First print

New South Wales

Children (Education and Care Services National Law Application) Bill 2010

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.

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 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)*.

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.

First print

New South Wales

Children (Education and Care Services National Law Application) Bill 2010

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New South Wales

Children (Education and Care Services National Law Application) Bill 2010

No , 2010

A Bill for

An Act to apply as a law of this State a national law relating to the regulation of education and care services for children.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Children (Education and Care Services National Law Application) Act 2010*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation.

(2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

3 Definitions

(1) In this Act:

Children (Education and Care Services) National Law (NSW) means the provisions applying in this jurisdiction because of section 4.

(2) Terms used in this Act and also in the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria have the same meanings in this Act as they have in that Law.

Part 2 Adoption of National Law

4 Adoption of Education and Care Services National Law

The Education and Care Services National Law, as in force from time to time, set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria:

(a) applies as a law of this jurisdiction, and

(b) as so applying may be referred to as the *Children (Education and Care Services) National Law (NSW)*, and

(c) so applies as if it were part of this Act.

5 Exclusion of legislation of this jurisdiction

(1) The following Acts of this jurisdiction do not apply to the *Children (Education and Care Services) National Law (NSW)* or to instruments made under that Law:

(a) the *Government Information (Public Access) Act 2009*,

(b) the *Health Records and Information Privacy Act 2002*,

(c) the *Interpretation Act 1987*,

(d) the *Privacy and Personal Information Protection Act 1998*,

(e) the *Subordinate Legislation Act 1989*.

(2) The following Acts of this jurisdiction do not apply to the *Children (Education and Care Services) National Law (NSW)* or to 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:

(a) the *Annual Reports (Statutory Bodies) Act 1984*,

(b) the *Ombudsman Act 1974*,

(c) the *Public Finance and Audit Act 1983*,

(d) the *Public Sector Employment and Management Act 2002*.

6 Application of State Records Act 1998

To avoid any doubt, it is declared that the *State Records Act 1998* applies to the Regulatory Authority for this jurisdiction and its records.

7 Meaning of generic terms in Education and Care Services National Law for the purposes of this jurisdiction

In the *Children (Education and Care Services) National Law (NSW)*:

child protection law means:

(a) Chapters 1–10 and 13–17 of the *Children and Young Persons (Care and Protection) Act 1998*, and

(b) the regulations made under that Act in so far as they relate to those Chapters.

de facto relationship means a relationship between 2 persons who are de facto partners of each other within the meaning of section 21C of the *Interpretation Act 1987*.

local authority means a council within the meaning of the *Local Government Act 1993*.

magistrate means a Magistrate appointed under the *Local Court Act 2007*.

public authority means a public authority of the State, and includes a State owned corporation within the meaning of the *State Owned Corporations Act 1989* and a subsidiary of a public authority or State owned corporation, but does not include a council or county council within the meaning of the *Local Government Act 1993*.

registered teacher means a teacher who is accredited under the *Institute of Teachers Act 2004*.

superior court means the Supreme Court of New South Wales.

this jurisdiction means New South Wales.

8 Relevant tribunal or court

For the purposes of the definition of ***relevant tribunal or court*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*:

(a) the District Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of section 181 of that Law, and

(b) the Administrative Decisions Tribunal is declared to be the relevant tribunal or court for this jurisdiction for the purposes of Part 8 of that Law.

9 Regulatory Authority

For the purposes of the definition of ***Regulatory Authority*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the Director-General of the Department of Human Services is declared to be the Regulatory Authority for this jurisdiction for the purposes of that Law.

10 Children's services law

(1) For the purposes of the definition of ***children's services law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the following are declared to be a children's services law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*:

(a) Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*,

(b) Chapters 1, 2, 15, 16 and 17 and Schedule 3 of the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to Chapters 12 and 12A of that Act,

(c) the regulations made under the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to a provision referred to in paragraph (a) or (b).

(2) For the purposes of the definition of ***children's services regulator*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the Director-General of the Department of Human Services is declared to be a children's services regulator for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

11 Education law

For the purposes of the definition of ***education law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the following Acts and the regulations made under those Acts are declared to be an education law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*:

(a) the *Education Act 1990*,

(b) the *Institute of Teachers Act 2004*,

(c) the *Teaching Service Act 1980*.

12 Former education and care services law

For the purposes of the definition of ***former education and care services law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the following provisions of the *Children and*

Young Persons (Care and Protection) Act 1998 are declared to be a former education and care services law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*:

(a) Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*,

(b) Chapter 17 and Schedule 3 of the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to Chapters 12 and 12A of that Act,

(c) the regulations made under the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to a provision referred to in paragraph (a) or (b).

13 Infringements law

For the purposes of the definition of ***infringements law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Fines Act 1996* and the regulations made under that Act are declared to be an infringements law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

14 Public sector law

For the purposes of the definition of ***public sector law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Public Sector Employment and Management Act 2002* and the regulations made under that Act are declared to be a public sector law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

15 Working with children law

For the purposes of the definition of ***working with children law*** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Commission for Children and Young People Act 1998* and the regulations made under that Act are declared to be a working with children law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

16 Penalty at end of provision

In the *Children (Education and Care Services) National Law (NSW)*, a penalty specified at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty not more than the specified penalty.

17 Transitional

(1) For the purposes of the definition of ***declared approved family day care service*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a family day care children's service that was an approved children's service under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved family day care service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(2) For the purposes of the definition of ***declared approved provider*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was a licensed service provider under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved provider for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(3) For the purposes of the definition of ***declared approved service*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a children's service that held a children's service approval under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(4) For the purposes of the definition of ***declared certified supervisor*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was an authorised supervisor under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared certified supervisor for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(5) For the purposes of the definition of ***declared compliance notice*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a compliance notice under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared compliance notice for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(6) For the purposes of the definition of ***declared enforceable undertaking*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a written undertaking in force under section 219X of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared enforceable undertaking for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(7) For the purposes of the definition of ***declared nominated supervisor*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was an authorised supervisor under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared nominated supervisor for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(8) For the purposes of the definition of ***declared out of scope service*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, an out of school hours care service under the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared out of scope service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

(9) For the purposes of the definition of ***former approval*** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a children's services approval under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a former approval for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

Part 3 Miscellaneous

18 Application of Industrial Relations (Commonwealth Powers) Act 2009

An employee of the National Authority is not a State public sector employee for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.

19 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

20 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

21 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Note Education and Care Services National Law

Note. The text of the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria (as at the date of its enactment) is set out below. The National Law (as in force from time to time) is applied as a law of New South Wales.

Part 1 Preliminary

1 Short title

This Law may be cited as the Education and Care Services National Law.

2 Commencement

This Law commences in a participating jurisdiction as provided under the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3 Objectives and guiding principles

(1) The objective of this Law is to establish a national education and care services quality framework for the delivery of education and care services to children.

(2) The objectives of the national education and care services quality framework are—

(a) to ensure the safety, health and wellbeing of children attending education and care services;

(b) to improve the educational and developmental outcomes for children attending education and care services;

(c) to promote continuous improvement in the provision of quality education and care services;

(d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;

(e) to improve public knowledge, and access to information, about the quality of education and care services;

(f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

(3) The guiding principles of the national education and care services quality framework are as follows—

(a) that the rights and best interests of the child are paramount;

(b) that children are successful, competent and capable learners;

(c) that the principles of equity, inclusion and diversity underlie this Law;

(d) that Australia's Aboriginal and Torres Strait Islander cultures are valued;

(e) that the role of parents and families is respected and supported;

(f) that best practice is expected in the provision of education and care services.

4 How functions to be exercised

An entity that has functions under this Law is to exercise its functions having regard to the objectives and guiding principles of the national education and care services quality framework set out in section 3.

5 Definitions

(1) In this Law—

approved education and care service means an education and care service for which a service approval exists;

approved family day care service means an approved education and care service that is a family day care service;

approved family day care venue means a place other than a residence where an approved family day care service is provided;

approved learning framework means a learning framework approved by the Ministerial Council;

approved provider means a person who holds a provider approval;

associated children's service means a children's service that is operated or intended to be operated by an approved provider at the same place as an approved education and care service;

Australian Accounting Standards means the standards issued or pronounced by the Australian Accounting Standards Board;

authorised officer means a person authorised to be an authorised officer under Part 9;

Authority Fund means the Australian Children's Education and Care Quality Authority Fund established under section 274;

Board means the Australian Children's Education and Care Quality Authority Board established under this Law;

certified supervisor means a person who holds a supervisor certificate;

chief executive officer means the chief executive officer of the National Authority appointed under this Law;

children's service means a service providing or intended to provide education and care on a regular basis to children under 13 years of age that is primarily regulated under a children's services law of a participating jurisdiction and is not an education and care service;

children's services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a children's services law for the purposes of this Law;

children's services regulator, in relation to a participating jurisdiction, means a person declared by a law of that jurisdiction to be the children's services regulator for the purposes of this Law;

Commonwealth Minister means the Minister of the Commonwealth who is responsible for policies and programs relating to education and care services;

compliance direction means a compliance direction under section 176;

compliance notice means a compliance notice under section 177;

education and care service means any service providing or intended to provide education and care on a regular basis to children under 13 years of age other than—

(a) a school providing full-time education to children, including children attending in the year before grade 1 but not including a preschool program delivered in a school or a preschool that is registered as a school; or

(b) a preschool program delivered in a school if—

  (i) the program is delivered in a class or classes where a full-time education program is also being delivered to school children; and

  (ii) the program is being delivered to fewer than 6 children in the school; or

(c) a personal arrangement; or

(d) a service principally conducted to provide instruction in a particular activity; or

  Example. Instruction in a particular activity could be instruction in sport, dance, music, culture or language or religious instruction.

(e) a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; or

(f) care provided under a child protection law of a participating jurisdiction; or

(g) a prescribed class of disability service; or

(h) a service of a prescribed class;

Example. Education and care services to which this Law applies include long day care services, family day care services, outside school hours services and preschool programs including those delivered in schools, unless expressly excluded.

education and care service premises means—

(a) in relation to an education and care service other than a family day care service, each place at which an education and care service operates or is to operate; or

(b) in relation to a family day care service—

(i) an office of the family day care service; or

(ii) an approved family day care venue; or

(iii) each part of a residence used to provide education and care to children as part of a family day care service or used to provide access to the part of the residence used to provide that education and care;

education law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an education law for the purposes of this Law;

educator means an individual who provides education and care for children as part of an education and care service;

eligible association means an association of a prescribed class;

family day care co-ordinator means a person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service;

family day care educator means an educator engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue;

family day care residence means a residence at which a family day care educator educates and cares for children as part of a family day care service;

family day care service means an education and care service that is delivered through the use of 2 or more educators to provide education and care for children in residences whether or not the service also provides education and care to children at a place other than a residence;

family member, in relation to a child, means—

(a) a parent, grandparent, brother, sister, uncle, aunt, or cousin of the child, whether of the whole blood or half-blood and whether that relationship arises by marriage (including a de facto relationship) or by adoption or otherwise; or

(b) a relative of the child according to Aboriginal or Torres Strait Islander tradition; or

(c) a person with whom the child resides in a family-like relationship; or

(d) a person who is recognised in the child's community as having a familial role in respect of the child;

former education and care services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a former education and care services law for the purposes of this Law;

grade 1, in relation to a school, means the first year of compulsory full-time schooling;

guardian, in relation to a child, means the legal guardian of the child;

infringements law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an infringements law for the purposes of this Law;

Ministerial Council means the Ministerial Council consisting of the persons who from time to time hold office as Ministers of the Crown responsible for early childhood education or care in the governments of the States and Territories and the Commonwealth;

National Authority means the Australian Children's Education and Care Quality Authority established under this Law;

national education and care services quality framework means—

(a) this Law; and

(b) the national regulations; and

(c) the National Quality Standard; and

(d) the prescribed rating system;

National Partnership Agreement means the National Partnership Agreement on the National Quality Agenda for Early Childhood and Care entered into by the States and Territories and the Commonwealth on 7 December 2009, as amended from time to time;

National Quality Framework means the national education and care services quality framework;

National Quality Standard means the National Quality Standard prescribed by the national regulations;

national regulations means the regulations made under this Law;

nominated supervisor, in relation to an education and care service, means a person—

(a) who is a certified supervisor; and

(b) who is nominated by the approved provider of the service under Part 3 to be the nominated supervisor of that service; and

(c) who has consented to that nomination;

Note. A person may be both the nominated supervisor of a family day care service and the family day care co-ordinator for that service if the person meets the criteria for each role.

office, in relation to a family day care service, means—

(a) the principal office or any other business office of the approved provider of the service; or

(b) any premises of the service from which its family day care educators are co-ordinated;

parent, in relation to a child, includes—

(a) a guardian of the child; and

(b) a person who has parental responsibility for the child under a decision or order of a court;

participating jurisdiction means a State or Territory in which—

(a) this Law applies as a Law of the State or Territory; or

(b) a law that substantially corresponds to the provisions of this Law has been enacted;

payment, in relation to a prescribed fee, includes payment by electronic or other means;

person means—

(a) an individual; or

(b) a body corporate; or

(c) an eligible association; or

(d) a partnership; or

(e) a prescribed entity;

person with management or control, in relation to an education and care service, means—

(a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth who is responsible for managing the delivery of the education and care service; or

(b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or

(c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or

(d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service;

personal arrangement means education and care provided to a child—

(a) by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age; or

(b) by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised;

preschool program means an early childhood educational program delivered by a qualified early childhood teacher to children in the year that is 2 years before grade 1 of school;

prescribed ineligible person means a person in a class of persons prescribed by the national regulations to be prescribed ineligible persons;

protected disclosure—see section 296;

provider approval means a provider approval—

(a) granted under Part 2 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a provider approval that has been cancelled;

public sector law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a public sector law for the purposes of this Law;

rating assessment means an assessment or reassessment of an approved education and care service under Part 5;

Ratings Review Panel means a Ratings Review Panel established under section 146;

receiving approved provider has the meaning set out in section 58;

Regulatory Authority means a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction;

relevant Commonwealth Department means the government department administered by the Commonwealth Minister;

relevant tribunal or court, in relation to a participating jurisdiction, means the tribunal or court declared by a law of that jurisdiction to be the relevant tribunal or court for the purposes of this Law or a provision of this Law;

residence means the habitable areas of a dwelling;

school children includes children attending school in the year before grade 1;

school means—

(a) a government school; or

(b) a non-government school that is registered or accredited under an education law of a participating jurisdiction;

serious detrimental action—see section 296;

service approval means a service approval—

(a) granted under Part 3 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a service approval that has been cancelled;

staff member, in relation to an education and care service, means any individual (other than the nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as family day care co-ordinator, educator or otherwise;

supervisor certificate means a supervisor certificate—

(a) issued under Part 4 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a supervisor certificate that has been cancelled;

transferring approved provider has the meaning set out in section 58;

working with children card means a card issued to a person under a working with children law of a participating jurisdiction that permits that person to work with children;

working with children check means a notice, certificate or other document granted to, or with respect to, a person under a working with children law to the effect that—

(a) the person has been assessed as suitable to work with children; or

(b) there has been no information that if the person worked with children the person would pose a risk to the children; or

(c) the person is not prohibited from attempting to obtain, undertake or remain in child-related employment;

working with children law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with children law for the purposes of this Law;

working with vulnerable people law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with vulnerable people law for the purposes of this Law.

(2) In this Law, a reference (either generally or specifically) to a law or a provision of a law (including this Law) includes a reference to the statutory instruments made or in force under the law or provision.

(3) In this Law a reference to education and care includes a reference to education or care.

(4) In this Law, an education and care service as defined in subsection (1) is an education and care service even if the service also provides education and care to children of or over the age of 13 years.

(5) In this Law, a children's service as defined in subsection (1) is a children's service even if the service also provides education and care to children of or over the age of 13 years.

6 Interpretation generally

(1) Schedule 1 applies in relation to this Law.

(2) The National Partnership Agreement is declared to be a relevant document for the purposes of paragraph (h) of the definition of extrinsic material in clause 8(1) of Schedule 1.

7 Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by this Law may exercise its functions in relation to—

(a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

8 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following—

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

9 Law binds the State

(1) This Law binds the State.

(2) In this section—

State means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2 Provider approval

Division 1 Application for provider approval

10 Application for provider approval

(1) A person, other than a prescribed ineligible person, may apply to the Regulatory Authority for a provider approval.

(2) An application may be made by more than one person.

(3) If an application is made by more than one person—

(a) the prescribed information must be provided in respect of each person; and

(b) the requirements of this Division must be complied with by and in respect of each person.

11 Form of application

An application under section 10 must—

(a) be made to the Regulatory Authority of the participating jurisdiction—

(i) in which the applicant, or any of the applicants, is ordinarily resident; or

(ii) if the applicant or applicants are not individuals, in which the principal office of the applicant or any of the applicants is located; and

(b) be in writing; and

(c) include the prescribed information; and

(d) include payment of the prescribed fee.

12 Applicant must be fit and proper person

(1) An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of an education and care service.

(2) If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that—

(a) each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service; and

(b) the applicant is a fit and proper person to be involved in the provision of an education and care service.

(3) The head of a government department administering an education law of a participating jurisdiction is taken to be a fit and proper person for the purposes of this Part.

13 Matters to be taken into account in assessing whether fit and proper person

(1) In determining whether a person is a fit and proper person under this Division, the Regulatory Authority must have regard to—

(a) the person's history of compliance with—

(i) this Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction; and

Note. If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

(b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and

(c) either—

(i) any prescribed matters relating to the criminal history of the person to the extent that history may affect the person's suitability for the role of provider of an education and care service; or

(ii) any check of the person under a working with vulnerable people law of a participating jurisdiction; and

(d) whether the person is bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors or, in the case of a body corporate, is insolvent under administration or an externally-administered body corporate.

