of age; and
- [\*My Time, Our Place: The Framework for School Age Care in Australia\*](#) (FSAC) – for school age children.

### These frameworks detail outdoor learning environments as follows:

“Outdoor learning spaces ...offer a vast array of possibilities for physical activity and learning experiences not available indoors. Access to play spaces in natural environments may include plants, trees, edible gardens, open spaces, sand, rocks, mud, water and other elements from nature. These and other outdoor spaces invite open-ended play and interactions, physically active play and games, spontaneity, risk-taking, exploration, discovery and connection with nature. They foster an appreciation of the natural world and the interdependence between people, animals, plants, lands and waters providing opportunities for children to engage with all concepts of sustainability through environmental education.”  
(*EYLF V2.0, 2022, p.23*)

“In childhood, dexterity and flexibility in physical development is evident in the wide range of activities children and young people are able to perform. Their coordination allows children and young people to undertake tasks such as beadwork and playing a musical instrument, and ball sports and bike riding. They undertake more complex physical activities that allow risk-taking, particularly in the outdoor environment.”  
(*FSAC V2.0, 2022, p.47*)



Being outdoors, children can enjoy more complex physical activities. To accommodate these activities, the regulations require that children must have more than double the minimum space outdoors that they have indoors.

While it's important for children to play in the sunlight, there must be consideration for appropriate ultraviolet (UV) protection (*regulation 114*).

There are many ways outdoor spaces can provide shade including shade sails, large trees, and natural surfaces which reflect less UV (e.g. natural grass, soil, bark). Additionally, wearing hats, appropriate protective clothing and sunscreen offer important protection.

For more information refer to ACECQA's [Sun Protection Policy Guidelines](#) and [Sample SunSmart policy and procedures for early childhood](#).

## Requirements for an outdoor space

### An outdoor space should be:

- located in an area separated from, and in addition to, any area where indoor play facilities are located;
- outside the exterior walls of the built structure and open to the sky for children to experience the outdoors;
- able to foster children's understanding and respect for the natural environment and the connections between people, plants, animals and the land; and
- designed in a way that facilitates supervision of all areas in the space and does not prohibit the ability to leave the space safely or evacuate in an emergency.

- an environment suitable for a range of experiences that support:
  - gross motor skills such as walking, running, jumping, climbing, hopping, skipping, sliding;
  - manipulative skills such as throwing, catching, kicking, striking, bouncing; and
  - stability skills such as bending, stretching, swinging, twisting, balancing.

Unencumbered outdoor space only relates to spaces used by children for their education and care. Functional spaces used to support operations are unsuitable for children and must be excluded.



**The following areas are to be excluded from unencumbered outdoor space (regulation 108(3)):**

- pathways or thoroughfares that aren't used by children as part of the education and care program;
- car parking areas;
- storage sheds or other storage areas; and
- any other space that is not suitable for children.

Any pathway or thoroughfare is excluded when it is not used by children as part of the education and care program (*regulation 108(3)(a)*), for example, when the only way to access an indoor space is through an outdoor space (i.e. there is no internal hallway and door into the activity room).

In this case, part of the outdoor space must be considered a thoroughfare or pathway, whether it has been marked out with concrete/pavers, or is more of a virtual pathway over a grassed area. That pathway or thoroughfare (including door swings into the outdoor space) can be included in unencumbered outdoor space only if it is safe and suitable to be used as part of the education and care program. If a thoroughfare is part of an evacuation route, it should be free from obstruction, and therefore is unlikely to be used as part of program activities.

