

Overview of Bill

The object of this Bill is to provide for the regulation of certain children's education and care services that are not subject to the *Children (Education and Care Services) National Law (NSW)* (the **National Law**) and to align the regulation of those services, where practicable, with the National Law.

The children's education and care services that are the subject of the proposed Act are:

- (a) home based education and care services (other than family day care services), and
- (b) mobile education and care services, and
- (c) centre based education and care services, and
- (d) other education and care services of a kind prescribed by the regulations.

Only children's education and care services that are not regulated by the National Law are covered. These services are referred to as **State regulated education and care services**. Those services, along with those children's education and care services that are regulated under the National Law (such as family day care services), are currently regulated under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*. That Chapter is repealed by the proposed Act. It will be replaced by the proposed Act and the National Law.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. The **National Law Alignment Provisions** are the provisions of the National Law that apply to State regulated education and care services by virtue of the proposed Act.

Clause 4 defines State regulated education and care service, as described in the overview.

Clause 5 provides for exemptions from the proposed Act.

Part 2 Guiding principles

Clause 6 provides for the guiding principles of the proposed Act.

Clause 7 provides for the role of the guiding principles.

Part 3 State regulated education and care services

Division 1 Operation of State regulated education and care services

Clause 8 makes it an offence for a person to provide a State regulated education and care service unless the person is an approved provider in respect of that service (that is, the holder of a provider approval) and the service is an approved education and care service (that is, the subject of a service approval).

Clause 9 makes it an offence for a person to advertise an education and care service unless the person is an approved provider in respect of that service and the service is an approved education and care service.

Clause 10 requires each approved education and care service (other than a home based education and care service) to have at least one nominated supervisor who is a certified supervisor. Contravention of this requirement is not an offence but is a contravention of the proposed Act.

Division 2 Provider approvals

Clause 11 explains that the National Law Alignment Provisions make provision for the grant of provider approvals for State regulated education and care services and other matters relating to provider approvals.

Clause 12 makes it an offence for a person to contravene a condition of a provider approval. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

Division 3 Service approvals

Clause 13 explains that the National Law Alignment Provisions make provision for the grant of service approvals for State regulated education and care services and other matters relating to service approvals.

Clause 14 makes it an offence for a person to contravene a condition of a service approval. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

Division 4 Supervisor certificates

Clause 15 explains that the National Law Alignment Provisions make provision for the grant of supervisor certificates for State regulated education and care services and other matters relating to supervisor certificates.

Clause 16 makes it an offence for a person to contravene a condition of a supervisor certificate. The penalty for the offence is aligned with the penalty for the corresponding offence under the National Law.

Part 4 National Law alignment

Division 1 Alignment with National Law

Clause 17 applies the National Law to State regulated education and care services as if those services were education and care services within the meaning of the National Law. The National Law applies as modified by the proposed Act and by any regulations under the proposed Act.

Clause 18 provides for the application of the *Children (Education and Care Services National Law Application) Act 2010* in respect of the National Law Alignment Provisions.

Clause 19 provides that the *Interpretation Act 1987* does not apply in respect of the National Law Alignment Provisions.

Clause 20 makes it clear that authorities granted under the National Law Alignment Provisions are not authorities for the purposes of the National Law.

Division 2 Modification of National Law

Clause 21 excludes the operation of various provisions of the National Law for the purposes of the National Law Alignment Provisions.

Clause 22 provides for references to education and care services under the National Law to be read as references to State regulated education and care services.

Clause 23 provides for references in the National Law to the law itself to be read as references to the proposed Act and the regulations under the proposed Act.

Clause 24 provides for references to the Regulatory Authority to mean the Regulatory Authority for this jurisdiction (that is, the Director-General of the Department of Education and Communities). The National Law Alignment Provisions do not confer powers on Regulatory Authorities of other jurisdictions.

Clause 25 provides for references to regulations in the National Law to be read as references to regulations under the proposed Act.

Clause 26 requires references in the National Law that relate to national scheme matters to be disregarded.

Clause 27 contains specific variations to the National Law in relation to home based education and care services.

Clause 28 enables the regulations to extend the list of reviewable decisions under the National Law, in relation to State regulated education and care services.

Clause 29 enables further modifications to be made to the National Law, in its application to State regulated education and care services, by regulation.

Division 3 Recognition of matters provided for by National Law

Clause 30 provides that a person who holds a provider approval under the National Law is taken to be an approved provider of State regulated education and care services under the proposed Act. Accordingly, there is no need for an approved provider under the National Law to obtain a separate provider approval under the proposed Act in order to provide State regulated education and care services.

Clause 31 provides that authorised officers appointed under the National Law by the Regulatory Authority for this jurisdiction are taken to be authorised officers for the purposes of the National Law Alignment Provisions.

Part 5 Other operational requirements

Clause 32 requires approved providers of State regulated education and care services to provide information about the service to parents of children enrolled in the service.

Clause 33 requires an approved provider of a State regulated education and care service to afford parents contact with their children.

Clause 34 requires the Regulatory Authority to be notified if an adult person is residing at the home of an approved provider of a home based education and care service for a lengthy period.

Clause 35 requires records to be kept in relation to State regulated education and care services.

Part 6 Miscellaneous

Clause 36 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 37 enables the regulations to adopt other publications, in particular, the national regulations made under the National Law.

Clause 38 provides that the *State Records Act 1998* does not apply in respect of certain private children's services.

Clause 39 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. The provisions continue the operation of the *Children's Services Regulation 2004*, made under the *Children and Young Persons (Care and Protection) Act 1998*, as a Regulation taken to be made under the proposed Act.

Schedule 2 Amendment of Acts and Regulations

Schedule 2 amends the Acts and Regulations specified in the Schedule.

The amendments provide for the repeal of Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998* and provide for various consequential matters relating to that repeal, the commencement of the National Law and the enactment of the proposed Act.

Amendments to the *Children (Education and Care Services National Law Application) Act 2010* also:

- (a) ensure that Part 3A of the *Ombudsman Act 1974* (Child protection) continues to apply in respect of education and care services regulated under the National Law, and
- (b) update the meanings of the expression **Regulatory Authority**, **children's services law**, **education law** and **former education and care services law**, and
- (c) include an additional transitional provision in relation to nominated supervisors of approved education and care services to ensure that only one supervisor can be nominated.