(2) Without limiting subsection (1), the Regulatory Authority may have regard to—

(a) whether the person has a medical condition that may cause the person to be incapable of being responsible for providing an education and care service in accordance with this Law; and

(b) whether the financial circumstances of the person may significantly limit the person's capacity to meet the person's obligations in providing an education and care service in accordance with this Law.

(3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person to be involved in the provision of an education and care service.

14 Regulatory Authority may seek further information

(1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person, the Regulatory Authority may—

(a) ask the person to provide further information; and

(b) undertake inquiries in relation to the person.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the

provision of the further information is not included in the period referred to in section 15 for the Regulatory Authority to make a decision on the application.

15 Grant or refusal of provider approval

(1) On an application under section 10, the Regulatory Authority may—

(a) grant the provider approval; or

(b) refuse to grant the provider approval.

Note. A provider approval is granted subject to conditions in accordance with section 19.

(2) The Regulatory Authority must not grant a provider approval unless the Authority is satisfied as to the matters in section 12.

(3) Subject to subsection (4), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

Note. If further information is requested under section 14(3), the period between the making of the request and the provision of the information is not included in the 60 day period.

(4) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.

(5) The Regulatory Authority is taken to have refused to grant a provider approval if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant period required under subsection (3); or

(b) within the period extended under subsection (4)—

as the case requires.

16 Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 15 and the reasons for that decision within 7 days after the decision is made.

17 Duration of provider approval

A provider approval granted under section 15 continues in force until it is cancelled or surrendered under this Law, or this Law as applying in a participating jurisdiction.

18 Effect of provider approval

A provider approval authorises the approved provider to operate an approved education and care service and an associated children's service if the approved provider is the holder of the service approval for those services.

19 Conditions on provider approval

(1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.

(2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.

(3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.

(4) An approved provider must comply with the conditions of the provider approval.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

20 Copy of provider approval

If the Regulatory Authority grants a provider approval under this Part, the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—

(a) the name of the approved provider; and

(b) if the approved provider is not an individual, the address of the principal office of the provider; and

(c) any conditions to which the approval is subject; and

(d) the date that the provider approval was granted; and

(e) the provider approval number; and

(f) any other prescribed matters.

Division 2 Reassessment

21 Reassessment of fitness and propriety

(1) The Regulatory Authority may at any time assess—

(a) whether an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or

(b) whether a person with management or control of an education and care service operated by an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or

(c) whether a person who becomes a person with management or control of an education and care service operated by the approved provider after the grant of the provider approval is a fit and proper person to be involved in the provision of an education and care service.

(2) Sections 13 and 14 apply to the reassessment.

Division 3 Amendment of provider approvals

22 Amendment of provider approval on application

(1) An approved provider may apply to the Regulatory Authority for an amendment of the provider approval.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority must decide the application by—

(a) amending the provider approval in the way applied for; or

(b) with the applicant's written agreement, amending the provider approval in another way; or

(c) refusing to amend the provider approval.

(4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.

(5) Without limiting subsection (3), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

23 Amendment of provider approval by Regulatory Authority

(1) The Regulatory Authority may amend a provider approval at any time without an application from the approved provider.

(2) Without limiting subsection (1), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

(3) The Regulatory Authority must give written notice to the approved provider of the amendment.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (2); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

24 Copy of amended provider approval to be provided

If the Regulatory Authority amends a provider approval under this Division, the Regulatory Authority must—

(a) provide an amended copy of the provider approval to the approved provider; and

(b) make any necessary amendments to any service approval held by the provider and provide an amended copy of the service approval to the approved provider.

Division 4 Suspension or cancellation of provider approval

25 Grounds for suspension of provider approval

The Regulatory Authority may suspend a provider approval if—

(a) the approved provider has been charged with an indictable offence, or with an offence that if committed in this jurisdiction would be an indictable offence, or any other circumstance indicates that the approved provider may not be a fit and proper person to be involved in the provision of an education and care service; or

(b) the approved provider has failed to comply with a condition of the provider approval; or

(c) the approved provider has failed to comply with this Law as applying in any participating jurisdiction; or

(d) action is being taken under Part 7 (other than a compliance direction) in respect of more than one education and care service operated by the approved provider; or

(e) the approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension); or

(f) the approved provider purported to transfer or receive a transfer of an approved education and care service without the consent of the Regulatory Authority; or

(g) the approved provider has not paid any outstanding prescribed fees.

26 Show cause notice before suspension

(1) This section applies if the Regulatory Authority is considering the suspension of a provider approval under section 25.

(2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to suspend the provider approval; and

(b) the proposed period of suspension; and

(c) the reasons for the proposed suspension; and

(d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

27 Decision to suspend after show cause process

After considering any written response from the approved provider received within the time allowed by section 26(2)(d), the Regulatory Authority may—

(a) suspend the provider approval for a period not more than the prescribed period; or

(b) decide not to suspend the provider approval.

28 Suspension without show cause notice

(1) The Regulatory Authority may suspend the provider approval on a ground referred to in section 25 without giving the approved provider a show cause notice under section 26 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the provider.

(2) The suspension may not be for a period of more than 6 months.

29 Notice and taking effect of suspension

(1) The Regulatory Authority must give the approved provider written notice of the decision to suspend the provider approval.

(2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.

(3) The decision under section 27 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(4) The decision under section 28 to suspend takes effect on the giving of the notice.

30 Effect of suspension

(1) Subject to this section, if a provider approval is suspended under section 27 or 28 of this Law as applying in any participating jurisdiction, all service approvals held by the provider are also suspended for the same period.

(2) A suspension under subsection (1) applies to both education and care services and any associated children's services.

(3) A person whose provider approval is suspended is taken not to be an approved provider for the period of the suspension.

(4) A service approval is not suspended under subsection (1) during any period that a person is approved under section 41 to manage or control the education and care service.

(5) The Regulatory Authority may consent under Part 3 to the transfer of a service approval that is suspended under section 27 or 28.

(6) The suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date.

31 Grounds for cancellation of provider approval

The Regulatory Authority may cancel a provider approval if—

(a) the Regulatory Authority is satisfied that the approved provider or a person with management or control of an education and care service operated by the approved provider is not a fit and proper person to be involved in the provision of an education and care service; or

(b) the Regulatory Authority is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider; or

(c) the approved provider has been found guilty of an indictable offence or an offence that if committed in this jurisdiction would be an indictable offence; or

(d) the approved provider has been found guilty of an offence under this Law as applying in any participating jurisdiction; or

(e) the approved provider has breached a condition of the provider approval; or

(f) the approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension).

32 Show cause notice before cancellation

(1) This section applies if the Regulatory Authority is considering the cancellation of a provider approval under section 31.

(2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to cancel the provider approval; and

(b) the reasons for the proposed cancellation; and

(c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

33 Decision in relation to cancellation

(1) After considering any written response from the approved provider received within the time allowed under section 32(2)(c), the Regulatory Authority—

(a) may—

(i) cancel the provider approval; or

(ii) suspend the provider approval for a period not more than the prescribed period;

(iii) decide not to cancel the provider approval; and

(b) must give the approved provider written notice of the decision.

(2) The decision to cancel the provider approval takes effect at the end of 14 days after the date of the decision or, if another period is specified by the Regulatory Authority, at the end of that period.

(3) The notice of a decision to cancel the provider approval must set out the date on which it takes effect.

(4) This Law applies to a suspension of a provider approval under this section as if it were a suspension under section 27.

34 Effect of cancellation

(1) Subject to this section, if a provider approval is cancelled under section 33 of this Law as applying in any participating jurisdiction, all service approvals held by the person who was the approved provider are also cancelled.

(2) A cancellation under subsection (1) applies to both education and care services and any associated children's services.

(3) A service approval is not cancelled under subsection (1) if before that cancellation a person is approved under section 41 to manage or control the education and care service.

(4) A service approval is cancelled if a person referred to in subsection (3) ceases to manage or control the service.

(5) A provider whose provider approval is to be cancelled under section 33 may apply to the Regulatory Authority under Part 3 for consent to transfer a service approval held by the provider.

(6) The application for consent to transfer must be made within 14 days after the date of the decision to cancel the provider approval is made.

(7) If an application for consent to transfer is made, the service approval is suspended until the Regulatory Authority determines the application.

(8) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the transfer specify a later date.

(9) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse consent.

35 Approved provider to provide information to Regulatory Authority

(1) This section applies if a show cause notice has been given to an approved provider under section 26 or 32.

(2) The approved provider, at the request of the Regulatory Authority, must, within 7 days of the request, provide the Regulatory Authority with the contact details of the parents of all children enrolled at each education and care service operated by the approved provider.

(3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an education and care service about the suspension or cancellation.

36 Notice to parents of suspension or cancellation

(1) This section applies if a provider approval has been suspended or cancelled under section 27, 28, 33 or 34.

(2) The Regulatory Authority may require the person who is or was the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at all or any of the education and care services operated by that person.

(3) A person must comply with a requirement made of that person under subsection (2).

Penalty:

$3000 in the case of an individual.

$15 000 in any other case.

37 Voluntary suspension of provider approval

(1) An approved provider may apply to the Regulatory Authority for a suspension of the provider approval for a period of not more than 12 months.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to make the application.

(4) The Regulatory Authority must within 30 days after the application is made decide whether or not to grant the application.

(5) The Regulatory Authority must give written notice of its decision (including the period of suspension) to the approved provider.

(6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

(7) A suspension under this section remains in force for the period of time specified in the notice.

(8) The approved provider may apply to the Regulatory Authority to revoke the suspension before the end of the suspension period.

(9) If the Regulatory Authority grants the application to revoke the suspension, the suspension ceases on the date determined by agreement with the approved provider.

(10) If a provider approval is suspended under this section, each service approval held by the provider is also suspended for the same period unless—

(a) a person is approved under section 41 to manage or control the education and care service to which the approval relates; or

(b) the service approval is transferred under Division 3 of Part 3.

38 Surrender of provider approval by approved provider

(1) An approved provider may surrender the provider approval by written notice to the Regulatory Authority.

(2) The notice must specify a date on which the surrender is intended to take effect which must be—

(a) after the notice is given; and

(b) after the end of the period of notice required under subsection (3).

(3) The approved provider must notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to surrender the provider approval, at least 14 days before the surrender is intended to take effect.

(4) If a provider approval is surrendered, the approval is cancelled on the date specified in the notice.

(5) If a provider approval is surrendered, any service approval held by the provider is also taken to be surrendered.

Note. If a service approval is surrendered, it is cancelled—see section 86. A cancelled service approval cannot be transferred—see definition of ***service approval*** and also Division 3 of Part 3.

Division 5 Approval of executor, representative or guardian as approved provider

39 Death of approved provider

(1) This section applies if an approved provider dies.

(2) The nominated supervisor or any other person having day to day control of an education and care service of the approved provider must notify the Regulatory Authority of the approved provider's death within 7 days after that death.

(3) The executor of the estate of the approved provider may continue to operate any approved education and care service of the approved provider for the relevant period provided the nominated supervisor or any certified supervisor continues to manage the day to day operation of the service.

(4) The executor of the estate of the approved provider may transfer, surrender or apply for suspension of a service approval of the approved provider under this Law during the relevant period as if the executor were the approved provider.

(5) The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval.

(6) The application must be made within 30 days of the death of the approved provider and must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(7) In this section ***relevant period*** means—

(a) the period of 30 days after the death of the approved provider; or

(b) if the approved provider makes an application under subsection (5) within that period, until the application is finally determined under this Law.

40 Incapacity of approved provider

(1) This section applies if an approved provider has become incapacitated.

(2) The legal personal representative or guardian of an approved provider may apply to the Regulatory Authority for a provider approval.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

41 Decision on application

(1) The Regulatory Authority must not grant a provider approval to a person who has made an application under section 39 or 40 unless the Regulatory Authority is satisfied that the person is a fit and proper person to be involved in the provision of an education and care service.

(2) Sections 12, 13 and 14 apply to the assessment of a person under subsection (1).

(3) Subject to this section, the Regulatory Authority may—

(a) grant the provider approval; or

(b) grant the provider approval subject to conditions; or

(c) refuse to grant the provider approval.

(4) An approval under this section—

(a) may be granted for a period of not more than 6 months; and

(b) may be extended for a further period of not more than 6 months—

at the discretion of the Regulatory Authority.

(5) The provider approval is granted only in relation to the operation of the approved education and care services of the approved provider for whom the applicant is the executor, legal personal representative or guardian, as the case requires.

Division 6 Exercise of powers by another Regulatory Authority

42 Exercise of powers by another Regulatory Authority

(1) This section applies if the Regulatory Authority has granted a provider approval under this Part.

(2) A Regulatory Authority of another participating jurisdiction may exercise all of the powers and perform all of the functions of the Regulatory Authority under this Part (except Division 5) in respect of the provider approval if the approved provider operates an approved education and care service in that participating jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power to amend, suspend or cancel a provider approval after consulting with the Regulatory Authority of each participating jurisdiction in which the approved provider operates an approved education and care service.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a provider approval in another participating jurisdiction has effect in this jurisdiction.

Part 3 Service approval

Division 1 Application for service approval

43 Application for service approval

(1) An approved provider may apply to the Regulatory Authority for a service approval for an education and care service.

(2) An approved provider may only apply for a service approval for an education and care service if the approved provider is or will be the operator of the education and care service and is or will be responsible for the management of the staff members and nominated supervisor of that service.

(3) A person who has applied for a provider approval may apply to the Regulatory Authority for a service approval, however the Regulatory Authority must not grant the service approval unless the provider approval is granted.

44 Form of application

(1) An application for a service approval must—

(a) be made to the Regulatory Authority of the participating jurisdiction in which the service is to be located; and

(b) be in writing; and

(c) include the prescribed information; and

(d) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and

(e) include payment of the prescribed fee.

(2) An application for service approval may include an associated children's service.

(3) The approved provider can be the nominated supervisor if he or she—

(a) is a certified supervisor; or

(b) has applied for a supervisor certificate—

however the Regulatory Authority must not grant the service approval unless the supervisor certificate has been granted.

45 Regulatory Authority may seek further information

(1) The Regulatory Authority may ask an applicant for a service approval to provide any further information that is reasonably required for the purpose of assessing the application.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 48 for the Regulatory Authority to make a decision on the application.

46 Investigation of application for service approval

(1) For the purposes of determining an application for a service approval, the Regulatory Authority may—

(a) undertake inquiries and investigations, including inquiries relating to the previous licensing, accreditation or registration of the education and care service under a former education and care services law, a children's services law or an education law of any participating jurisdiction; and

(b) inspect the education and care service premises; and

(c) inspect the policies and procedures of the service.

(2) For the purposes of an inspection under subsection (1)(b) or (c), the Regulatory Authority may enter the education and care service premises at any reasonable time.

47 Determination of application

(1) Subject to subsection (3), in determining an application under section 43, the Regulatory Authority must have regard to—

(a) the National Quality Framework; and

(b) except in the case of a family day care residence, 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; and

(c) the adequacy of the policies and procedures of the service; and

(d) whether the applicant has a provider approval; and

(e) whether the nominated supervisor for the service is a certified supervisor and whether that person has consented in writing to the nomination; and

(f) any other matter the Regulatory Authority thinks fit; and

(g) any other prescribed matter.

(2) In addition, the Regulatory Authority may have regard to—

(a) whether the applicant is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;

(b) the applicant's history of compliance with this Law or this Law as applying in any participating jurisdiction, including in relation to any other education and care service it operates.

(3) Subject to subsection (4), in assessing an associated children's service for the purposes of determining whether to grant a service approval, the Regulatory Authority must have regard to the criteria under the children's services law of this jurisdiction for the grant of a children's services licence.

(4) The criteria referred to in subsection (3) do not include criteria relating to whether the applicant is a fit and proper person.

48 Grant or refusal of service approval

(1) On an application under section 43, the Regulatory Authority may—

(a) grant the service approval; or

(b) refuse to grant the service approval.

Note. A service approval is granted subject to conditions in accordance with section 51.

(2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 90 days after the Regulatory Authority received the application.

Note. If further information is requested under section 45(2), the period between the making of the request and the provision of the information is not included in the 90 day period.

(3) The period referred to in subsection (2) may be extended with the agreement of the applicant.

(4) The Regulatory Authority may grant a service approval solely for an education and care service if—

(a) the application includes an application for an associated children's service; and

(b) that associated children's service does not comply with the criteria referred to in section 47(2).

(5) The Regulatory Authority is taken to have refused to grant a service approval if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant time required under subsection (2); or

(b) within the period extended under subsection (3)—

as the case requires.

(6) A service approval cannot be granted solely for an associated children's service.

49 Grounds for refusal

(1) The Regulatory Authority must refuse to grant a service approval if—

(a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service; or

(b) the applicant does not have a provider approval.

(2) The Regulatory Authority may refuse to grant a service approval on any other grounds prescribed in the national regulations.

50 Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 48 and the reasons for the decision within 7 days after the decision is made.

51 Conditions on service approval

(1) A service approval is granted subject to the condition that the education and care service is operated in a way that—

(a) ensures the safety, health and wellbeing of the children being educated and cared for by the service; and

(b) meets the educational and developmental needs of the children being educated and cared for by the service.