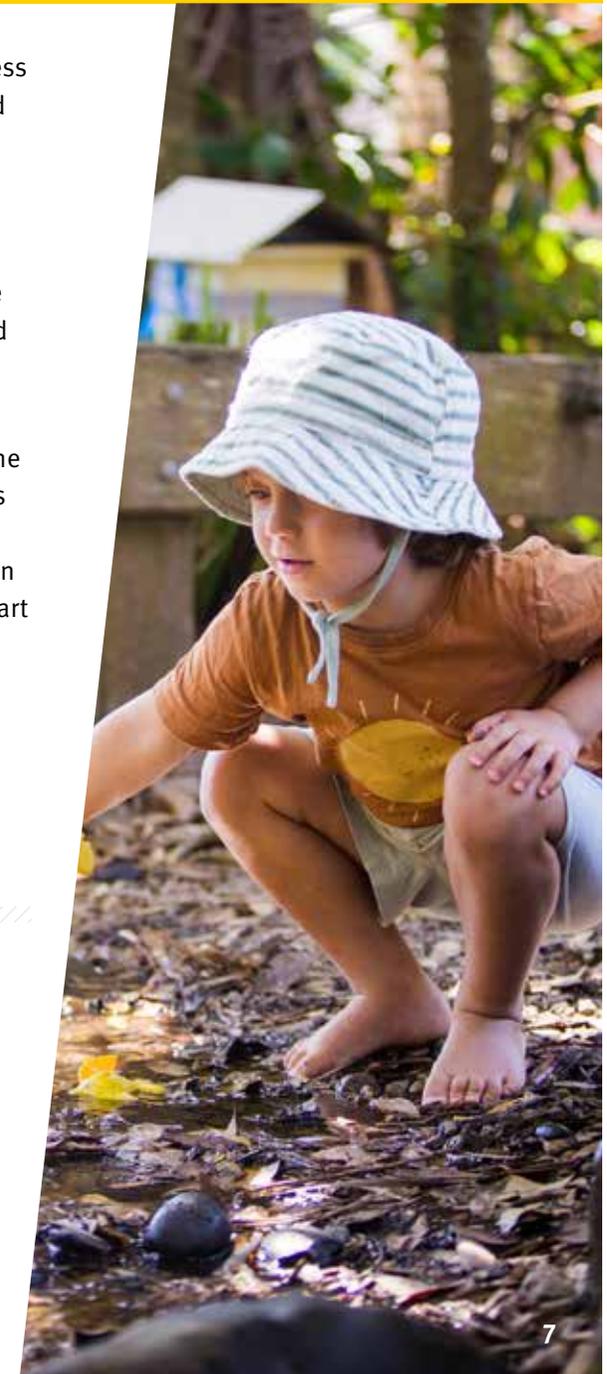
**Other areas that should be excluded from calculations include:**

- areas of a playground that cannot be adequately supervised;
- dining areas not for use by children as part of the education and care program;

In the event a service proposes to access an onsite swimming pool, the pool and its enclosed fenced area (including any entrance to the pool area) must be excluded from measurements. This area is deemed to be a high-risk area, unsuitable for regular and ongoing use by children as part of outdoor play, and as such, is not considered part of the education and care service premises.

Hedging should also be excluded if the space is inaccessible or unsuitable as play space, for example hedging that serves as barrier screening rather than plants that children engage with as part of an education and care program.

- areas where children have access to potentially hazardous items (e.g. water tanks and hot water pipes);
- hot-water and air conditioning units including the area enclosed by barriers around them; and
- a laundry drying area.



## Verandahs as outdoor space

### A verandah can be defined as:

- narrow and covered either by a separate solid roof or by the roof of the main structure;
- open-sided, sharing its long wall with the adjoining building's indoor space, and no more than two other walls/ barriers/fences that together do not enclose the structure;
- largely open to the air, well ventilated, has adequate natural light, and allows children to access and experience the outdoors; and
- a covered space that allows children to transition from an indoor to outdoor space that is open to the sky.

### A verandah is not:

- covered by a level of the building itself (i.e. an undercroft of a building);
- a transition between two indoor spaces (i.e. a covered piazza or walkway); and
- a transition from indoor space to a drop (i.e. a balcony).



The narrower and higher a verandah roof is, the more it is open to the air, and the more it allows children to experience natural ventilation and light.

**Approved providers must provide the required amount of unencumbered outdoor space in all property acquisitions or developments.**

They also need to consider the suitability of sites and premises before buying or leasing, as well as at the planning, design and building stages to ensure compliance with physical requirements under the National Regulations.

