

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to adopt the Education and Care Services National Law (the **National Law**) hosted by the Victorian Parliament and set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

The National Law gives effect to the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care endorsed by the Council of Australian Governments in December 2009. This included a commitment to establish a jointly governed, uniform National Quality Framework and facilitates the introduction, through the national regulations made under the National Law, of a new National Quality Standard.

The National Law:

(a) provides a national approach to regulation, assessment and quality improvement for early childhood education and care and outside school hours care, and

(b) replaces existing separate licensing and quality assurance processes for pre-school, family day care and outside school hours care, and

(c) establishes a public rating system for education and care services.

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Before the National Law commences it will be necessary for New South Wales, and each of the other States and Territories participating in the national licensing scheme, to enact legislation providing for consequential amendments of other Acts consequent on the adoption of 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.

Specifically, clause 3 (1) provides that the National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, as applied in New South Wales, is to be known as the *Children (Education and Care Services) National Law (NSW)*.

Clause 3 (2) provides that if a term is used in the proposed Act and in the National Law, the term has the same meaning in the proposed Act as it has in the National Law.

### **Part 2 Adoption of National Law**

**Clause 4** provides that the National Law, as in force from time to time, applies as a law of New South Wales (clause 4 (a)).

Each jurisdiction that adopts the National Law will have an equivalent provision in its adopting Act so that the National Law will be the law of each jurisdiction and is not only the law of Victoria.

Clause 4 (b) provides that the National Law, as applying in New South Wales, may be referred to by the name *Children (Education and Care Services) National Law (NSW)*.

Clause 4 (c) provides that the National Law, as applying in New South Wales, is part of the proposed Act. This is to ensure that the text of the National Law has effect for all purposes in New South Wales as an ordinary Act of Parliament. The effect of the proposed provision is that a reference in legislation to “an Act” or “any other Act” will include the National Law as applying in New South Wales.

**Clause 5** provides that a number of Acts that generally apply to New South Wales

legislation do not apply to the *Children (Education and Care Services) National Law (NSW)* or to instruments, including regulations, made under that Law. In particular, Acts dealing with the interpretation of legislation, freedom of information and privacy do not apply. Instead, provisions have been included in the National Law to deal with each of these matters, ensuring that the same law applies in relation to each jurisdiction that adopts the National Law. Acts dealing with financial matters, the Explanatory note page 3

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role of the Ombudsman and the employment of persons in the public sector will also not apply to the *Children (Education and Care Services) National Law (NSW)* or instruments made under that Law except to the extent that the Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority.

**Clause 6** clarifies that the *State Records Act 1998* applies to the Regulatory Authority for this jurisdiction and its records.

**Clause 7** provides for definitions of generic terms used in the *Children (Education and Care Services) National Law (NSW)*, including the terms **child protection law**, **superior court**, **de facto relationship** and **registered teacher**.

**Clause 8** provides for the declaration of the District Court as a relevant tribunal or court for the purposes of section 181 of the *Children (Education and Care Services) National Law (NSW)* and the declaration of the Administrative Decisions Tribunal as a relevant tribunal or court for the purposes of Part 8 of the Law.

**Clause 9** provides that the Director-General of the Department of Human Services is the Regulatory Authority for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 10** provides:

(a) that certain legislation of this jurisdiction (in particular, Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*) is a children's services law for the purposes of the *Children (Education and Care Services) National Law (NSW)*, and

(b) that the Director-General of the Department of Human Services is the children's services regulator for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 11** provides that the *Education Act 1990*, the *Institute of Teachers Act 2004* and the *Teaching Service Act 1980* are all education laws for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 12** provides that certain legislation of this jurisdiction (in particular, Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*) is a former education and care services law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 13** provides that the *Fines Act 1996* and the regulations made under that Act are an infringements law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 14** provides that the *Public Sector Employment and Management Act 2002* and the regulations made under that Act are a public sector law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

**Clause 15** provides that the *Commission for Children and Young People Act 1998* and the regulations made under that Act are a working with children law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

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**Clause 16** provides that a penalty specified at the end of a provision of the National

Law indicates that a contravention of the provision is punishable by a penalty of not more than the specified penalty.

**Clause 17** provides for the definition of certain terms used in section 305 of the National Law as they apply in New South Wales. The terms are used in transitional provisions included in the National Law.

**Part 3 Miscellaneous**

**Clause 18** provides that an employee of the Australian Children's Education and Care Quality Authority is not a State public sector employee for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.

**Clause 19** is the general regulation-making power.

**Clause 20** provides that the regulations may contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Clause 21** provides for the proposed Act to be reviewed as soon as possible after the period of 5 years from the date of assent to the Act.

**Note on Education and Care Services National Law**

A copy of the National Law is set out in the Note to the proposed Act. The explanatory memorandum for the National Law, as set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, is available at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au).