(2) A service approval for a family day care service is granted subject to the additional condition that the approved provider must ensure that—

(a) sufficient persons are appointed as family day care co-ordinators to monitor and support the family day care educators engaged by or registered with the service; and

(b) each family day care educator is adequately monitored and supported by a family day care co-ordinator.

(3) A service approval is granted subject to a condition that the service must commence ongoing operation of the service within 6 months after the approval is granted unless the Regulatory Authority agrees to an extension of time.

(4) A service approval is granted subject to a condition that the approved provider must hold the prescribed insurance in respect of the education and care service.

(5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by—

(a) this Law; or

(b) the Regulatory Authority.

(6) A condition of a service approval does not apply to an associated children's service unless the condition is expressed to apply to that associated children's service.

(7) A condition of a service approval may be expressed to apply solely to an associated children's service only if the Regulatory Authority has first consulted with the children's services regulator.

(8) An approved provider must comply with the conditions of a service approval held by the approved provider.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

52 Copy of service approval to be provided

If the Regulatory Authority grants a service approval under this Part, the Regulatory Authority must provide a copy of the service approval to the approved provider stating—

(a) the name of the education and care service; and

(b) the location of the education and care service or, if the education and care service is a family day care service, the location of the principal office and any approved family day care venue for the service; and

(c) any conditions to which the service approval is subject; and

(d) the date the service approval was granted; and

(e) the service approval number; and

(f) the name of the approved provider; and

(g) for a service other than a family day care service, the maximum number of children who can be educated and cared for by the service at any one time; and

(h) the details of any service waiver under Division 5 or temporary waiver under Division 6 applying to the service; and

(i) any other prescribed matters.

53 Annual fee

An approved provider must, in accordance with the national regulations, pay the prescribed annual fee in respect of each service approval held by the approved provider.

Division 2 Amendment of service approval

54 Amendment of service approval on application

(1) An approved provider may apply to the Regulatory Authority for an amendment of a service approval.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may ask the approved provider to provide any further information that is reasonably required for the purpose of assessing the application.

(4) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the provision of the further information is not included in the period referred to in subsection (5).

(5) The Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

(6) The Regulatory Authority must decide the application by—

(a) amending the service approval in the way applied for; or

(b) with the applicant's written agreement, amending the service approval in another way; or

(c) refusing to amend the service approval.

(7) Without limiting subsection (6), an amendment may vary a condition of the service approval or impose a new condition on the service approval.

(8) An amendment cannot change a location of an education and care service.

(9) The Regulatory Authority must give written notice of its decision to the approved provider.

55 Amendment of service approval by Regulatory Authority

(1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.

(2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.

(3) The Regulatory Authority must give written notice of the amendment to the approved provider.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

(5) The Regulatory Authority must amend a service approval to the extent that it relates to an associated children's service in accordance with any direction by the children's services regulator if that direction is given in accordance with the children's services law of this jurisdiction.

56 Notice of change to nominated supervisor

(1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to change the person nominated as the nominated supervisor of the education and care service.

(2) The notice must—

(a) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and

(b) include the prescribed information; and

(c) be given—

(i) at least 7 days before the new certified supervisor is to commence work as the nominated supervisor; or

(ii) if that period of notice is not possible in the circumstances, as soon as practicable and not more than 14 days after the certified supervisor commences work as the nominated supervisor.

57 Copy of amended service approval to be provided

If the Regulatory Authority amends a service approval under this Division, the Authority must provide an amended copy of the service approval to the approved provider.

Division 3 Transfer of service approval

58 Service approval may be transferred

(1) Subject to this Division, an approved provider who holds a service approval (***transferring approved provider***) may transfer the service approval to another approved provider (***receiving approved provider***).

(2) If a service approval is transferred to a receiving approved provider the transfer includes the transfer of the service approval for any associated children's service.

(3) A person who holds a provider approval may transfer a service approval held by the provider even if the provider approval or service approval is suspended.

59 Regulatory Authority to be notified of transfer

(1) The transferring approved provider and the receiving approved provider must jointly notify the Regulatory Authority of the transfer—

(a) at least 42 days before the transfer is intended to take effect; or

(b) if the Regulatory Authority considers that the circumstances are exceptional, a lesser period agreed to by the Regulatory Authority.

(2) The notice must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

60 Consent of Regulatory Authority required for transfer

A service approval cannot be transferred without the consent of the Regulatory Authority.

61 Consent taken to be given unless Regulatory Authority intervenes

The Regulatory Authority is taken to have consented to the transfer of a service approval if—

(a) the parties have given a notification under section 59; and

(b) 28 days before the transfer is intended to take effect, the Regulatory Authority has not notified the parties that it intends to intervene under section 62.

62 Transfer may be subject to intervention by Regulatory Authority

(1) The Regulatory Authority may intervene in a transfer of a service approval if the Regulatory Authority is concerned as to any of the following matters—

(a) whether the receiving approved provider is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;

(b) the receiving approved provider's history of compliance with this Law as applying in a participating jurisdiction, including in relation to any other education and care service it operates;

(c) any other matter relevant to the transfer of the service approval.

(2) The Regulatory Authority must notify the transferring approved provider and the receiving approved provider of the decision to intervene.

(3) The notice must be given at least 28 days before the date on which the transfer is intended to take effect.

(4) A notification under subsection (2) must—

(a) be in writing; and

(b) include the prescribed information.

63 Effect of intervention

If the Regulatory Authority intervenes under section 62, the transfer must not proceed unless and until the Regulatory Authority gives written consent to the transfer.

64 Regulatory Authority may request further information

If the Regulatory Authority has intervened under section 62, the Regulatory Authority may—

(a) request further information from the transferring approved provider or receiving approved provider for the purposes of deciding whether to consent to the transfer; and

(b) undertake inquiries in relation to the receiving approved provider for that purpose.

65 Decision after intervention

(1) If the Regulatory Authority has intervened under section 62, it may decide—

(a) to consent to the proposed transfer; or

(b) to refuse to consent to the proposed transfer.

(2) If the Regulatory Authority consents to the proposed transfer the Regulatory Authority may impose conditions on the consent, including specifying the date on which the proposed transfer is to take effect.

(3) The service approval must be transferred in accordance with the conditions imposed on the consent.

66 Regulatory Authority to notify outcome 7 days before transfer

(1) If the Regulatory Authority has intervened in the transfer of a service approval, the Authority must, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party specifying that the Authority—

(a) consents to the transfer; or

(b) refuses to consent to the transfer; or

(c) has suspended further consideration of the transfer until further information is received and that the transfer may not proceed until a further notice is given under this section consenting to the transfer; or

(d) has not yet made a decision on the transfer and that the Regulatory Authority will make a decision on the transfer within 28 days and that the transfer may not proceed until a further notice is given under this section consenting to the transfer.

(2) If the Regulatory Authority consents to the transfer, the notice—

(a) must specify—

(i) the date on which the transfer is to take effect; and

(ii) any conditions on the consent to the transfer; and

(b) may include notice of any condition that the Regulatory Authority has imposed on the provider approval or a service approval of the receiving approved provider because of the transfer.

(3) If the Regulatory Authority refuses to consent to the transfer, the notice must include the reasons for the refusal.

67 Transfer of service approval without consent is void

A transfer of a service approval is void if—

(a) it is made without the consent of the Regulatory Authority; or

(b) it is made in contravention of the conditions imposed by the Regulatory Authority on the consent to the transfer; or

(c) it is made to a person who is not the approved provider who gave the notification under section 59 as the receiving approved provider.

68 Confirmation of transfer

(1) The transferring approved provider and the receiving approved provider must give written notice to the Regulatory Authority within 2 days after the transfer takes effect specifying the date of the transfer.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(2) On receipt of a notice under this section, the Regulatory Authority must amend the service approval and provide an amended copy of the service approval to the receiving approved provider.

(3) The amendment to the service approval is taken to take effect on the date of the transfer.

(4) An approved provider who gives notice under this section is not guilty of an offence for a failure of any other person to give that notice.

69 Notice to parents

(1) The receiving approved provider must give written notice to the parents of children enrolled at an education and care service of the transfer of the service approval for that service to that provider.

Penalty:

$3000, in the case of an individual.

$15 000, in any other case.

(2) The notice must be given at least 2 days before the date on which the transfer of the service approval takes effect.

Division 4 Suspension or cancellation of service approval

70 Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if—

(a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or

(b) a condition of the service approval has not been complied with; or

(c) the service is not being managed in accordance with this Law; or

(d) the service has operated at a rating level as not meeting the National Quality Standard and—

(i) a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and

(ii) there has been no improvement in the rating level; or

(e) the approved provider has contravened this Law as applying in any participating jurisdiction; or

(f) the approved provider has failed to comply with a direction, compliance notice or emergency order under this Law as applying in any participating jurisdiction in relation to the service; or

(g) the approved provider has—

(i) ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and

(ii) within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or

(h) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or

(i) the approved provider has not paid the prescribed annual fee for the service approval.

71 Show cause notice before suspension

(1) This section applies if the Regulatory Authority is considering the suspension of a service approval under section 70.

(2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to suspend the service approval; and

(b) the proposed period of suspension; and

(c) the reasons for the proposed suspension; and

(d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

72 Decision in relation to suspension

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

(a) suspend the service approval for a period not more than the prescribed period; or

(b) decide not to suspend the service approval.

73 Suspension of service approval without show cause

The Regulatory Authority may suspend the service approval without giving the approved provider a show cause notice under section 71 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the education and care service.

74 Notice and effect of decision

(1) The Regulatory Authority must give the approved provider written notice of the decision to suspend.

(2) Subject to section 76, the decision under section 72 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(3) Subject to section 76, the decision under section 73 to suspend takes effect on the giving of the notice.

(4) The notice of a decision to suspend must set out—

(a) the period of suspension; and

(b) the date on which it takes effect.

(5) A suspension of a service approval also suspends the service approval to the extent that it relates to an associated children's service.

75 Suspension of service approval to the extent that it relates to associated children's service

(1) If the Regulatory Authority considers that a service approval should be suspended to the extent only that it applies to an associated children's service, the Regulatory Authority must refer the matter to the children's services regulator of this jurisdiction for determination under the children's services law.

(2) The children's services regulator must notify the Regulatory Authority if it proposes to conduct any investigation or inquiry into an associated children's service under the children's services law.

(3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be suspended to the extent that it relates to an associated children's service—

(a) the children's services regulator must advise the Regulatory Authority of that determination; and

(b) the service approval is suspended to the extent that it relates to the associated children's service in accordance with that determination.

76 Transfer of suspended service

(1) The Regulatory Authority may consent under this Part to the transfer of a service approval that is suspended under section 72 or 73.

(2) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the Regulatory Authority's consent to the transfer otherwise provide.

77 Grounds for cancellation of service approval

A Regulatory Authority may cancel a service approval if—

(a) the Regulatory Authority reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service; or

(b) the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension; or

(c) the service approval was obtained improperly; or

(d) a condition of the service approval has not been complied with.

78 Show cause notice before cancellation

(1) This section applies if the Regulatory Authority is considering the cancellation of a service approval under section 77.

(2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to cancel the service approval; and

(b) the reasons for the proposed cancellation; and

(c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

79 Decision in relation to cancellation

(1) After considering any written response from the approved provider received within the time allowed by section 78(2)(c), the Regulatory Authority—

(a) may—

(i) cancel the service approval; or

(ii) suspend the service approval for a period not more than the prescribed period; or

(iii) decide not to cancel the service approval; and

(b) must give the approved provider written notice of the decision.

(2) Subject to section 81, the decision to cancel the service approval takes effect—

(a) at the end of 14 days after the date of the decision; or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

(3) The notice of a decision to cancel must set out the date on which it takes effect.

(4) A cancellation of a service approval includes the cancellation of the service approval to the extent that it relates to an associated children's service.

(5) This Law applies to a suspension of a service approval under this section as if it were a suspension under section 72.

80 Cancellation of service approval to the extent that it relates to associated children's service

(1) If the Regulatory Authority considers that a service approval should be cancelled to the extent only that it applies to an associated children's service, the Regulatory Authority must refer the matter to the children's services regulator of this jurisdiction for determination under the children's services law.

(2) The children's services regulator must notify the Regulatory Authority if it proposes to conduct any investigation or inquiry into an associated children's service under the children's services law.

(3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be cancelled to the extent that it relates to an associated children's service—

(a) the children's services regulator must advise the Regulatory Authority of that determination; and

(b) the service approval is cancelled to the extent that it relates to the associated children's service in accordance with that determination.

81 Application for transfer of cancelled service

(1) An approved provider may apply to the Regulatory Authority under this Part for consent to transfer a service approval that is to be cancelled under this Part.

(2) The application for consent to transfer must be made within 14 days after the decision to cancel the service approval is made.

(3) If an application for consent to transfer is made, the cancellation of the service approval does not take effect, and the service approval is suspended, until the Regulatory Authority determines the application.

(4) An application cannot be made under this section for consent to transfer a cancelled service approval if the cancellation relates only to an associated children's service.

82 Decision on application to transfer cancelled service

(1) If the Regulatory Authority consents to the transfer—

(a) the decision to cancel the service approval is revoked; and

(b) the suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory

Authority on the consent to the transfer specify a later date for the suspension to cease.

(2) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse to consent.

83 Approved provider to provide information to Regulatory Authority

(1) This section applies if a show cause notice has been given to an approved provider under section 71 or 78.

(2) The approved provider, at the request of the Regulatory Authority, must provide the Authority with the contact details of the parents of all children enrolled at the education and care service.

(3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an approved education and care service of a suspension or cancellation of the service approval for the service.

84 Notice to parents of suspension or cancellation

(1) This section applies if a service approval has been suspended or cancelled under section 72, 73, 79 or 81.

(2) The Regulatory Authority may require the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at the education and care service to which the approval relates and any associated children's service.

(3) The approved provider must comply with a requirement made under subsection (2).

Penalty:

$3000 in the case of an individual.

$15 000 in any other case.

85 Voluntary suspension of service approval

(1) An approved provider may apply to the Regulatory Authority for the suspension of a service approval for a period of not more than 12 months.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may agree to the suspension, having regard to whether the suspension is reasonable in the circumstances.

(4) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care service and any associated children's service of the intention to make the application.

(5) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.

(6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

86 Surrender of service approval

(1) An approved provider may surrender a service approval by written notice to the Regulatory Authority.

(2) The notice must specify a date on which the surrender is intended to take effect which must be—

(a) after the notice is given; and

(b) after the end of the period of notice required under subsection (3).

(3) The approved provider must notify the parents of children enrolled at the education and care service to which the approval relates and any associated children's service of the intention to surrender the service approval, at least 14 days before the surrender is intended to take effect.

(4) If a service approval is surrendered, the approval is cancelled on the date specified in the notice.

Division 5 Application for service waiver

87 Application for service waiver for service

(1) An approved provider may apply to the Regulatory Authority for a waiver from a requirement that an approved education and care service comply with a prescribed element or elements of the National Quality Standard and the national regulations as provided for in the national regulations.

(2) A person who applies for a service approval may apply for a service waiver under this section together with the application for the service approval.

(3) The Regulatory Authority must not grant a service waiver to a person who applies under subsection (2) unless the service approval is granted to that person.

88 Form of application

An application under section 87 must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

89 Powers of Regulatory Authority in considering application

For the purpose of determining an application under this Division, the Regulatory Authority may—

(a) ask the applicant to provide further information; and

(b) inspect the education and care service premises and the office of the applicant.

90 Matters to be considered

In considering whether the grant of a service waiver is appropriate, the Regulatory Authority may have regard to either or both of the following—

(a) whether the education and care service is able to meet the prescribed element or elements of the National Quality Standard and the national regulations by alternative means that satisfy the objectives of those elements;

(b) any matters disclosed in the application that are relevant to the application for the service waiver.

91 Decision on application

(1) On an application under this Division, the Regulatory Authority may decide to grant the service waiver or refuse the application.

(2) Subject to subsection (3), the Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.

(3) If an application for a service waiver has been made together with an application for service approval, the Regulatory Authority may notify the applicant of the Authority's decision on the application at the same time as the notice of the decision on the application for the service approval.

(4) If a service waiver is granted, the Regulatory Authority must issue or reissue the service approval specifying the element or elements of the National Quality Standard and the national regulations to which the service waiver applies.

92 Revocation of service waiver

(1) The Regulatory Authority may, at its discretion, revoke a service waiver.

(2) An approved provider may apply to the Regulatory Authority for the revocation of a service waiver applying to any education and care service that it operates.

(3) A revocation under this section takes effect at the end of the period prescribed in the national regulations.

93 Effect of service waiver

While a service waiver is in force, the approved education and care service is taken to comply with the element or elements of the National Quality Standard and the national regulations that are specified in the service waiver.

Division 6 Temporary waiver

94 Application for temporary waiver

An approved provider may apply to the Regulatory Authority for a temporary waiver from a requirement that an approved education and care service comply with any prescribed element or elements of the National Quality Standard and the national regulations as provided for in the national regulations.

95 Form of application

An application under section 94 must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

96 Regulatory Authority may seek further information

For the purpose of determining an application under this Division, the Regulatory Authority may—

(a) ask the applicant to provide further information; and

(b) inspect the education and care service premises and the office of the applicant.

97 Special circumstances

In considering whether the grant of a temporary waiver is appropriate, the Regulatory Authority must have regard to whether special circumstances disclosed in the application reasonably justify the grant of the temporary waiver.

98 Decision on application

(1) The Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.

(2) A temporary waiver must specify the period of the waiver which cannot be for a period of more than 12 months.

(3) The Regulatory Authority, on the application of the approved provider, may—

(a) extend and further extend the period of a temporary waiver by periods of not more than 12 months; and

(b) grant a further temporary waiver for an education and care service under this Division.