If unencumbered outdoor space is insufficient for the proposed number of children, numbers must be reduced in order to comply.

## Covered outdoor spaces

Verandahs will generally be counted in unencumbered outdoor space measurements if they are safe and suitable.

Deep, more enclosed covered outdoor spaces that are not open to the sky may not be considered verandahs. These covered spaces can still be used if safe for children, but they won't be counted in measurements without approval by the regulatory authority.

The regulatory authority will need measurements of these covered spaces as sub-measurements of the overall outdoor space.

As a last resort, an application can be made for a waiver if the premises do not provide the required amount of unencumbered outdoor space.

## Fully roofed piazza spaces and undercrofts are not considered outdoor spaces.

An undercroft level of a building (generally ground level) is within the footprint of the building, is covered by the building above, and may be relatively open at the sides.

A covered piazza (or covered courtyard or atrium) is a structure fully or mostly surrounded by the building(s), that could have been designed to be open to the sky, but instead has been covered by a solid roof. An all-weather, climate-controlled structure is functionally indoors.



## Related information

To learn more about an approved provider's responsibilities for providing unencumbered indoor and outdoor space, please read the relevant legislation:

[Education and Care Services National Law](#)

- *Section 3* – Objectives and guiding principles
- *Section 4* – How functions are to be exercised
- *Section 47(1)(b)* – Determination of an application – in determining an application for service approval, the regulatory authority must have regard to the suitability of the education and care service premises and the site and location of those premises for the operation of an education and care service
- *Section 90* – Matters to be considered (for an application for service waiver)
- *Section 168* – Offence relating to required programs
- *Section 323* – Approved learning framework

- *Clause 7 of Schedule 1* – Interpretation best achieving Law's purpose

[Education and Care Services National Regulations](#)

- *Regulation 103* – Premises, furniture and equipment to be safe, clean and in good repair
- *Regulation 107* – Space requirements – indoor space
- *Regulation 108* – Space requirements – outdoor space
- *Regulation 110* – Ventilation and natural light
- *Regulation 113* – Outdoor space – natural environment
- *Regulation 114* – Outdoor space – shade
- *Regulation 113* – Premises designed to facilitate supervision
- *Regulation 254* – Declared approved learning frameworks

[National Quality Standard](#)

- Quality Area 2 – Children's health and safety
  - *Element 2.1.3* – Healthy lifestyle (healthy eating and physical activity are promoted and appropriate for each child)

- Quality Area 3 – Physical environment
  - *Element 3.1.1* – Fit for purpose (outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child)
  - *Element 3.2.1* – Inclusive environment (outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments)
  - *Element 3.2.3* – Environmentally responsible (the service cares for the environment and supports children to become environmentally responsible)

[Belonging, Being and Becoming: The Early Years Learning Framework for Australia](#)

[My Time, Our Place: Framework for School Age Care in Australia](#)

[Providing Appropriate Outdoor Space](#)

[Sun Protection Policy Guidelines](#)

[Sample SunSmart policy and procedures for early childhood](#)



## Waivers for physical environment

In special circumstances, including unexpected events, a waiver may be granted as a last resort if certain regulations cannot be met.

**All possible ways to comply with the requirements should be explored before making a waiver application.**

### What aspects of the physical environment can be waived?

**A waiver can be sought for things such as:**

- fencing (*regulation 104*);
- indoor space (*regulation 107*);
- outdoor space (*regulation 108*);
- ventilation (*regulation 110*) and;
- the natural environment (*regulation 113*).

Waivers cannot be sought for elements of the National Quality Standard (NQS).

*Regulation 108* of the National Regulations is associated with quality area 3 of the NQS. In assessing an application to waive *regulation 108*, the regulatory authority will review how the service is able to meet quality area 3.

An application for service waiver must include evidence of the measures being taken or to be taken to protect the wellbeing of children being educated and cared for by the service while the waiver is in force (*regulation 42*).

For the full list of requirements that may be waived, see regulations 41 and 44 of *Education and Care Services National Regulations* (National Regulations).



