



Educators with a swimming pool or outdoor spa – engagement and transfers

Frequently Asked Questions

1. What are the restrictions on engaging or hiring an existing educator with a swimming pool or outdoor spa?

Regulation 373C of the Education and Care Services National Regulations 2012 (WA) (the National Regulations) commenced from 1 September 2022 and introduced a condition on service approval restricting approved providers from engaging or registering new educators with a swimming pool or outdoor spa.

The Regulatory Authority may consider exceptional circumstances to be present if the approved provider of an existing educator with a swimming pool or outdoor spa:

- has their provider or service approval cancelled or suspended; or
- voluntarily suspends or surrenders their provider or service approval; or
- transfers/sells their service to another provider.

2. I'm an existing registered family day care educator with a swimming pool or spa – how am I affected by restrictions on engagement?

You can continue to operate subject to additional requirements and restrictions.

From 1 September 2022, there are restrictions on your ability to transfer to a new provider. These are as per regulation 373C.

You may transfer to a new approved provider only under **exceptional circumstances and with the written approval of the Regulatory Authority.**

The Regulatory Authority may consider exceptional circumstances to be present if your current approved provider:

- has their provider or service approval cancelled or suspended; or
- voluntarily suspends or surrenders their provider or service approval; or
- transfers/sells their service to another provider.

Under these circumstances, you may transfer to another provider. The receiving approved provider must get written approval from the Education and Care Regulatory Unit (ECRU) prior to your engagement/registration.

You can move to any approved provider who will accept you under these circumstances. You are not required to move to the approved provider who has bought the service or whom the service is being transferred to.

3. I'm a family day care approved provider – how do restrictions on engaging educators with a pool or outdoor spa affect me?

Since 31 December 2020, approved providers have had a condition on approval preventing them from engaging or registering new educators to operate a family day care service at a residence/venue with a swimming pool or spa.

From 1 September 2022, there are limited circumstances in which transfers of existing registered family day care educators who have swimming pools or spas at their residence/venue from another approved provider can be approved.

If your provider or service approval is cancelled or suspended, your educators may transfer to another approved provider, with the approval of ECRU.

If you are selling or transferring your service to another approved provider, your educators may choose to transfer to that provider OR another approved provider.

If you are voluntarily suspending or surrendering your provider or service approval, your educators may transfer to another approved provider, with the approval of ECRU.

You may accept educators from another approved provider who has had their approvals cancelled or suspended, with the approval of ECRU.

You may accept educators from another approved provider who has sold or transferred their service approval, with the approval of ECRU.

You may accept educators from another approved provider who has voluntarily suspended or surrendered their provider or service approval, with the approval of ECRU.

You do not have to accept the transfers of existing educators with a swimming pool or spa, if you do not wish to.

4. Why does an approved provider need to get the approval of ECRU before engaging or registering an existing educator with a pool or outdoor spa?

Approved providers can only engage or register an existing educator with a pool or spa under certain exceptional circumstances. See FAQ 1 for those circumstances.

The approved provider intending to accept an existing educator with a pool or outdoor spa will not be able to determine if the educator meets the exceptional circumstances.

ECRU is the only entity that will be able to confirm if an educator was registered with another approved provider and if they meet the exceptional circumstances criteria.

5. What exactly does it mean to be an existing educator with a pool or outdoor spa?

An existing educator with a pool or spa is someone currently on an approved provider's family day care service register of educators. It can include educators engaged or registered with an approved provider who may be on maternity leave or other forms of leave but who have maintained their registration with the approved provider.

If an educator is NOT on the register of an approved provider, then they are not an existing educator with a pool or outside spa.

Regardless of their experience or previous registration, if an educator is NOT on a register of an approved provider they are regarded as a 'new' educator and cannot be engaged or registered by an approved provider.

6. How do I go about getting the approval of ECRU for the engagement or registration of an existing educator with a pool or spa?

Existing educators with a pool or spa, who meet the exceptional circumstances requirements, and are wanting to move to another approved provider should discuss this with the new potential approved provider.

The approved provider is responsible for getting the approval of ECRU, if they wish to take on the existing educator with a pool or spa.

Approved providers should submit the Request to engage or register an existing educator with a swimming pool or outdoor spa form to ECRU via email – ecru@communities.wa.gov.au. This form is available on the [Improving safety at family day care residences or venues with swimming pools, spas and water features in Western Australia](#) website.

Each request received by ECRU will be assessed. The approved provider will be advised of the outcome as soon as practicable and no later than 28 days from the receipt of the request. A shorter timeframe may be considered in extenuating circumstances.

7. I heard that family day care educators with pools or spas weren't going to be allowed to transfer between providers. Is this true?

Transfers are now limited to exceptional circumstances.

Transfers need to be approved by ECRU as required under regulation 373C (3).

The Regulatory Authority may consider exceptional circumstances to be present if the approved provider of an existing educator with a swimming pool or outdoor spa:

- has their provider or service approval cancelled or suspended; or
- voluntarily suspends or surrenders their provider or service approval; or
- transfers/sells their service to another provider.

8. I am an existing registered family day care educator with a swimming pool or outdoor spa and my approved provider is transferring their service approval. Can I move to a new approved provider?

Yes, you meet the exceptional circumstances criteria. You can move to any other approved provider who may wish to take you on. However, your new potential approved provider must get written approval from ECRU to engage or register you.

9. I am an existing registered family day care educator with a swimming pool or outdoor spa and my approved provider is transferring their service approval. If I move to a new approved provider, am I able to move again after that?

No, you can only move from your approved provider if they meet the exceptional circumstances criteria. If the new approved provider you are engaged or registered with does not meet these circumstances, then you cannot transfer again.

Exceptional circumstances requirements (FAQ 1) must exist every time you wish to transfer.

10. I am an existing registered family day care educator with a swimming pool or outdoor spa and my approved provider is transferring their service approval. Can I move to a new approved provider who does not have their Child Care Subsidy (CCS) approval yet?

Yes, the requirement is that your new provider must be approved under the *Education and Care Services National Law (WA) Act 2012* (the National Law). The new provider does not need to hold their approval from the Australian Government Department of Education. However, parents using your service will not be able to access CCS until your approved provider does have that approval. This may have an impact on the ability of families to use your services and your income.

You would not be able to move from your new provider unless their approval under the National Law is cancelled/suspended/surrendered/transferred.