(4) If the Regulatory Authority grants a temporary waiver, the Regulatory Authority must issue or reissue the service approval specifying the element or elements of the National Quality Standard and the national regulations which have been temporarily waived and the period of the waiver.

99 Revocation of temporary waiver

The Regulatory Authority may, at its discretion, revoke a temporary waiver.

100 Effect of temporary waiver

While a temporary waiver is in force, the approved education and care service is not required to comply with the element or elements of the National Quality Standard and the national regulations that have been temporarily waived.

Division 7 Exercise of powers by another Regulatory Authority

101 Exercise of powers by another Regulatory Authority—family day care services

(1) This section applies if the Regulatory Authority has granted a service approval under this Part to an approved provider for a family day care service.

(2) A Regulatory Authority of another participating jurisdiction may exercise all the powers and perform all the functions of a Regulatory Authority under this Part (except Division 3 or section 76, 81 or 82) in respect of the service approval if the family day care service operates in that participating jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power to amend, suspend or cancel a service approval after consulting with the Regulatory Authority of each participating jurisdiction in which the family day care service operates.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a service approval for a family day care service in another participating jurisdiction has effect in this jurisdiction.

Division 8 Associated children's services

102 Application of this Law to associated children's services

This Law does not apply to an associated children's service except as expressly provided in this Law.

Division 9 Offences

103 Offence to provide an education and care service without service approval

(1) A person must not provide an education and care service unless—

(a) the person is an approved provider in respect of that service; and

(b) the education and care service is an approved education and care service.

Penalty:

$20 000, in the case of an individual.

$100 000, in any other case.

(2) Subsection (1) does not apply to a family day care educator providing education and care to children as part of an approved family day care service.

104 Offence to advertise education and care service without service approval

(1) A person must not knowingly publish or cause to be published an advertisement for an education and care service unless it is an approved education and care service.

Penalty:

$6000, in the case of an individual.

$30 000, in any other case.

(2) Subsection (1) does not apply if an application for a service approval in respect of the education and care service has been made under this Law but has not been decided.

Part 4 Supervisor certificates

Division 1 Application for supervisor certificate

105 Purpose of supervisor certificate

A supervisor certificate makes the person to whom it is issued eligible to be placed in day to day charge of an approved education and care service.

106 Application for supervisor certificate

(1) A person may apply to the Regulatory Authority for a supervisor certificate.

(2) An applicant must be an individual of or above the age of 18 years.

(3) An application must be made to the Regulatory Authority of the participating jurisdiction in which the applicant is ordinarily resident or intending to reside.

107 Form of application

An application under section 106 must—

(a) be in writing signed by the applicant; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

108 Applicant must satisfy Regulatory Authority of specified matters

(1) An applicant must satisfy the Regulatory Authority that the applicant—

(a) is a fit and proper person to be a supervisor of an education and care service; and

(b) meets the prescribed minimum requirements for qualifications, experience and management capability.

(2) The following persons are taken, in the absence of evidence to the contrary, to satisfy the requirements of subsection (1)(a)—

(a) a person who is a registered teacher under an education law of a participating jurisdiction;

(b) a person who holds a current working with children card under the working with children law of a participating jurisdiction.

109 Matters to be taken into account in assessing whether fit and proper person

(1) The Regulatory Authority, in determining whether it is satisfied that a person is a fit and proper person under this Division, must have regard to—

(a) the history of the person's compliance with—

(i) this Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction; and

Note. If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

(b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and

(c) the working with children check for that person, or if there is no working with children check for that person, any prescribed matters relating to the criminal history of the person to the extent that that history may affect the person's suitability for the role of supervisor of an education and care service.

(2) Without limiting subsection (1), the Regulatory Authority may have regard to whether the person has a medical condition that may affect the person's capacity to be the supervisor of an education and care service.

(3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to satisfy the Regulatory Authority that he or she is a fit and proper person to be a supervisor of an education and care service.

110 Regulatory Authority may seek further information

(1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person to hold a supervisor certificate, the Regulatory Authority may—

(a) ask the person in respect of whom the assessment is being carried out to provide further information; and

(b) undertake inquiries or investigations in relation to the person in respect of whom the assessment is being carried out.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 111 for the Regulatory Authority to make a decision on the application.

111 Grant or refusal of supervisor certificate

(1) The Regulatory Authority may grant or refuse to grant a supervisor certificate on an application under section 106.

Note. A supervisor certificate is granted subject to conditions in accordance with section 115.

(2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority received the application.

Note. If further information is requested under section 110(3), the period between the making of the request and the provision of the information is not included in the 60 day period.

(3) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.

(4) The Regulatory Authority is taken to have refused to grant a supervisor certificate if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant time required under subsection (3); or

(b) within the period extended under subsection (4)—

as the case requires.

112 Grounds for refusal

The Regulatory Authority must refuse to grant a supervisor certificate if—

(a) the Regulatory Authority is not satisfied that the applicant is a fit and proper person to be the supervisor of an education and care service; or

(b) the applicant is under the age of 18 years; or

(c) the Regulatory Authority is not satisfied that the applicant meets the prescribed minimum requirements for qualifications, experience and management capability.

113 Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 111 and the reasons for the decision within 7 days after the decision is made.

114 Grant of supervisor certificate to specified classes of persons

(1) The Regulatory Authority may grant a supervisor certificate to a person in a prescribed class of persons.

Note. A supervisor certificate is granted subject to conditions in accordance with section 115.

(2) Sections 106 to 113 do not apply to the grant of a supervisor certificate under this section.

115 Conditions on certificate

(1) A supervisor certificate is subject to any conditions imposed by—

(a) this Law; or

(b) the Regulatory Authority.

(2) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must, to the extent that a matter is within the supervisor's control, comply with this Law in relation to that matter.

(3) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must notify the Regulatory Authority of a change in his or her name or mailing address.

(4) A certified supervisor must comply with the conditions of the supervisor certificate held by that person.

Penalty: $4000.

116 Issue of certificate

If the Regulatory Authority grants a supervisor certificate under section 111 or 114, the Authority must issue a certificate containing the following information to the applicant—

(a) the name of the certified supervisor or the prescribed class of person to which the certified supervisor belongs;

(b) any conditions imposed on the supervisor certificate;

(c) the date the supervisor certificate was granted;

(d) the certified supervisor number;

(e) any other prescribed information.

117 Effect of supervisor certificate

A person who is the holder of a supervisor certificate may—

(a) be nominated as the nominated supervisor of an education and care service; and

(b) be the responsible person present at the education and care service premises in the absence of the approved provider or the nominated supervisor.

Division 2 Reassessment

118 Reassessment of suitability

(1) The Regulatory Authority may at any time reassess whether a certified supervisor is a fit and proper person to be a supervisor of an education and care service.

(2) Sections 108, 109 and 110 apply to the reassessment.

Division 3 Amendment of supervisor certificate

119 Amendment of supervisor certificate on application

(1) A certified supervisor may apply to the Regulatory Authority for an amendment of the supervisor certificate.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority must decide the application by—

(a) amending the supervisor certificate in the way applied for; or

(b) with the applicant's written agreement, amending the supervisor certificate in another way; or

(c) refusing to amend the supervisor certificate.

(4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.

(5) Without limiting subsection (3), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

120 Amendment of supervisor certificate by Regulatory Authority

(1) The Regulatory Authority may amend a supervisor certificate at any time.

(2) Without limiting subsection (1), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

(3) The Regulatory Authority must give written notice to the certified supervisor of the amendment.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

121 Notice of change of circumstances

(1) A certified supervisor must notify the Regulatory Authority of—

(a) any change in the circumstances of the supervisor that affects—

(i) a requirement under section 108 or 109; or

(ii) the information specified in the supervisor certificate under section 116; or

(b) the suspension or cancellation of a working with children check, working with children card or teacher registration held by the certified supervisor; or

(c) any disciplinary proceedings in relation to the certified supervisor under an education law of a participating jurisdiction.

Penalty: $4000.

(2) The notice must be given within 7 days after the change occurs.

122 Notice of change of information

If the certified supervisor notifies the Regulatory Authority of a change in any of the information stated on the supervisor certificate, the Regulatory Authority may amend the supervisor certificate to show the correct information.

Division 4 Suspension or cancellation of supervisor certificate

123 Grounds for suspension or cancellation of supervisor certificate

The Regulatory Authority may suspend or cancel a supervisor certificate—

(a) if the Regulatory Authority is of the opinion that the certified supervisor is no longer a fit and proper person to be a supervisor of an education and care service; or

(b) if the certified supervisor fails to comply with a condition of the supervisor certificate; or

(c) if the certified supervisor fails to comply with a requirement of this Law as applying in any participating jurisdiction in relation to a matter within the certified supervisor's control.

124 Show cause notice before suspension or cancellation

(1) This section applies if the Regulatory Authority is considering the suspension or cancellation of a supervisor certificate under section 123.

(2) The Regulatory Authority must first give the certified supervisor a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to suspend or cancel the supervisor certificate; and

(b) the reasons for the proposed suspension or cancellation; and

(c) that the certified supervisor may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension or cancellation.

125 Decision in relation to suspension or cancellation

After considering any written response from the certified supervisor received within the time allowed by section 124(2)(c) (if applicable), the Regulatory Authority—

(a) may—

(i) suspend the supervisor certificate for a period not exceeding the prescribed period; or

(ii) cancel the supervisor certificate; or

(iii) decide not to suspend or cancel the supervisor certificate; and

(b) must give the certified supervisor notice of the decision.

126 Suspension of supervisor certificate without show cause notice

The Regulatory Authority may suspend the supervisor certificate on a ground referred to in section 123 without giving the supervisor a show cause notice under section 124 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children.

127 Notice and taking effect of suspension or cancellation

(1) The Regulatory Authority must give the certified supervisor written notice of the decision to suspend or cancel the supervisor certificate under section 125 or 126.

(2) The notice of a decision to suspend must set out—

(a) the period of suspension; and

(b) the date on which it takes effect.

(3) The decision under section 125 to suspend or cancel takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(4) The decision to suspend under section 126 takes effect on the giving of the notice.

128 Suspension or cancellation of certain supervisor certificates

(1) If the teacher registration of a person is suspended, the supervisor certificate of that person is suspended at the end of 14 days after that suspension unless and until the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.

(2) If the teacher registration of a person is cancelled, the supervisor certificate of that person is cancelled at the end of 14 days after that cancellation unless the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.

(3) The supervisor certificate of a person is suspended immediately if the working with children card of that person is suspended.

(4) The supervisor certificate of a person is cancelled immediately if the working with children card of that person is cancelled.

129 Voluntary suspension of supervisor certificate

(1) A certified supervisor may apply to the Regulatory Authority for a suspension of the supervisor certificate for a period of not more than 12 months.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may, by written notice, agree to the suspension if the Authority is satisfied that it is reasonable in the circumstances.

(4) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.

(5) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the certified supervisor.

130 Surrender of a supervisor certificate by certified supervisor

(1) A certified supervisor may surrender the supervisor certificate by written notice to the Regulatory Authority.

(2) On the surrender of the supervisor certificate, the certificate is cancelled.

Division 5 Exercise of powers by another Regulatory Authority

131 Exercise of powers by another Regulatory Authority

(1) This section applies if the Regulatory Authority has granted a supervisor certificate under this Part.

(2) A Regulatory Authority of a participating jurisdiction may exercise all of the powers and perform all the functions of the Regulatory Authority under this Part in respect of the supervisor certificate if the certified supervisor works as a certified supervisor in that jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power referred to in subsection (2) after consulting with the Regulatory Authority of each participating jurisdiction in which the certified supervisor is currently working as a nominated supervisor.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a supervisor certificate in another participating jurisdiction has effect in this jurisdiction.

Division 6 Offence

132 Offence to act as supervisor without supervisor certificate

A person must not hold himself or herself out as being a certified supervisor unless the person holds a supervisor certificate.

Penalty: $10 000.

Part 5 Assessments and ratings

Division 1 Assessment and rating

133 Assessment for rating purposes

(1) The Regulatory Authority that granted the service approval for an education and care service may at any time assess the service in accordance with the national regulations to determine whether and at what rating level the service meets the National Quality Standard and the requirements of the national regulations.

(2) Until an approved education and care service is first assessed under this Part, it is taken to have the prescribed provisional rating.

134 Rating levels

(1) The rating levels for the purposes of this Law are the levels prescribed by the national regulations.

(2) The highest rating level prescribed by the national regulations can only be given by the National Authority under this Part.

135 Rating of approved education and care service

(1) After carrying out a rating assessment of an approved education and care service, the Regulatory Authority must determine the rating level (other than the highest rating level)—

(a) for each quality area stated in the National Quality Standard; and

(b) for the overall rating of the service.

(2) In determining a rating level, the Regulatory Authority may have regard to—

(a) any information obtained in the rating assessment; and

(b) any information obtained in any monitoring or investigation of the service under this Law; and

(c) the service's history of compliance with this Law as applying in any participating jurisdiction; and

(d) any other prescribed information.

136 Notice to approved education and care service of rating

(1) The Regulatory Authority must give written notice to the approved provider of an approved education and care service of the outcome of the rating assessment and the rating levels for that service determined under section 135.

(2) The notice under subsection (1) must be given within 60 days—

(a) after the completion of the assessment by an authorised officer under Part 9 of the premises of the approved education and care service for the purpose of the rating assessment; or

(b) if section 137 applies, after the end of the final period for review of the applicable decision or action referred to in section 137(1).

(3) A rating level set out in the notice is to be a rating level for the education and care service for the purposes of this Law unless a review of the rating level is sought under Division 3 or 4.

137 Suspension of rating assessment

(1) This section applies in respect of a rating assessment of an approved education and care service if the assessment has not been completed and—

(a) the provider approval or the service approval for the service is suspended or cancelled; or

(b) a compliance notice has been given to the approved provider in respect of the service; or

(c) a notice has been given under section 179 in respect of the service; or

(d) an action has been taken under section 189 in respect of a child or children being educated and cared for by the service.

(2) The Regulatory Authority must give the approved provider a written notice stating that notice of the outcome of the rating assessment will be given under section 136 within 60 days after—

(a) the end of the final period for review of the decision or action referred to in subsection (1); or

(b) if that review is sought, the determination of the review.

Division 2 Reassessment and re-rating

138 Regulatory Authority may reassess and re-rate approved education and care service

The Regulatory Authority may at any time reassess an approved education and care service or any aspect or element of an approved education and care service in accordance with the national regulations to determine whether and at what rating level it meets the National Quality Standard and the requirements of the national regulations for the purpose of rating that service.

139 Application for reassessment and re-rating by approved provider

(1) An approved provider may apply to the Regulatory Authority for a reassessment and re-rating of an approved education and care service or any aspect or element of an approved education and care service which is rateable against the National Quality Standard or the national regulations.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) An application under this section can only be made once in every 2 year period, unless the Regulatory Authority agrees otherwise.

140 Application of Division 1

Division 1 applies (with any necessary changes) to a reassessment and re-rating of an approved education and care service or any aspect or element of an approved education and care service under this Division.

Division 3 Review by Regulatory Authority

141 Review by Regulatory Authority

(1) This section applies to an approved provider that is given a notice under section 136.

(2) The approved provider may ask the Regulatory Authority that determined the rating levels to review the rating levels.

(3) A request must be made within 14 days after the approved provider receives the notice.

(4) A request must—

(a) be in writing; and

(b) set out the grounds on which review is sought; and

(c) be accompanied by the prescribed information; and

(d) include payment of the prescribed fee.

142 Process for review

(1) The person who conducts a review of rating levels for an approved education and care service for the Regulatory Authority must not be a person who was involved in the assessment or rating of the service.

(2) The person conducting the review may ask the approved provider and any person who was involved in the assessment or rating of the service for further information.

(3) A review under this section must be conducted within 30 days after the application for review is received.

(4) The period specified in subsection (3) may be extended by up to 30 days—

(a) if a request for further information is made under subsection (2); or

(b) by agreement between the approved provider and the Regulatory Authority.

143 Outcome of review by Regulatory Authority

(1) Following a review under section 142, the Regulatory Authority may—

(a) confirm the specific rating levels or the overall rating or both; or

(b) amend the specific rating levels or the overall rating or both.

(2) The Regulatory Authority must give the approved provider written notice of the decision on the review within 30 days after the decision is made.

(3) The notice must set out—

(a) the rating levels and overall rating for the approved education and care service; and

(b) the reasons for the decision.

(4) Unless an application is made under Division 4 for a review of the rating levels, the rating levels set out in the notice are the rating levels for the approved education and care service for the purposes of this Law.

Division 4 Review by Ratings Review Panel

Subdivision 1 Application for review

144 Application for further review by Ratings Review Panel

(1) This section applies if the Regulatory Authority has conducted a review of any rating levels of an approved education and care service under Division 3.

(2) The approved provider may apply to the National Authority for a further review by a Ratings Review Panel of the rating levels confirmed or amended by the Regulatory Authority under Division 3.

(3) An application may only be made on the ground that the Regulatory Authority—

(a) did not appropriately apply the prescribed processes for determining a rating level; or

(b) failed to take into account or give sufficient weight to special circumstances existing or facts existing at the time of the rating assessment.

145 Form and time of application

(1) An application must be made under section 144 within 14 days after the decision of the Regulatory Authority is received under Division 3.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) An application must not include information or evidence that was not given to the Regulatory Authority for the purpose of a determination under Division 1, 2 or 3.