## Children's safety, health and wellbeing is the priority

The objectives and guiding principles of the NQF must be considered when applying for a service or temporary waiver for physical environment. This includes an application to waive the required amount of unencumbered outdoor space (*regulation 108(2)*).

### The National Law (*section 3*) sets out the objectives and guiding principles of the NQF:

- to ensure the safety, health and wellbeing of children;
- to improve the educational and developmental outcomes for children attending education and care services;
- the rights and best interests of the child are paramount; and
- best practice is expected in the provision of education and care services.

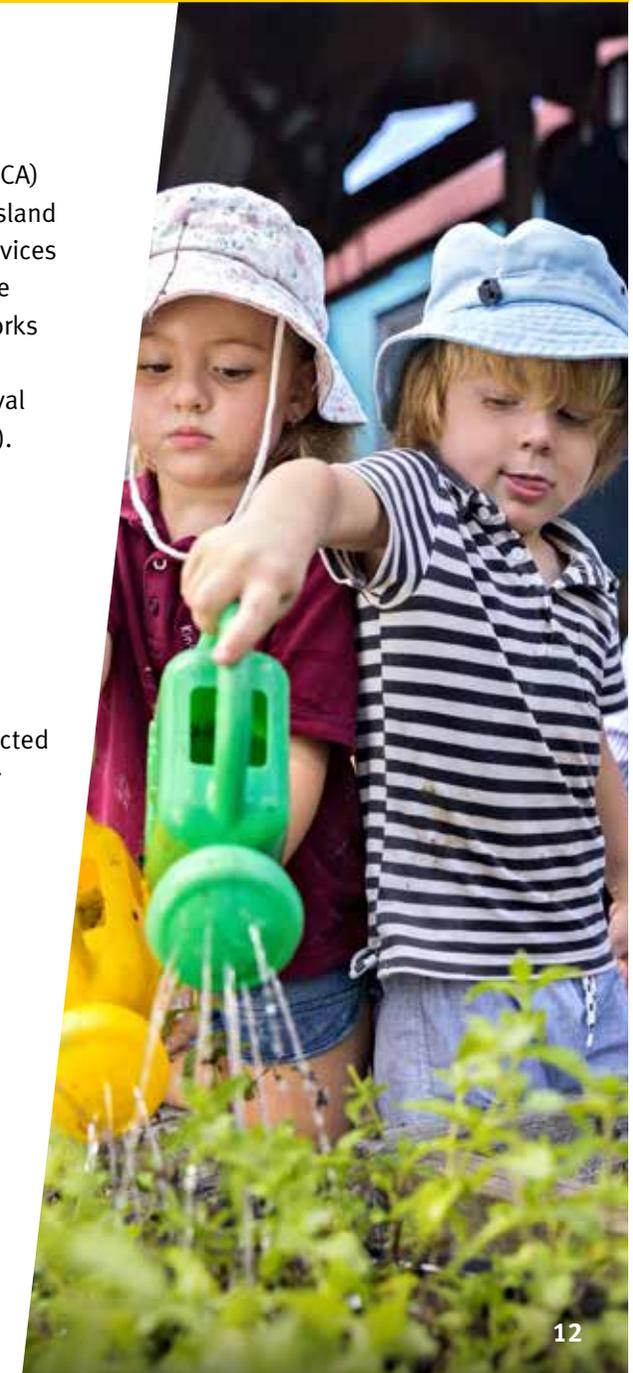
## Building standards and the National Law

The Building Code of Australia (the BCA) applies to all planned or new Queensland centre-based education and care services (other than outside school hours care services in schools), and building works to already approved premises (depending on when building approval for the original premises was lodged).

The requirements of the NQF are separate and additional to the requirements of the BCA.

## Council restrictions on using outdoor space

If your use of outdoor space is restricted for more than 1 hour per day of your operating hours due to council approval, you will need a waiver.



## Determining an outdoor space waiver

Applications for service approval will take into account the suitability, site and location of the education and care premises (*section 47(1)(b)* of the National Law).

### A child's access to outdoor spaces is important for:

- physical health;
- emotional wellbeing;
- experiencing risk-taking and problem-solving; and
- improving a range of motor skills.