(4) The National Authority must—

(a) within 7 days after receipt of the application, give written notice to the Regulatory Authority of an application under this Division to review a determination of the Regulatory Authority; and

(b) invite the Regulatory Authority to make submissions to the review.

Subdivision 2 Establishment of Ratings Review Panel

146 Establishment of Ratings Review Panel

(1) The Board must establish a Ratings Review Panel for the purposes of conducting a review under this Division.

(2) The Panel is to consist of up to 3 members appointed by the Board.

(3) One of the members is to be appointed as chairperson.

(4) The members are to be appointed from the Review Panel pool established under section 147.

147 Review Panel pool

(1) The Board must establish a pool of persons to act as members of a Ratings Review Panel.

(2) The pool may consist of persons nominated by the Regulatory Authorities of each participating jurisdiction and the Commonwealth Minister.

(3) Subject to subsection (4), the persons approved as members of the pool must have expertise or expert knowledge in one or more of the following areas—

(a) early learning and development research or practice;

(b) law;

(c) a prescribed area.

(4) A member of staff of the National Authority may be approved as a member of the pool.

148 Procedure of Panel

(1) Subject to this Law, the procedure of a Ratings Review Panel is in its discretion.

(2) The chairperson of a Panel must convene meetings of the Panel.

(3) A Panel must keep minutes of its deliberations setting out—

(a) the dates and duration of its deliberations; and

(b) its decisions on the review.

(4) The Panel must seek to make decisions by consensus.

(5) In the absence of a consensus, a decision of the Panel is a decision of the majority of the members of the Panel.

(6) If a majority decision is not reached, the Panel is taken to have confirmed the rating levels determined by the Regulatory Authority.

149 Transaction of business by alternative means

(1) A Ratings Review Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Panel.

(2) The Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) Papers may be circulated among the members for the purposes of subsection (1) by facsimile, email or other transmission of the information in the papers concerned.

Subdivision 3 Conduct of review

150 Conduct of review

(1) In conducting a review, the Ratings Review Panel may consider—

(a) any documents or other information or plans, photographs or video or other evidence available to the Regulatory Authority in carrying out the rating assessment; and

(b) the approved provider's history of compliance with this Law as applying in any participating jurisdiction; and

(c) the approved education and care service's history of compliance with this Law as applying in any participating jurisdiction; and

(d) the application for review to the Regulatory Authority; and

(e) any submissions made by the approved provider to the review by the Regulatory Authority; and

(f) the written findings on the review by the Regulatory Authority; and

(g) the application for review to the Ratings Review Panel; and

(h) any written submissions or responses made to the Ratings Review Panel by the approved provider; and

(i) any written submissions or responses made to the Ratings Review Panel by the Regulatory Authority relating to the stated grounds for review; and

(j) any advice received from the National Authority, at the request of the Ratings Review Panel, about how the prescribed processes for rating assessments are intended to be applied that is relevant to the review.

(2) The Ratings Review Panel is not required to hold an oral hearing for a review.

(3) The Ratings Review Panel may ask the Regulatory Authority to provide in writing any information in relation to the assessment.

(4) The Ratings Review Panel may ask the approved provider for further written information in relation to its application.

(5) The Ratings Review Panel must ensure that the approved provider is provided with a copy of, and an opportunity to respond in writing to, any documents, information or evidence provided to the Panel by the Regulatory Authority.

151 Decision on review by Ratings Review Panel

(1) Following a review, the Ratings Review Panel may—

(a) confirm the rating levels determined by the Regulatory Authority; or

(b) amend the rating levels.

(2) The Ratings Review Panel must make a decision on the review within 60 days after the application for review was made.

(3) The chairperson of the Panel may extend the period for the making of a decision by a Ratings Review Panel if the chairperson considers there are special circumstances that warrant that extension.

(4) The period for the making of a decision by a Ratings Review Panel may be extended by agreement between the chairperson of the Panel and the approved provider.

(5) The Ratings Review Panel must give the approved provider, the Regulatory Authority and the National Authority written notice of the decision on the review within 14 days after the decision is made setting out its findings on each review ground.

(6) A rating level confirmed or amended on a review under this Division by the Ratings Review Panel is the rating level for the approved education and care service for the purposes of this Law.

Division 5 Awarding of highest rating

152 Application for highest rating

(1) An approved provider may apply to the National Authority for an approved education and care service operated by that provider to be assessed for the highest rating level for the education and care service if the criteria determined by the National Authority are met.

(2) The highest rating level is an overall rating of the education and care service.

(3) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(4) An application may be made only once every 3 years, unless the National Authority determines otherwise in a particular case.

(5) An application may be made for the highest rating level only if the current overall rating of the service is the second highest rating level.

153 Assessment of education and care service

(1) The National Authority may determine and publish criteria that must be met by approved education and care services in respect of the award of the highest rating level.

(2) The Board must assess the approved education and care service in accordance with the criteria published under subsection (1) to determine whether the service meets the highest rating level in meeting the National Quality Standard and the requirements of the national regulations.

(3) The Board must ask for, and take into account, the advice of the Regulatory Authority in carrying out the assessment.

(4) The advice of the Regulatory Authority may include—

(a) previous rating assessments and ratings for the education and care service; and

(b) information about the service's compliance history; and

(c) any other relevant information.

154 Board may seek information and documents

(1) The Board for the purposes of the rating assessment may—

(a) ask the approved provider of the approved education and care service for any information and documents; and

(b) make any inquiries it considers appropriate.

(2) If the Board asks the approved provider for further information and documents under subsection (1), the period from the making of the request until the provision of the further information and documents is not included in the period referred to in section 155(2) for the Board to make a decision on the application.

155 Decision on application

(1) After assessing the approved education and care service, the Board must—

(a) if it is satisfied that it is appropriate to do so, give the approved education and care service the highest rating level; or

(b) otherwise refuse to give that rating.

(2) The Board must make its decision within 60 days after the application is received.

(3) The period specified in subsection (2) may be extended by up to 30 days—

(a) if a request for information and documents is made under section 154; or

(b) by agreement between the approved provider and the Board.

(4) If the Board gives the highest rating level to an approved education and care service, that rating becomes the rating level for that service.

(5) The highest rating level awarded to an approved education and care service applies to that service for 3 years, unless sooner revoked.

156 Notice of decision

(1) The Board must give written notice of its decision under section 155 in relation to an approved education and care service to—

(a) the approved provider; and

(b) the Regulatory Authority.

(2) The notice must be given within 14 days of making the decision.

157 Reassessment of highest rating level

The Board may at any time reassess an approved education and care service in accordance with section 153.

158 Revocation of highest rating level

The Board must revoke the highest rating level of an approved education and care service if—

(a) it determines that the service no longer meets the criteria for the highest rating level; or

(b) the Regulatory Authority advises the Board that the overall rating level of the education and care service has been determined to be at a level that is lower than the second highest rating level.

159 Re-application for highest rating level

(1) An approved provider of an approved education and care service that has been awarded the highest rating level may reapply for the award of the highest rating level for the service.

(2) The application must be made within 90 days before the expiry of the existing highest rating level for the approved education and care service.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

Division 6 Publication of rating levels

160 Publication of ratings

(1) The National Authority must publish the rating levels for an approved education and care service in accordance with this section.

(2) The National Authority must publish any rating levels determined under Division 1 or 2 at the end of the period for requesting a review of the rating levels under Division 3 if no request for review is received in that period.

(3) If a review by the Regulatory Authority is requested under Division 3, the rating levels must be published at the end of the period for requesting a further review of the rating under Division 4 if no request for further review is received in that period.

(4) If a further review is requested under Division 4, the rating levels must be published after the notification to the approved provider of the decision on the review.

(5) The National Authority must publish notice of the giving of the highest rating level to an approved education and care service under Division 5, as soon as possible after the Regulatory Authority and the approved provider are notified of the decision of the Board under that Division.

Part 6 Operating an education and care service

161 Offence to operate education and care service without nominated supervisor

The approved provider of an education and care service must not operate the service unless there is a nominated supervisor for that service.

Penalty:

$5000, in the case of an individual.

$25 000, in any other case.

162 Offence to operate education and care service unless responsible person is present

(1) The approved provider of an education and care service must ensure that one of the following persons is present at all times that the service is educating and caring for children—

(a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of an education and care service operated by the approved provider;

(b) the nominated supervisor of the service;

(c) a certified supervisor who has been placed in day to day charge of the service in accordance with the national regulations.

Penalty:

$5000, in the case of an individual.

$25 000, in any other case.

(2) This section does not apply to an approved family day care service.

163 Offence relating to appointment or engagement of family day care co-ordinators

(1) The approved provider of a family day care service must ensure that at all times one or more qualified persons are employed or engaged as family day care co-ordinators of the family day care service—

(a) to assist with the operation of the family day care service; and

(b) to support, monitor and train the family day care educators of that service.

Penalty:

$5000, in the case of an individual.

$25 000, in any other case.

(2) A person is a qualified person under this section if the person has the qualifications prescribed by the national regulations.

164 Offence relating to assistance to family day care educators

(1) The approved provider of a family day care service must ensure that, at all times that a family day care educator is educating and caring for a child as part of the service, one of the following persons is available to provide support to the family day care educator—

(a) the approved provider, if the approved provider is an individual, or a person with management or control of the family day care service, in any other case;

(b) the nominated supervisor of the service;

(c) a certified supervisor who has been placed in day to day charge of the family day care service in accordance with the national regulations.

Penalty:

$5000, in the case of an individual.

$25 000, in any other case.

(2) For the purposes of this section, the requirement to be available to provide support to a family day care educator includes being available to be contacted by telephone to provide advice and assistance to the family day care educator.

165 Offence to inadequately supervise children

(1) The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(2) The nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: $10 000.

(3) A family day care educator must ensure that any child being educated and cared for by the educator as a part of a family day care service is adequately supervised.

Penalty: $10 000.

166 Offence to use inappropriate discipline

(1) The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(2) The nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10 000.

(3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10 000.

(4) A family day care educator must not subject any child being educated and cared for by the educator as part of a family day care service to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10 000.

167 Offence relating to protection of children from harm and hazards

(1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(2) A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty: $10 000.

(3) A family day care educator must ensure that every reasonable precaution is taken to protect a child being educated and cared for as part of a family day care service from harm and from any hazard likely to cause injury.

Penalty: $10 000.

168 Offence relating to required programs

(1) The approved provider of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

(a) is based on an approved learning framework; and

(b) is delivered in a manner that accords with the approved learning framework; and

(c) is based on the developmental needs, interests and experiences of each child; and

(d) is designed to take into account the individual differences of each child.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(2) A nominated supervisor of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

(a) is based on an approved learning framework; and

(b) is delivered in a manner that accords with the approved learning framework; and

(c) is based on the developmental needs, interests and experiences of each child; and

(d) is designed to take into account the individual differences of each child.

Penalty: $4000.

169 Offence relating to staffing arrangements

(1) An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(2) An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets

the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(3) A nominated supervisor of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: $10 000.

(4) A nominated supervisor of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: $10 000.

(5) A family day care educator must ensure that the number of children being educated and cared for by the family day care educator at any one time is no more than the number prescribed for this purpose.

Penalty: $10 000.

(6) Subsections (1), (2), (3), (4) and (5) do not apply in respect of an education and care service—

(a) to the extent that it holds a temporary waiver under Division 6 of Part 3 in respect of this requirement; or

(b) to the extent that it holds a service waiver under Division 5 of Part 3 in respect of this requirement.

(7) The National Authority may, on application, determine qualifications, including foreign qualifications, to be equivalent to the qualifications required by the national regulations.

(8) If a determination is made under subsection (7), any person holding the qualification is to be taken to be qualified in accordance with the national regulations.

170 Offence relating to unauthorised persons on education and care service premises

(1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.

(2) The approved provider of the education and care service must ensure that an unauthorised person does not remain at the education and care service premises while children are being educated and cared for at the

premises unless the person is under the direct supervision of an educator or other staff member of the service.

Penalty:

$1000, in the case of an individual.

$5000, in any other case.

(3) The nominated supervisor of the education and care service must ensure that an unauthorised person does not remain at the education and care service premises while children are being educated and cared for at the premises unless the person is under the direct supervision of an educator or other staff member of the service.

Penalty: $1000.

(4) A family day care educator must ensure that an unauthorised person does not remain at the residence or approved family day care venue at which the educator is educating and caring for a child as part of a family day care service unless the unauthorised person is under the direct supervision of the educator.

Penalty: $1000.

(5) In this section—

authorised nominee, in relation to a child, means a person who has been given permission by a parent or family member of the child to collect the child from the education and care service or the family day care educator;

unauthorised person means a person who is not—

(a) a person who holds a current working with children check or working with children card; or

(b) a parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or

(c) an authorised nominee of a parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or

(d) in the case of an emergency, medical personnel or emergency service personnel; or

(e) a person who is permitted under the working with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

(6) A reference in subsection (5) to a parent or family member of a child does not include a person—

(a) whose access to the child is prohibited or restricted by an order of a court or tribunal of which the approved provider, nominated supervisor or family day care educator (as the case requires) is aware; or

(b) who is an inappropriate person within the meaning of section 171.

171 Offence relating to direction to exclude inappropriate persons from education and care service premises

(1) The Regulatory Authority may direct an approved provider, a nominated supervisor or a family day care educator to exclude a person whom the Authority is satisfied is an inappropriate person from the education and care service premises while children are being educated and cared for at the premises for such time as the Authority considers appropriate.

(2) A person to whom a direction is given under subsection (1) must comply with the direction.

Penalty:

$10 000, in the case of an individual.

$50 000, in any other case.

(3) In this section—

inappropriate person means a person—

(a) who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the education and care service; or

(b) whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for him or her to be on the education and care service premises while children are being educated and cared for by the education and care service.

Example. A person who is under the influence of drugs or alcohol.

172 Offence to fail to display prescribed information

An approved provider of an education and care service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the education and care service premises—

(a) the provider approval;

(b) the service approval;

(c) the nominated supervisor or the prescribed class of persons to which the nominated supervisor belongs;

(d) the rating of the service;

(e) any service waivers or temporary waivers held by the service;

(f) any other prescribed matters.

Penalty:

$3000, in the case of an individual.

$15 000, in any other case.

173 Offence to fail to notify certain circumstances to Regulatory Authority

(1) An approved provider must notify the Regulatory Authority of the following in relation to the approved provider or each approved education and care service operated by the approved provider—

(a) a change in the name of the approved provider;

(b) any appointment or removal of a person with management or control of an education and care service operated by the approved provider;

(c) a failure to commence operating an education and care service within 6 months (or within the time agreed with the Regulatory Authority) after being granted a service approval for the service.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(2) An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider—

(a) if the approved provider is notified of the suspension or cancellation of a working with children card or teacher registration of, or disciplinary proceedings under an education law of a participating jurisdiction in respect of, a nominated supervisor or certified supervisor engaged by the service;

(b) if a nominated supervisor of an approved education and care service ceases to be employed or engaged by the service or withdraws consent to the nomination;

(c) any proposed change to the education and care service premises of an approved education and care service (other than a family day care residence);

(d) ceasing to operate the education and care service;

(e) in the case of an approved family day care service, a change in the location of the principal office of the service;

(f) an intention to transfer a service approval, as required under section 59.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—

(a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and

(b) in the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

174 Offence to fail to notify certain information to Regulatory Authority

(1) An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider or each approved education and care service operated by the approved provider—

(a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;

(b) information in respect of any other prescribed matters.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

(a) any serious incident at the approved education and care service;

(b) complaints alleging—

(i) that the safety, health or wellbeing of a child or children was or is being compromised while that child or children is or are being educated and cared for by the approved education and care service; or

(ii) that this Law has been contravened;

(c) information in respect of any other prescribed matters.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—

(a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and

(b) in the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

(5) In this section—

serious incident means an incident or class of incidents prescribed by the national regulations as a serious incident.

175 Offence relating to requirement to keep enrolment and other documents

(1) An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty:

$4000, in the case of an individual.

$20 000, in any other case.

(2) Documents referred to in subsection (1)—

(a) must, to the extent practicable, be kept at the education and care service premises if they relate to—

(i) the operation of the service; or

(ii) any staff member employed or engaged by the service; or

(iii) any child cared for, or educated at, those premises—

in the previous 12 months; and

(b) in any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

(3) A family day care educator who educates and cares for a child at a residence or approved family day care venue, as part of a family day care service, must keep the prescribed documents available for inspection by an authorised officer at that residence or venue.

Penalty: $4000.

Part 7 Compliance with this Law

Division 1 Notices

176 Compliance directions

(1) This section applies if the Regulatory Authority is satisfied that an education and care service has not complied with a provision of this Law that is prescribed by the national regulations.

(2) The Regulatory Authority may give the approved provider a written direction (a ***compliance direction***) requiring the approved provider to take the steps specified in the direction to comply with that provision.

(3) An approved provider must comply with a direction under subsection (2) within the period (being not less than 14 days) specified in the direction.

Penalty:

$2000, in the case of an individual.

$10 000, in any other case.

177 Compliance notices

(1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.

(2) The Regulatory Authority may give the approved provider a notice (a ***compliance notice***) requiring the approved provider to take the steps specified in the notice to comply with that provision.

(3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty:

$6000, in the case of an individual.

$30 000, in any other case.

178 Notice to suspend education and care by a family day care educator

(1) This section applies if the Regulatory Authority is satisfied that because of the conduct of, or the inadequacy of the service provided by, a family day care educator engaged by or registered with a family day care service—

(a) the approved provider or the nominated supervisor of an approved family day care service is not complying with any provision of this Law; or

(b) there is a risk to the safety, health or wellbeing of children being educated and cared for by the family day care educator.

(2) The Regulatory Authority may give the approved provider, the nominated supervisor (if applicable) and the educator a notice (***show cause notice***) stating—

(a) that the Regulatory Authority intends to give the approved provider a notice directing the provider to suspend the provision of education and care by the educator; and

(b) the reasons for the proposed direction; and

(c) that the approved provider, nominated supervisor or educator, (as the case requires) may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in respect of the proposed direction.

(3) The show cause notice must be served by delivering it personally to the family day care educator.

(4) The Regulatory Authority—

(a) must consider any submissions from the approved provider, the nominated supervisor and the family day care educator received within the time allowed by subsection (2)(c); and

(b) may consider any other submissions and any matters the Regulatory Authority considers relevant; and

(c) may—

(i) give the approved provider a notice directing the provider to suspend the provision of education and care of children by the family day care educator; or

(ii) decide not to give that direction.

(5) The Regulatory Authority must give the family day care educator a notice of the decision under subsection (4).

(6) If the Regulatory Authority decides not to give the direction to suspend, the Regulatory Authority must give the approved provider notice of the decision.

(7) A person must comply with a direction under subsection (4).

Penalty:

$6000, in the case of an individual.

$30 000, in any other case.

179 Emergency action notices

(1) This section applies if the Regulatory Authority is satisfied that an education and care service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.

(2) The Regulatory Authority may, by written notice, direct the approved provider of the education and care service to take the steps specified in the notice to remove or reduce the risk within the time (not more than 14 days) specified in the notice.

(3) An approved provider must comply with a direction given under subsection (2).

Penalty:

$6000, in the case of an individual.

$30 000, in any other case.

Division 2 Enforceable undertakings

180 Enforceable undertakings

(1) This section applies if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law.

(2) The Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.

(3) A person may with the consent of the Regulatory Authority withdraw or amend an undertaking.

(4) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.

(5) While an undertaking is in force, proceedings may not be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking is given.

(6) If a person complies with the requirements of an undertaking, no further proceedings may be brought for any offence constituted by the

contravention or alleged contravention in respect of which the undertaking was given.

(7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

181 Failure to comply with enforceable undertakings

(1) If the Regulatory Authority considers that the person who gave an undertaking under section 180 has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order under subsection (2) to enforce the undertaking.

(2) If the relevant tribunal or court is satisfied that the person has failed to comply with a term of the undertaking, the relevant tribunal or court may make any of the following orders—

(a) an order directing the person to comply with that term of the undertaking;

(b) an order that the person take any specified action for the purpose of complying with the undertaking;

(c) any other order that the relevant tribunal or court considers appropriate in the circumstances.

(3) If the relevant tribunal or court determines that the person has failed to comply with a term of the undertaking, proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

Division 3 Prohibition notices

182 Grounds for issuing prohibition notice

(1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed—

(a) to remain on the education and care service premises; or

(b) to provide education and care to children.

(2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following—

(a) an approved provider;

(b) a certified supervisor;

(c) an educator;

(d) a family day care educator;

(e) an employee;

(f) a contractor;

(g) a volunteer—

or in any other capacity.

183 Show cause notice to be given before prohibition notice

(1) Before giving a person a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***)—

(a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and

(b) stating the reasons for the proposed prohibition; and

(c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

(2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

184 Deciding whether to issue prohibition notice

(1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.

(2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.

185 Content of prohibition notice

A prohibition notice given to a person must state—

(a) that the person is prohibited from doing any of the following—

(i) providing education and care to children for an education and care service;

(ii) being engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;

(iii) carrying out any other activity relating to education and care services; and

(b) that the person may apply for cancellation of the notice; and

(c) how an application for cancellation must be made.

186 Cancellation of prohibition notice

(1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the Regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.

(2) A person for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) be signed by the person.

(4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were—

(a) to remain at the education and care service premises; or

(b) to provide education and care to children.

(5) The application may include a statement setting out any change in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.

(6) The Regulatory Authority must decide the application as soon as practicable after its receipt.

187 Person must not contravene prohibition notice

While a prohibition notice is in force under this Law as applying in any participating jurisdiction for a person, the person must not—

(a) provide education and care to children for an education and care service; or

(b) be engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or

(c) carry out any other activity relating to education and care services.

Penalty: $20 000.

188 Offence to engage person to whom prohibition notice applies

An approved provider must not engage a person as a supervisor, educator, family day care educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, an education and care service if the provider knows, or ought reasonably to know, a prohibition notice is in force under this Law as applying in any participating jurisdiction in respect of the person.

Penalty:

$20 000, in the case of an individual.

$100 000, in any other case.

Division 4 Emergency removal of children

189 Emergency removal of children

(1) This section applies if the Regulatory Authority considers, on reasonable grounds, that there is an immediate danger to the safety or health of a child or children being educated and cared for by an education and care service.

(2) The Regulatory Authority may remove, or cause the removal of, the child or children from the education and care service premises.

(3) In exercising a power under subsection (2)—

- (a) the Regulatory Authority may be given such assistance by other persons (including police officers) as is reasonably required; and
- (b) the Regulatory Authority and any person assisting the Regulatory Authority may—
  - (i) enter the education and care service premises, without warrant; and
  - (ii) use reasonable force as necessary.

(4) If a child is removed from the education and care service premises under subsection (2), the Regulatory Authority must ensure that the child's parents are immediately notified of the situation and the child's current location.

Part 8 Review

Division 1 Internal review

190 Reviewable decision—internal review

A reviewable decision for internal review is a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—

- (a) to refuse to grant a provider approval, a service approval or a supervisor certificate; or

(b) to amend or refuse to amend a provider approval, a service approval or a supervisor certificate; or

(c) to impose a condition on a provider approval, a service approval or a supervisor certificate; or

(d) to suspend—

(i) a provider approval under section 28;

(ii) a service approval under section 73;

(iii) a supervisor certificate under section 126; or

(e) to refuse to consent to the transfer of a service approval; or

(f) to revoke a service waiver; or

(g) to issue a compliance direction; or

(h) to issue a compliance notice.

191 Internal review of reviewable decisions

(1) A person who is the subject of a reviewable decision for internal review may apply to the Regulatory Authority in writing for review of the decision.

(2) An application under subsection (1) must be made—

(a) within 14 days after the day on which the person is notified of the decision; or

(b) if the person is not notified of the decision, within 14 days after the person becomes aware of the decision.

(3) The person who conducts the review for the Regulatory Authority must not be a person who was involved in the assessment or investigation of the person or service to whom or which the decision relates.

(4) The person conducting the review may ask the person who applied for the review for further information.

(5) A review under this section must be conducted within 30 days after the application is made.

(6) The period specified in subsection (5) may be extended by up to 30 days—

(a) if a request for further information is made under subsection (4); or

(b) by agreement between the person who applied for the review and the Regulatory Authority.

(7) The Regulatory Authority may, in relation to an application under subsection (1)—

(a) confirm the decision; or

(b) make any other decision that the Regulatory Authority thinks appropriate.

Division 2 External review

192 Reviewable decision—external review

A reviewable decision for external review is—

(a) a decision of the Regulatory Authority made under section 191 (other than a decision in relation to the issue of a compliance direction or a compliance notice); or

(b) a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—

(i) to suspend a provider approval under section 27; or

(ii) to cancel a provider approval under section 33; or

(iii) to suspend a service approval under section 72; or

(iv) to cancel a service approval under section 79 or 307; or

(v) to suspend or cancel a supervisor certificate under section 125; or

(vi) to direct the approved provider of a family day care service to suspend the care and education of children by a family day care educator; or

(vii) to give a prohibition notice or to refuse to cancel a prohibition notice.

Note. A person is not entitled to a review under this section in respect of a suspension or cancellation of a service approval if that suspension or cancellation relates only to an associated children's service. Any right of review would be under the children's services law.

193 Application for review of decision of the Regulatory Authority

(1) A person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision.

(2) An application must be made within 30 days after the day on which the applicant is notified of the decision that is to be reviewed.

(3) After hearing the matter, the relevant tribunal or court may—

(a) confirm the decision of the Regulatory Authority; or

(b) amend the decision of the Regulatory Authority; or

(c) substitute another decision for the decision of the Regulatory Authority.

(4) In determining any application under this section, the relevant tribunal or court may have regard to any decision under this Law as applying in another participating jurisdiction of a relevant tribunal or court of that jurisdiction.

Division 3 General

194 Relationship with Act establishing administrative body

This Part applies despite any provision to the contrary in the Act that establishes the relevant tribunal or court but does not otherwise limit that Act.

Part 9 Monitoring and enforcement

Division 1 Authorised officers

195 Authorisation of authorised officers

(1) The Regulatory Authority may authorise any person who the Regulatory Authority is satisfied is an appropriate person to be an authorised officer for the purposes of this Law.

(2) In considering whether a person is an appropriate person to be an authorised officer, the Regulatory Authority must take into account the requirements for the authorisation of authorised officers determined by the National Authority under subsection (5).

(3) An authorised officer holds office on any terms and conditions stated in the authorisation.

(4) A defect in the authorisation of an authorised officer does not affect the validity of any action taken or decision made by the authorised officer under this Law.

(5) The National Authority may determine the requirements for the authorisation of authorised officers under this section.

(6) A determination under subsection (5) must be published on the website of the National Authority.

196 Identity card

(1) The Regulatory Authority must issue to each authorised officer an identity card in the form prescribed by the national regulations.

(2) The identity card must identify the authorised officer as an authorised officer authorised by the Regulatory Authority under this Law.

(3) An authorised officer must—

(a) carry the identity card whenever the officer is exercising his or her functions under this Law; and

(b) show the identity card—

(i) before exercising a power of entry under this Law; and

(ii) at any time during the exercise of a power under this Law when asked to do so.

Penalty: $1000.

(4) An authorised officer who fails to comply with subsection (3)(b) in relation to the exercise of a power ceases to be authorised to exercise the power in relation to the matter.

(5) An authorised officer must return his or her identity card to the Regulatory Authority on ceasing to be authorised as an authorised officer for the purposes of this Law.

Penalty: $1000.

Division 2 Powers of entry

197 Powers of entry for assessing and monitoring approved education and care service

(1) An authorised officer may exercise a power under this section for any of the following purposes—

(a) monitoring compliance with this Law;

(b) a rating assessment of an approved education and care service under Part 5;

(c) obtaining information requested under section 35 or 83.

(2) An authorised officer may, at any reasonable time and with such assistants as may reasonably be required, enter any education and care service premises and do any of the following—

(a) inspect the premises and any plant, equipment, vehicle or other thing;

(b) photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises;

(c) inspect and make copies of, or take extracts from, any document kept at the premises;

(d) take any document or any other thing at the premises;

(e) ask a person at the premises—

(i) to answer a question to the best of that person's knowledge, information and belief;

(ii) to take reasonable steps to provide information or produce a document.

(3) A power under subsection (1)(a) to (d) is limited to a document or thing that is used or likely to being used in the provision of the education and care service.

(4) If the authorised officer takes any document or thing under subsection (2), he or she must—

(a) give notice of the taking of the document or thing to the person apparently in charge of it or to an occupier of the premises; and

(b) return the document or thing to that person or the premises within 7 days after taking it.

(5) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

(b) the occupier of the residence has consented in writing to the entry and the inspection.

198 National Authority representative may enter service premises in company with Regulatory Authority

(1) A person authorised by the National Authority, in company with an authorised officer, may enter premises used by an approved education and care service within the usual hours of operation of the service at those premises.

(2) The entry by the person authorised by the National Authority is solely for the purpose of informing the National Authority of the rating assessment processes of the Regulatory Authority under Part 5 to assist the National Authority in promoting consistency across participating jurisdictions.

199 Powers of entry for investigating approved education and care service

(1) An authorised officer may exercise the powers under this section to investigate an approved education and care service if the authorised officer reasonably suspects that an offence may have been or may be being committed against this Law.

(2) The authorised officer, with any necessary assistants, may with or without the consent of the occupier of the premises, enter the education and care service premises at any reasonable time and do any of the following—

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

(3) A power under subsection (1)(b) to (d) is limited to a document or thing that is used or likely to be used in the provision of the education and care service.

(4) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

(b) the occupier of the residence has consented in writing to the entry and the inspection.

200 Powers of entry to business premises

(1) An authorised officer may exercise powers under this section if the authorised officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against this Law are present at the principal office or any other business premises of an approved provider.

(2) The authorised officer, with the consent of the occupier of the premises, may enter the premises and do any of the following—

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

(3) An authorised officer must not enter and search the premises with the consent of the occupier unless, before the occupier consents to that entry, the authorised officer has—

(a) produced his or her identity card for inspection; and

(b) informed the occupier—

(i) of the purpose of the search and the powers that may be exercised; and

(ii) that the occupier may refuse to give consent to the entry and search or to the taking of anything found during the search; and

(iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.

201 Entry to premises with search warrant

(1) An authorised officer under the authority of a search warrant may enter premises if the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103 at or from the premises.

(2) An authorised officer under the authority of a search warrant may enter any education and care service premises or any premises where the authorised officer reasonably believes that an approved education and care service is operating if the authorised officer reasonably believes that the education and care service is operating in contravention of this Law.

(3) An authorised officer under the authority of a search warrant may enter the principal office or any other business premises of an approved provider if the authorised officer reasonably believes that documents or other evidence relevant to the possible commission of an offence against this Law are present at those premises.

(4) Schedule 2 applies in relation to the issue of the search warrant and the powers of the authorised officer on entry.

202 Seized items

(1) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must take reasonable steps to return the thing to the person from whom it was taken if the reason for the taking no longer exists.

(2) If the thing has not been returned within 60 days after it was taken, the authorised officer must take reasonable steps to return it unless—

(a) proceedings have been commenced within the period of 60 days and those proceedings (including any appeal) have not been completed; or

(b) a court makes an order under section 203 extending the period the thing can be retained.

(3) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must provide the owner of the thing with reasonable access to the thing.

203 Court may extend period

(1) An authorised officer may apply to a court within the period of 60 days referred to in section 202 or within a period extended by the court under this section for an extension of the period for which the thing can be held.

(2) The court may order the extension if satisfied that retention of the thing is necessary—

(a) for the purposes of an investigation into whether an offence has been committed; or

(b) to enable evidence of an offence to be obtained for the purposes of a prosecution.

(3) The court may adjourn an application to enable notice of the application to be given to any person.

Division 3 Other powers

204 Power to require name and address

(1) This section applies if—

(a) an authorised officer finds a person committing an offence against this Law; or

(b) an authorised officer finds a person in circumstances that lead, or the authorised officer has information that leads, the officer to reasonably suspect the person is committing, or has committed, an offence against this Law.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

205 Power to require evidence of age, name and address of person

(1) This section applies if—

(a) the national regulations require a staff member, a family day care educator or a volunteer to have attained a prescribed minimum age; and

(b) an authorised officer reasonably suspects that a person—

(i) is employed or engaged as a staff member or a family day care educator by, or is a volunteer at, an education and care service; and

(ii) has not attained that prescribed minimum age.

(2) The authorised officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.

(3) Also, the authorised officer may require the person to provide evidence of the correctness of the stated date of birth—

(a) at the time of making the requirement under subsection (2) if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth; or

(b) otherwise, within 14 days of making the requirement under subsection (2).

(4) The authorised officer may require the person to state the person's name and residential address if—

(a) the person refuses or is unable to comply with a requirement under subsection (2) or (3); or

(b) according to the date of birth the person states, or the evidence of the person's age the person gives, the person has not attained the prescribed minimum age.

206 Power of authorised officers to obtain information documents and evidence

(1) An authorised officer may exercise a power under this section for any of the following purposes—

(a) monitoring compliance with this Law;

(b) a rating assessment of an approved education and care service under Part 5;

(c) obtaining information requested under section 35 or 83.

(2) An authorised officer may, by written notice, require a specified person to provide to the authorised officer, by writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice.

(3) The time specified in the notice must not be less than 14 days from the date the notice is issued.

(4) In this section—

specified person means a person who is or has been—

(a) an approved provider, a certified supervisor or a staff member of, or a volunteer at, an approved education and care service; or

(b) a family day care educator.

Division 4 Offences relating to enforcement

207 Offence to obstruct authorised officer

A person must not obstruct an authorised officer in exercising his or her powers under this Law.

Penalty:

$8000, in the case of an individual.

$40 000, in any other case.

208 Offence to fail to assist authorised officer

A person must not, without reasonable excuse—

(a) refuse to answer a question lawfully asked by an authorised officer (other than a question asked under section 197(2)(e)); or

(b) refuse to provide information or produce a document lawfully required by an authorised officer; or

(c) fail to comply with a requirement made by an authorised officer under clause 5(2)(f) or (g) of Schedule 2.

Penalty:

$8000, in the case of an individual.

$40 000, in any other case.

209 Offence to destroy or damage notices or documents

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept under this Law.

Penalty:

$8000, in the case of an individual.

$40 000, in any other case.

210 Offence to impersonate authorised officer

A person must not impersonate an authorised officer.

Penalty: $8000.

211 Protection against self incrimination

(1) An individual may refuse or fail to give information or do any other thing that the individual is required to do by or under this Law if giving the information or doing the thing might incriminate the individual.

(2) However, subsection (1) does not apply to—

(a) the production of a document or part of a document that is required to be kept under this Law; or

(b) the giving of the individual's name or address in accordance with this Law; or

(c) anything required to be done under section 215 or 216.