Access to a natural environment also upholds the objectives and guiding principles of the National Law and NQS, and the requirements of *regulation 113* of the National Regulations.

There may be circumstances where insufficient unencumbered outdoor space is available. These may be ongoing (e.g. services located in Brisbane Central Business District multi-storey buildings); or temporary (e.g. where outdoor space is being repaired following natural disaster). For more information on multi-storey buildings, see ACECQA's information sheet: [NQF design considerations for centre-based early childhood education and care services in multi-storey buildings](#).

An application can be made for a service waiver or a temporary waiver in relation to outdoor space requirements (*sections 87 and 94 of the National Law, respectively*). A waiver can be applied for at the same time as an application for service approval, or at any other time during the life of a service approval.

**As part of a waiver application, prescribed information under the National Regulations (*regulation 42 or 45*) must be provided, including:**

- the regulation(s) for which the waiver is sought;
- the way the service does not or will not comply;
- the reasons the service is unable to comply;
- details and evidence of any attempts made to comply; and
- the measures being taken to protect the wellbeing of children if the waiver is granted.



**A service waiver is not guaranteed; each application is assessed on its merits and will only be considered where unencumbered outdoor space cannot be achieved, and where the objectives and guiding principles of the NQF are met.**

**When deciding whether to grant a service waiver, the regulatory authority may have regard to the following (under section 90):**

- any matters disclosed in the application; and
- any other matter the regulatory authority thinks fit.

In considering a service waiver due to insufficient unencumbered outdoor space, the regulatory authority considers relevant the availability of alternative space, and the characteristics of that alternative space.

**General matters the regulatory authority may consider relevant include:**

- the ordinary meaning of ‘outdoor’ rather than any representations made by a building practitioner on plans about a space being outdoor;
- the objectives and guiding principles of the NQF;
- the physical environment requirements contained in *regulations 103-115* of the National Regulations; and
- for premises offering services to children from birth to 5 years of age, the [Early Years Learning Framework for Australia](#), and for premises offering services for school age children, the [Framework for School Age Care in Australia](#).



**Matters that may be considered relevant to a service waiver for unencumbered outdoor space can be categorised by the suitability requirements of a service approval (under section 47(1)(b) of the National Law) specifically:**

### 1. Location

Where is the service proposed to be located? A service waiver for unencumbered outdoor space is more likely to be granted to a service proposed to be in the Brisbane CBD, than one outside of it.

This is because the ability to purchase and design services with sufficient unencumbered outdoor space is more constrained within Brisbane CBD multi-storey buildings than it is within suburban Brisbane or other towns in Queensland.



### 2. Site

What proportion of unencumbered outdoor space is subject to the waiver application? The entire outdoor space will be considered when assessing a portion of it. The larger the amount of space to be considered compared to the unencumbered outdoor space required, the less likely a service waiver would be approved.



### 3. Premises

How does the approved provider intend to meet the relevant provisions of the National Regulations and the NQS, through measures (e.g. alternative space and characteristics of that alternative space) in lieu of required unencumbered outdoor space.

The greater the level of authentic natural elements, natural light and ventilation, the more likely a service waiver would be approved.



### Premises Considerations – Unencumbered Outdoor Space Waivers

The following considerations may be relevant depending on the individual circumstances of a service and the timing of a waiver application.

For example, if a service waiver application is made at the same time as a service approval application, some matters are likely to have been considered as part of the service approval application and will not need to be reconsidered. This list is not exhaustive and each application is considered on a case-by-case basis.