(3) Any document referred to in subsection (2)(a) that is produced by an individual or any information obtained directly or indirectly from that document produced by an individual is not admissible in evidence against the individual in any criminal proceedings (except for criminal proceedings under this Law) or in any civil proceedings.

212 Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this Part or Schedule 2, an authorised officer must—

(a) identify himself or herself to the person as an authorised officer by producing the officer's identity card; and

(b) warn the person that a failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and

(c) in the case of an individual, warn the person about the effect of section 211.

(2) Nothing in this section prevents an authorised officer from obtaining and using evidence given to the authorised officer voluntarily by any person.

(3) This section does not apply to a request made under section 197.

213 Occupier's consent to search

(1) An occupier who consents in writing to the entry and inspection of his or her premises under Division 2 must be given a copy of the signed consent immediately.

(2) If, in any proceeding, a written consent is not produced to the court, it must be presumed until the contrary is proved that the occupier did not consent to the entry and search.

Division 5 Powers of Regulatory Authority

214 Powers of Regulatory Authority to obtain information for rating purposes

The Regulatory Authority may, for the purpose of a rating assessment—

(a) ask the approved provider of the approved education and care service for any information and documents; and

(b) make any inquiries it considers appropriate.

215 Power of Regulatory Authority to obtain information, documents and evidence by notice

(1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.

(2) The Regulatory Authority may, by written notice, require a specified person—

(a) to provide to the Regulatory Authority, in writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice; or

(b) to produce to the Regulatory Authority, or to a person specified in the notice acting on the Regulatory Authority's behalf, in accordance with the notice, any relevant document referred to in the notice; or

(c) to appear before the Regulatory Authority, or a person specified in the notice acting on the Regulatory Authority's behalf, at a time and place specified in the notice to give any evidence or to produce any relevant document specified in the notice.

(3) The notice must—

(a) warn the person that failure or refusal to comply with the notice would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority or the person specified in the notice acting on the Regulatory Authority's behalf may require the evidence referred to in subsection (2)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.

(5) The person may give evidence under subsection (2)(c) by telephone or video conference or other electronic means unless the Regulatory Authority, on reasonable grounds, requires the person to give that evidence in person.

(6) In this section, ***specified person*** has the meaning given in section 206(4).

216 Power of Regulatory Authority to obtain information, documents and evidence at education and care service

(1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.

(2) The Regulatory Authority may require a specified person at an education and care service—

(a) to provide the Regulatory Authority, or a person acting on the Regulatory Authority's behalf, with any specified information that is relevant to the suspected offence; or

(b) to produce to the Regulatory Authority, or to a person acting on the Regulatory Authority's behalf, any specified document that is relevant to the suspected offence.

(3) The Regulatory Authority must—

(a) warn the person that failure or refusal to comply with the requirement would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority must not require a person to remain at the education and care service more than a reasonable time for the purposes of providing information or producing documents under subsection (2).

(5) In this section, ***specified person*** has the meaning given in section 206(4).

217 Offence to fail to comply with notice or requirement

A person must not refuse or fail to comply with a requirement under section 215 or 216 to the extent that the person is capable of complying with that requirement.

Penalty:

$8000, in the case of an individual.

$40 000, in any other case.

218 Offence to hinder or obstruct Regulatory Authority

A person must not obstruct or hinder the Regulatory Authority in exercising a power under section 215 or 216.

Penalty:

$8000, in the case of an individual.

$40 000, in any other case.

219 Self incrimination not an excuse

(1) A person is not excused from complying with a notice or requirement under section 215 or 216 on the ground that complying with the notice or requirement may result in information being provided that might tend to incriminate the person.

(2) Subject to subsection (3), disclosed information is not admissible in evidence against the individual in any criminal proceedings (other than proceedings under section 218 or 295) or in any civil proceedings.

(3) Despite subsection (2), any information obtained from a document or documents required to be kept under this Law that is produced by a person is admissible in evidence against the person in criminal proceedings under this Law.

(4) In this section—

disclosed information means—

(a) the answer by an individual to any question asked under section 215 or 216; or

(b) the provision by an individual of any information in compliance with section 215 or 216; or

(c) any information obtained directly or indirectly because of that answer or the provision of that information.

Part 10 Ministerial Council

220 Functions of Ministerial Council

(1) The Ministerial Council has the following functions under this Law—

(a) to oversee the implementation and administration of the National Quality Framework;

(b) to promote uniformity in the application and enforcement of the National Quality Framework;

(c) to review and approve the National Quality Standard and set specific standards for education and care services and classes of education and care services;

(d) to review and approve the rating level system to be used in rating education and care services;

(e) to review and approve the fee structure under this Law;

(f) to review and approve new learning frameworks for the purposes of this Law;

(g) to monitor the implementation and operation of, and recommend or approve amendments to, this Law;

(h) to monitor the implementation and operation of the national regulations;

(i) to review the education and care services to which this Law applies and recommend, or amend the national regulations to provide for, the inclusion of new classes of education and care services under this Law;

(j) to appoint the members of the Board;

(k) to monitor and review the performance of the National Authority;

(l) any other functions given to the Ministerial Council by or under this Law.

(2) The Ministerial Council must have regard to the objectives and guiding principles of the National Quality Framework in carrying out its functions.

221 Powers of Ministerial Council

The Ministerial Council may—

(a) make recommendations to the Board in relation to the exercise of the National Authority's functions under this Law; and

(b) refer any matter to the Board for consideration and advice; and

(c) make regulations in accordance with this Law; and

(d) do anything necessary or convenient to be done in carrying out its functions.

222 Directions

(1) The Ministerial Council may give directions to the Board in relation to the carrying out of the National Authority's functions under this Law, including the following—

(a) reporting and accountability to the Ministerial Council and Regulatory Authorities;

(b) the application of the National Quality Framework;

(c) the rating level system to be used in rating education and care services;

(d) the collection and use of information.

(2) The Ministerial Council may give directions to a Regulatory Authority with respect to the administration of the National Quality Framework.

(3) A direction under this section cannot be about—

(a) a particular person or education and care service; or

(b) a particular application, approval, notification, assessment or proceeding; or

(c) the determination of a rating for a particular education and care service.

(4) A direction must be in writing.

(5) A direction must not be inconsistent with this Law.

(6) A direction is not a legislative instrument or an instrument of a legislative character.

(7) A direction to the Board under this section must be given to the Chairperson of the Board.

(8) The Board or a Regulatory Authority must comply with a direction given to the Board or the Authority by the Ministerial Council under this section.

223 How Ministerial Council exercises powers

(1) The Ministerial Council is to give a direction for the purposes of this Law by resolution of the Council passed in accordance with procedures determined by the Council.

(2) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

Part 11 Australian Children's Education and Care Quality Authority

Division 1 The National Authority

224 National Authority

(1) The Australian Children's Education and Care Quality Authority is established.

(2) The National Authority—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(3) The National Authority represents the State.

225 Functions of National Authority

(1) The functions of the National Authority are as follows—

(a) to guide the implementation and administration of the National Quality Framework and to monitor and promote consistency in its implementation and administration;

(b) to report to and advise the Ministerial Council on the National Quality Framework;

(c) to report to the Regulatory Authorities and the relevant Commonwealth Department in relation to the following—

(i) the collection of information under this Law;

(ii) the evaluation of the National Quality Framework;

(d) to establish consistent, effective and efficient procedures for the operation of the National Quality Framework;

(e) to determine the arrangements for national auditing for the purposes of this Law;

(f) to keep national information on the assessment, rating and regulation of education and care services;

(g) to establish and maintain national registers of approved providers, approved education and care services and certified supervisors and to publish those registers;

(h) to promote and foster continuous quality improvement by approved education and care services;

(i) to publish, monitor and review ratings of approved education and care services;

(j) to make determinations with respect to the highest level of rating for approved education and care services;

(k) in conjunction with the Regulatory Authorities, to educate and inform education and care services and the community about the National Quality Framework;

(l) to publish guides and resources—

(i) to support parents and the community in understanding quality in relation to education and care services; and

(ii) to support the education and care services sector in understanding the National Quality Framework;

(m) to publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children;

(n) to publish practice notes and guidelines for the application of this Law;

(o) to determine the qualifications for authorised officers and to provide support and training for staff of Regulatory Authorities;

(p) to determine the qualifications required to be held by educators, including the assessment of equivalent qualifications;

(q) any other function given to the National Authority by or under this Law.

(2) In carrying out its functions, the National Authority must ensure that the regulatory burden on education and care services is minimised as far as possible.

(3) In carrying out its functions, the National Authority must have regard to the objectives and guiding principles of the National Quality Framework.

226 National Authority may advise and seek guidance of Ministerial Council

The National Authority may provide advice to and seek the guidance of the Ministerial Council if the National Authority considers it necessary in carrying out its functions under this Law.

227 Powers of National Authority

(1) The National Authority has all the powers of an individual and, in particular, may—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) borrow and invest money; and

(d) develop and supply resources and consultancy services to the education and care sector on a commercial basis; and

(e) do anything necessary or convenient to be done in carrying out its functions.

(2) Without limiting subsection (1), the National Authority may—

(a) collect, hold and use information obtained under this Law by the National Authority or a Regulatory Authority about the provision of education and care to children including information about outcomes for children and about providers of education and care services in each participating jurisdiction; and

Note. See section 270, which provides for the National Authority to publish information about approved providers.

(b) develop protocols for communication and dispute resolution among the National Authority, the Regulatory Authorities and the relevant Commonwealth Department to provide for consistency in the implementation and administration of the National Quality Framework; and

(c) collect, waive, reduce, defer and refund fees and enter into agreements in relation to fees in accordance with the national regulations; and

(d) enter into agreements in relation to fees and funding with the Regulatory Authorities; and

(e) undertake research and evaluation activities for the purpose of its functions under this Law.

228 Co-operation with participating jurisdictions and Commonwealth

(1) The National Authority may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation with or with the assistance of any of the following—

(a) a government agency of a participating jurisdiction or of the Commonwealth; or

(b) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth; or

(c) a prescribed body or body in a prescribed class of bodies.

(2) In particular, the National Authority may—

(a) ask a person or body referred to in subsection (1) for information that the Authority requires to carry out its functions under this Law; and

(b) use the information to carry out its functions under this Law.

(3) A person or body referred to in subsection (1) that receives a request for information from the National Authority is authorised to give the information to the National Authority.

229 National audit functions

(1) The National Authority is to undertake national audits of the administration of the National Quality Framework and—

(a) review the findings of the national audit processes; and

(b) evaluate trends in the administration of the National Quality Framework across participating jurisdictions; and

(c) advise the Regulatory Authorities about the outcomes of the national audit processes and its evaluations; and

(d) report to the Ministerial Council on the outcomes of the national audit and evaluation processes.

(2) The audits are to be undertaken at the intervals, and by the means, determined by the National Authority.

Division 2 The Board of the National Authority

Subdivision 1 Establishment and responsibilities

230 National Authority Board

The National Authority has a governing body known as the Australian Children's Education and Care Quality Authority Board.

231 Responsibilities of Board

(1) The affairs of the National Authority are to be controlled by the Board.

(2) The Board has all the powers and duties and all the functions of the National Authority.

(3) All acts and things done in the name of, or on behalf of, the National Authority by or with the authority of the Board are taken to have been done by the National Authority.

(4) The Board must ensure that the National Authority carries out its functions and duties and exercises its powers in a proper, effective and efficient way.

(5) The Board has any other functions given to it under this Law.

(6) Any report to the Ministerial Council under this Law is to be made by or through the Board.

(7) The Board must act in accordance with any directions given to the National Authority by the Ministerial Council under section 222.

(8) The Board must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

232 Membership of Board

(1) The Board consists of up to 13 members appointed by consensus of the Ministerial Council.

(2) The Ministerial Council must appoint by consensus one person to be the Chairperson of the Board.

(3) One member is to be appointed for each State and Territory from 2 persons nominated by each State or Territory Minister on the Ministerial Council.

(4) The Commonwealth Minister may nominate up to 8 persons for appointment to the Board.

(5) Four of the persons nominated under subsection (4) must be appointed to the Board.

(6) The Ministerial Council must appoint by consensus one of the members referred to in subsection (3) or (5) to be the Deputy Chairperson of the Board.

(7) The members appointed to the Board must have professional skills and expertise in one or more of the following areas—

(a) assessment of quality in education and care services or other relevant services;

(b) early childhood development;

(c) labour market and workforce participation and development;

(d) best practice regulation;

(e) financial management and corporate governance;

(f) research, evaluation and performance;

(g) any other areas of skill determined by the Ministerial Council.

(8) In appointing members of the Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

Subdivision 2 Members

233 Terms of office of members

(1) Subject to this Subdivision, members of the Board hold office on the terms and conditions determined by the Ministerial Council.

(2) Subject to this Subdivision, a member of the Board holds office for a period, being not more than 3 years, specified in the member's appointment.

(3) A member may be reappointed for a further period of not more than 3 years.

(4) The maximum consecutive period of appointment of a member is 2 terms.

234 Remuneration

The remuneration and allowances (if any) to be paid to members of the Board are to be determined from time to time by the Ministerial Council.

235 Vacancy in the office of member

(1) The office of a member of the Board becomes vacant if the member—

(a) completes a term of office; or

(b) resigns the office by instrument addressed to the Chairperson of the Board; or

(c) is removed from office by the Ministerial Council under this section; or

(d) in the case of the Chairperson of the Board, is absent, without leave first being granted by the Chairperson of the Ministerial Council, from 3 or more consecutive meetings of the Board; or

(e) in the case of any other member, is absent, without leave first being granted by the Chairperson of the Board, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or

(f) dies.

(2) The Chairperson of the Ministerial Council may remove a member of the Board from office if—

(a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or

(c) the Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed, or is unable, to properly carry out the member's functions as a member.

(3) The Chairperson of the Board may resign by written notice addressed to the Chairperson of the Ministerial Council.

(4) A resignation takes effect on the day that it is received by the Chairperson of the Board or the Chairperson of the Ministerial Council (as the case requires) or a later day specified in the notice of resignation.

(5) If the office of a member of the Board becomes vacant, the Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.

(6) If the office of the Chairperson of the Board becomes vacant, the Deputy Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.

236 Acting positions

(1) The Deputy Chairperson of the Board is to act as the Chairperson of the Board—

(a) during a vacancy in the office of Chairperson; or

(b) during any period that the Chairperson—

(i) is absent from duty; or

(ii) is, for any reason, unable to carry out the duties of that office.

(2) While the Deputy Chairperson of the Board is acting in the office of Chairperson—

(a) he or she has all the powers and functions of the Chairperson; and

(b) this Law and other laws apply to the Deputy Chairperson as if he or she were Chairperson.

(3) Anything done by or in relation to the Deputy Chairperson when purporting to act in the office of Chairperson is not invalid merely because the occasion for the Deputy Chairperson to act had not arisen or had ceased.

(4) The Ministerial Council may, by consensus, appoint a member of the Board to be the Deputy Chairperson of the Board—

(a) during a vacancy in the office of Deputy Chairperson; or

(b) during any period that the Deputy Chairperson—

(i) is acting as the Chairperson; or

(ii) is absent from duty; or

(iii) is, for any reason, unable to carry out the duties of that office.

(5) A person nominated by a Minister on the Ministerial Council may, with the approval of the Chairperson of the Board, act as a member of the Board in the place of the member appointed on the nomination of that Minister if that member is unable to attend a meeting of the Board.

237 Leave of absence

(1) The Chairperson of the Ministerial Council may grant the Chairperson of the Board a leave of absence on the terms and conditions determined by the Chairperson of the Ministerial Council.

(2) The Chairperson of the Board may grant leave of absence to any other member of the Board on the terms and conditions determined by the Chairperson of the Board.

(3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council if the Chairperson of the Board grants to a member a leave of absence of more than 6 months.

(4) If a member of the Board has been granted a leave of absence of 3 months or more, the Ministerial Council may appoint a person nominated by the Minister who nominated the member to act as a member of the Board in the place of the member during that leave of absence.

238 Disclosure of conflict of interest

(1) If—

(a) a member of the Board has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board; and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter—

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) Particulars of any disclosure made under subsection (1) must be recorded by the Board.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Board otherwise determines—

(a) be present during any deliberation of the Board with respect to the matter; or

(b) take part in any decision of the Board with respect to the matter; or

(c) be provided with any written material in relation to the matter.

(4) For the purposes of the making of a determination by the Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making of the determination by the Board.

(5) A contravention of this section does not invalidate any decision of the Board.

Subdivision 3 Procedure of Board

239 General procedure

(1) The Board must hold such meetings as are necessary for it to perform its functions.

(2) Subject to this Law, the procedure for the calling of meetings of the Board and for the conduct of business at those meetings is to be as determined by the Board.

(3) The Chairperson of the Board may convene any meetings of the Board that are, in his or her opinion, necessary for the efficient performance of the functions of the Board.

(4) The Chairperson of the Board must convene a meeting of the Board at the written request of the Ministerial Council.

(5) The Board must keep minutes of its meetings.

240 Quorum

The quorum for a meeting of the Board is 9 members of whom—

(a) one must be the Chairperson or Deputy Chairperson; and

(b) five must be members appointed on the nomination of State and Territory Ministers; and

(c) one may be a member appointed on the nomination of the Commonwealth Minister.

241 Chief executive officer may attend meetings of the Board

(1) The chief executive officer of the National Authority, subject to the policies and procedures of the Board, may attend meetings of the Board and participate in its deliberations but—

(a) is not a member of the Board; and

(b) is not entitled to vote at a meeting of the Board.

(2) Section 238 applies to the chief executive officer in relation to attendance at meetings of the Board as if the chief executive officer were a member of the Board.