Particular considerations under a service waiver application	NQF provisions include
<p><b>1. How will children access the natural environment and explore and experience natural elements in the proposed alternative space or through any other measures?</b></p> <p>Note, the natural environment requirements of the EYLF V2.0 (p.23) will be of particular relevance to children up to 5 years of age: “play spaces in natural environments may include plants, trees, edible gardens, open spaces, sand, rocks, mud, water and other elements from nature. These and other outdoor spaces invite open-ended play and interactions, physically active play and games, spontaneity, risk-taking, exploration, discovery and connection with nature. They foster an appreciation of the natural world and the interdependence between people, animals, plants, lands and waters providing opportunities for children to engage with all concepts of sustainability through environmental education.”</p>	<p><i>Regulation 113 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i>  <i>Element 3.2.1 (inclusive environment)</i>  <i>Element 3.2.3 (environmentally responsible)</i></p>
<p><b>2. How will natural light and natural ventilation be provided in the proposed alternative space?</b></p>	<p><i>Regulation 110 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i></p>
<p><b>3. How will the proposed alternative space provide an environment suitable for a variety of outdoor play activities that support education?</b></p>	<p><i>Element 3.1.1 (fit for purpose)</i>  <i>Element 1.2.3 (child directed learning)</i>  <i>Element 2.1.3 (healthy lifestyle)</i>  <i>Standard 3.2 (use)</i>  <i>Element 3.2.1 (inclusive environment)</i></p>
<p><b>4. How will the proposed alternative space differentiate from the indoor play space, thereby enabling children to experience the change between indoor and outdoor environments?</b></p>	<p><i>Element 3.1.1 (fit for purpose)</i>  <i>Standard 3.2 (use)</i>  <i>Element 3.2.1 (inclusive environment)</i></p>

<p><b>5. How will the proposed alternative space be a safe and suitable environment which will minimise the risk of harm and hazard, including injury, illness, overcrowding, noise, and conflict between children?</b></p>	<p><i>Section 167 of the National Law</i>  <i>Regulation 103 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i></p>
Service waiver considerations that may be considered concurrently with a service approval application	NQF provisions include
<p><b>6. How will the proposed alternative space be kept safe, clean and in good repair?</b></p>	<p><i>Regulation 103 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i>  <i>Element 3.1.2 (upkeep)</i>  <i>Element 2.1.2 (health practices and procedures)</i></p>
<p><b>7. How will the proposed alternative space be designed to facilitate adequate supervision?</b></p>	<p><i>Regulation 115 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i>  <i>Element 2.2.1 (supervision)</i></p>
<p><b>8. How will the safety and wellbeing of children be considered with respect to fire evacuation and use of stairwells, balconies and elevators (if relevant)?</b></p>	<p><i>Regulation 97 of the National Regulations</i>  <i>Element 3.1.1 (fit for purpose)</i>  <i>Element 2.2.2 (incident and emergency management)</i></p>

### Effect of a waiver

At least 7m<sup>2</sup> of outdoor space must be available per child, made up from unencumbered outdoor space plus alternative space under waiver.

The effect of the waiver does not reduce or remove the requirement for 7m<sup>2</sup> of space per child; rather, it will allow for the use of alternative space in lieu of unencumbered outdoor space (*section 93 or 100, National Law*).

### How to apply

Further details regarding waivers under the NQF, including how to apply, can be found at [waivers for NQF services](#).

Upon application, the regulatory authority may seek further information, and an inspection of the premises may be needed when deciding to grant or refuse the waiver.

## Services under the Education and Care Service Act 2013 (Qld)

As under the NQF, the ECS Act allows that, in special circumstances, including unexpected events, a waiver may be granted as a last resort if certain operational or legislative requirements can't be met.

Approved providers should explore all possible ways to meet the requirements before making a waiver application.

### What aspects in the physical environment may be waived?

- *Regulation 7* (service waivers) and *regulation 8* (temporary waivers) specify the requirements for which an approved provider can seek a waiver.
- Approved providers must give strong evidence of their safety measures to eliminate risk of exposure to the hazard (e.g. less outdoor space) and to protect the safety, health and wellbeing of children for the application to be considered.

### Considerations for approving an outdoor space waiver under the ECS Act

The objects and guiding principles of the ECS Act will be considered in the waiver. Similar matters as under the NQF above may also be considered.

Further details regarding waivers under the ECS Act, can be found at [waivers for ECS Act services](#).

## Help and support

Contact the regulatory authority by email at [ecis@qed.qld.gov.au](mailto:ecis@qed.qld.gov.au) if you need further information.