242 Presiding member

The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.

243 Voting

(1) At a meeting of the Board each member will have a deliberative vote.

(2) A decision supported by a majority of the votes cast at the meeting of the Board at which a quorum is present is the decision of the Board.

(3) In the event of an equality of votes the Chairperson (or the Deputy Chairperson if the Chairperson is not present), will have a second or casting vote.

(4) The Board must keep a record of all decisions made at a meeting.

(5) If a decision of the Board to recommend a matter to the Ministerial Council is not arrived at unanimously, the Chairperson of the Board must advise the Ministerial Council of the reasons for and extent of the minority opinions.

244 Defects in appointment of members

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the Board.

245 Transaction of business by alternative means

(1) The Board may, if it thinks fit, transact any of its business by the provision of papers to all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of the members constituting a quorum of the Board is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

(a) the approval of a resolution under subsection (1); or

(b) a meeting held in accordance with subsection (2)—

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) Papers may be circulated among the members for the purposes of subsection (1) by facsimile, email or other transmission of the information in the papers concerned.

246 Delegation by Board

(1) The Board may, in writing, delegate any of its functions, powers or duties to—

(a) a Regulatory Authority; or

(b) the chief executive of an entity or the head of a government department of a participating jurisdiction nominated by the member of the Ministerial Council who represents that jurisdiction; or

(c) the chief executive officer of the National Authority; or

(d) a committee established by the Board; or

(e) any other entity with the approval of the Ministerial Council.

(2) Subject to the delegation under subsection (1), a chief executive of an entity or head of a government department may subdelegate a delegated function, power or duty to a member of staff of the entity or department.

(3) The chief executive officer of the National Authority may subdelegate a delegated power, function or duty to a member of the staff of the National Authority.

247 Committees

(1) The Board may establish committees to assist it in carrying out its functions.

(2) The Board must determine—

(a) the membership and functions of a committee;

(b) the procedure at or in relation to meetings of the committee including—

(i) the convening of meetings; and

(ii) the quorum for meetings; and

(iii) the selection of a committee member to be the chairperson of the committee; and

(iv) the manner in which questions arising at meetings of the committee are to be decided;

(c) the procedures for reporting to the Board.

(3) A committee must give the Board any reports, documents and information relating to the committee's functions and activities that the Board requests.

(4) The Board must report to the Ministerial Council on any committees it establishes.

Subdivision 4 Chief executive officer of the National Authority

248 Chief executive officer

(1) Subject to this section, the Chairperson of the Board is to appoint a person as chief executive officer of the National Authority.

(2) The appointment may only be made after the Ministerial Council has first endorsed the appointment on the recommendation of the Board.

249 Functions of chief executive officer

(1) The chief executive officer is responsible for the day to day management of the affairs of the National Authority.

(2) The chief executive officer has any other functions given to him or her or delegated to him or her under this Law.

(3) Subject to this Law, the chief executive officer must comply with the directions and policies of the Board in carrying out his or her functions.

(4) The chief executive officer is to report to the Board.

(5) The chief executive officer must manage the affairs of the National Authority in a way that—

(a) promotes the effective use of the resources of the National Authority; and

(b) is consistent with this Law.

(6) The chief executive officer must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

250 Terms and conditions of appointment

(1) The chief executive officer of the National Authority is to be appointed for a period, not more than 3 years, specified in the officer's appointment, but is eligible for reappointment.

(2) A member of the Board cannot be appointed as chief executive officer.

(3) Subject to this Law, the chief executive officer holds office subject to any terms and conditions that are decided by the Board.

(4) The chief executive officer must not engage in paid employment outside the duties of his or her office without the approval of the Chairperson of the Board.

(5) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of any approval given under subsection (4).

(6) The chief executive officer of the National Authority is taken, while holding that office, to be a member of the staff of the National Authority.

251 Remuneration

The chief executive officer is to be paid the remuneration and allowances decided by the Board.

252 Vacancy in office

The office of the chief executive officer of the National Authority becomes vacant if—

(a) the chief executive officer resigns from office by written notice addressed to the Chairperson of the Board; or

(b) the appointment of the chief executive officer is terminated by the Board under this Law; or

(c) the chief executive officer dies.

253 Resignation

(1) The chief executive officer may resign the office by written notice addressed to the Chairperson of the Board.

(2) The resignation takes effect on the day that it is received by the Chairperson of the Board or a later day specified in the notice of resignation.

(3) The Chairperson of the Board must notify the Ministerial Council of that resignation.

254 Termination of appointment

(1) The Board may terminate the appointment of the chief executive officer—

(a) for misconduct or for physical or mental incapacity that significantly impacts on the ability of the chief executive officer to perform the role; or

(b) if the Board is satisfied that the performance of the chief executive officer has been unsatisfactory; or

(c) if the chief executive officer engages in paid employment outside the duties of his or office without the approval of the Chairperson of the Board; or

(d) if the chief executive officer has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Board, makes the chief executive officer unfit to continue to be appointed.

(2) The Board must terminate the appointment of the chief executive officer if the chief executive officer—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the chief executive officer's creditors or makes an assignment of the chief executive officer's remuneration for their benefit; or

(b) is absent, except on a leave of absence approved by the Chairperson of the Board, for 14 consecutive days or for 28 days in any period of 12 months; or

(c) fails, without reasonable excuse, to comply with section 256.

(3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of the termination of the appointment of the chief executive officer.

255 Acting chief executive officer

(1) The Board may appoint a person to act as the chief executive officer—

(a) during any vacancy in the office of chief executive officer; or

(b) during any period that the chief executive officer—

(i) is absent from duty; or

(ii) is, for any reason, unable to perform the duties of that office.

(2) The period of the acting appointment must not exceed 6 months.

256 Disclosure of interests

The chief executive officer must give written notice to the Chairperson of the Board as soon as possible of any direct or indirect personal or pecuniary interest that the chief executive officer has, or acquires, or may acquire, that conflicts or could conflict with the proper carrying out of the chief executive officer's functions.

Subdivision 5 Staff, consultants and contractors

257 Staff of National Authority

(1) The National Authority may, for the purpose of carrying out its functions, employ staff.

(2) The staff of the National Authority are to be employed on the terms and conditions determined by the National Authority from time to time.

(3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

258 Staff seconded to National Authority

The National Authority may, in consultation with the relevant Regulatory Authority or the relevant Commonwealth Department, make arrangements for the secondment of staff.

259 Consultants and contractors

(1) The National Authority may engage persons with suitable qualifications and experience as consultants or contractors.

(2) The terms and conditions of engagement of consultants or contractors are as decided by the National Authority from time to time.

Part 12 Regulatory Authority

260 Functions of Regulatory Authority

The Regulatory Authority has the following functions under this Law in relation to this jurisdiction—

(a) to administer the National Quality Framework;

(b) to assess approved education and care services against the National Quality Standard and the national regulations and determine the ratings of those services;

(c) to monitor and enforce compliance with this Law;

(d) to receive and investigate complaints arising under this Law;

(e) in conjunction with the National Authority and the relevant Commonwealth Department, to educate and inform education and care services and the community in relation to the National Quality Framework;

(f) to work in collaboration with the National Authority to support and promote continuous quality improvements in education and care services;

(g) to undertake information collection, review and reporting for the purposes of—

(i) the regulation of education and care services; and

(ii) reporting on the administration of the National Quality Framework; and

(iii) the sharing of information under this Law;

(h) any other functions conferred on the Regulatory Authority under this Law.

261 Powers of Regulatory Authority

(1) The Regulatory Authority has the power to do all things that are necessary or convenient to be done for, or in connection with, or that are incidental to the carrying out of its functions under this Law.

(2) Without limiting subsection (1), the Regulatory Authority has the following powers under this Law in relation to this jurisdiction—

(a) to collect, hold and use information obtained under this Law by the Regulatory Authority or the National Authority about the provision of education and care to children including information about outcomes for children and information about providers of education and care services in each participating jurisdiction;

(b) subject to the *Privacy Act 1988* of the Commonwealth, to collect, hold and use information about providers of education and care services, family day care educators and certified supervisors;

(c) to maintain and publish registers of approved providers, approved education and care services and certified supervisors;

(d) to publish information about the National Quality Framework, including ratings and prescribed information about compliance with this Law;

(e) to collect, waive, reduce, defer and refund fees (including late payment fees) and enter into agreements in relation to fees;

(f) to enter into agreements relating to fees and funding with the National Authority;

(g) to exercise any other powers conferred on it by this Law.

262 Delegations

(1) The Regulatory Authority may in writing delegate any of its functions and powers under this Law (other than this power of delegation) to—

(a) any person employed under a public sector law of this jurisdiction; or

(b) a prescribed person or a person in a prescribed class of persons.

(2) A delegate of the Regulatory Authority must disclose to the Regulatory Authority, at the request of the Authority, any direct or indirect personal or pecuniary interest the delegate may have in relation to the delegated functions and powers.

Part 13 Information, records and privacy

Division 1 Privacy

263 Application of Commonwealth Privacy Act

(1) The Privacy Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

(2) For the purposes of subsection (1), the Privacy Act applies—

(a) as if a reference to the Office of the Privacy Commissioner were a reference to the Office of the National Education and Care Services Privacy Commissioner; and

(b) as if a reference to the Privacy Commissioner were a reference to the National Education and Care Services Privacy Commissioner; and

(c) with any other modifications made by the national regulations.

(3) Without limiting subsection (2)(c), the national regulations may—

(a) provide that the Privacy Act applies under subsection (1) as if a provision of the Privacy Act specified in the national regulations were omitted; or

(b) provide that the Privacy Act applies under subsection (1) as if an amendment to the Privacy Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

Privacy Act means the *Privacy Act 1988* of the Commonwealth, as in force from time to time.

Division 2 Application of Commonwealth FOI Act

264 Application of Commonwealth FOI Act

(1) The FOI Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

(2) For the purposes of subsection (1), the FOI Act applies—

(a) as if a reference to the Office of the Freedom of Information Commissioner were a reference to the Office of the National Education and Care Services Freedom of Information Commissioner; and

(b) as if a reference to the Freedom of Information Commissioner were a reference to the National Education and Care Services Freedom of Information Commissioner; and

(c) with any other modifications made by the national regulations.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the FOI Act applies under subsection (1) as if a provision of the FOI Act specified in the national regulations were omitted; or

(b) provide that the FOI Act applies under subsection (1) as if an amendment to the FOI Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

FOI Act means the *Freedom of Information Act 1982* of the Commonwealth, as in force from time to time.

Division 3 Application of New South Wales State Records Act

265 Application of State Records Act

(1) The State Records Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework except to the extent that this Law applies to a Regulatory Authority and the records of a Regulatory Authority.

(2) The national regulations may modify the State Records Act for the purposes of this Law.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the State Records Act applies under subsection (1) as if a provision of the State Records Act specified in the national regulations were omitted; or

(b) provide that the State Records Act applies under subsection (1) as if an amendment to the State Records Act made by a law of New South Wales, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

State Records Act means the *State Records Act 1998* of New South Wales, as in force from time to time.

Division 4 Registers

266 Register of approved providers

(1) The National Authority must keep a register of approved providers.

(2) The register must contain—

(a) the name of each approved provider; and

(b) any other prescribed information.

(3) The register of approved providers may be inspected at the office of the National Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of approved providers on payment of the prescribed fee.

267 Register of education and care services

(1) The Regulatory Authority must keep a register of approved education and care services operating in the participating jurisdiction.

(2) The register of approved education and care services must contain the following information—

(a) the name of each service;

(b) the name of the approved provider of each service;

(c) except in the case of a family day care service, the address of each education and care service premises;

(d) in the case of an approved family day care service, the address of the principal office of the service;

(e) the rating levels for each service;

(f) any other prescribed information.

(3) The register of approved education and care services may be inspected at the office of the Regulatory Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of approved education and care services on payment of the prescribed fee.

(5) The Regulatory Authority must provide a copy of the register of approved education and care services (as updated from time to time) to the National Authority and the relevant Commonwealth Department.

268 Register of certified supervisors

(1) The National Authority must keep a register of certified supervisors.

(2) The register of certified supervisors must contain the following information—

(a) the name of each certified supervisor;

(b) any other prescribed information.

(3) The register of certified supervisors may be inspected at the office of the National Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of certified supervisors on payment of the prescribed fee.

269 Register of family day care educators

(1) The approved provider of a family day care service must keep at its principal office a register of each family day care educator and any other person engaged by or registered with a family day care service to educate and care for a child.

(2) The register must contain the prescribed information in respect of each family day care educator engaged by or registered with a family day care service to educate and care for children.

(3) The approved provider must provide any information on the register of family day care educators and any changes to that information to the Regulatory Authority on request.

Division 5 Publication of information

270 Publication of information

(1) The National Authority and the Regulatory Authority may publish the following information about approved providers, approved education and care services and certified supervisors—

(a) the name of each provider, service or supervisor;

(b) except in the case of approved family day care services, the address of each education and care service premises;

(c) in the case of approved family day care services, the address of the principal office of each service;

(d) the rating levels of each approved education and care service;

(e) other prescribed information in respect of approved education and care services.

(2) The National Authority—

(a) must publish on its website—

(i) the register of approved providers; and

(ii) the register of certified supervisors; and

(b) may publish on its website the register of approved education and care services as kept by a Regulatory Authority.

(3) The Regulatory Authority must publish on its website the register of approved education and care services kept by the Regulatory Authority.

(4) The relevant Commonwealth Department is authorised to publish the register of approved education and care services on a website kept by that department.

(5) The Regulatory Authority may publish the prescribed information about—

(a) enforcement actions taken under this Law, including information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals or certificates; and

(b) any prescribed matters.

(6) Information published under this section must not include information that could identify or lead to the identification of an individual other than—

(a) an approved provider or certified supervisor; or

(b) a person who is being prosecuted for an offence against this Law.

Division 6 Disclosure of information

271 Disclosure of information to other authorities

(1) The Regulatory Authority and any government department, public authority and local authority may disclose information in respect of education and care services to each other for the purposes of this Law.

(2) The Regulatory Authority may disclose information in respect of education and care services to the National Authority or a Regulatory Authority of a participating jurisdiction or a person acting for that Authority—

(a) for the purposes of this Law; or

(b) for the purposes of research and the development of national policy with respect to education and care services.

(3) The Regulatory Authority may disclose information in respect of education and care services to the relevant Commonwealth Department or a person acting for the relevant Commonwealth Department—

(a) for the purposes of this Law; or

(b) for the purposes of research and the development of national policy with respect to education and care services; or

(c) for a purpose relating to the funding of education and care services; or

(d) for a purpose relating to the payment of benefits or allowances to persons using education and care services.

(4) The Regulatory Authority must disclose to the Regulatory Authorities of other participating jurisdictions the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor or certified supervisor of which it is notified under this Law.

(5) The Regulatory Authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice issued under this Law as applying in any participating jurisdiction in respect of the person.

(6) A disclosure of information under this section is subject to—

(a) Division 1; and

(b) any protocol approved by the National Authority for the purposes of this section.

(7) Information provided under this section must not include information that could identify or lead to the identification of an individual other than—

(a) an approved provider or a certified supervisor; or

(b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or

(c) a person to whom a prohibition notice applies; or

(d) a person who is being prosecuted for an offence against this Law.

272 Disclosure of information to education and care services

(1) If requested by an approved provider, the Regulatory Authority may disclose the following information—

(a) whether a person named in the request is subject to a prohibition notice issued under this Law as applying in any participating jurisdiction;

(b) whether a family day care educator named in the request has been suspended from providing education and care to children as part of a family day care service.

(2) A disclosure of information under this section is subject to—

(a) Division 1; and

(b) any protocol approved by the National Authority for the purposes of this section.

273 Duty of confidentiality

(1) An individual who is, or who has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty: $5000.

(2) However, subsection (1) does not apply if—

(a) the information is disclosed in the exercise of a function under, or for the purposes of, or in accordance with, this Law; or

(b) the disclosure is authorised or required by any law of a participating jurisdiction, or is otherwise required or permitted by law; or

(c) the disclosure is with the agreement of the person to whom the information relates; or

(d) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(e) the information is, or has been accessible to the public, including because it was published for the purposes of, or in accordance with, this Law; or

(f) the disclosure is otherwise authorised by the Ministerial Council.

(3) In this section—

protected information means information—

(a) that is personal to a particular individual and that identifies or could lead to the identification of the individual; and

(b) that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law.

Part 14 Miscellaneous

Division 1 Finance

274 Australian Children's Education and Care Quality Authority Fund

(1) The Australian Children's Education and Care Quality Authority Fund is established.

(2) The Authority Fund is a fund to be administered by the National Authority.

(3) The National Authority may establish accounts with any financial institution for money in the Authority Fund.

(4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

275 Payments into Authority Fund

There is payable into the Authority Fund—

(a) all money provided by a participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) the proceeds of the investment of money in the Fund; and

(c) all grants, gifts and donations made to the National Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and

(d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(e) any other money and property prescribed by the national regulations; and

(f) any other money or property received by the National Authority in connection with the exercise of its functions.

276 Payments out of Authority Fund

Payments may be made from the Authority Fund for the purpose of—

(a) paying any costs or expenses, or discharging any liabilities, incurred by the National Authority in the administration or enforcement of this Law or in the performance of its functions or duties or the exercise of its powers; and

(b) paying any remuneration or allowances payable under this Law by the National Authority; and

(c) allocating, transferring or reimbursing money to a participating jurisdiction in accordance with the national regulations; and

(d) any other payments recommended by the National Authority and approved by the Ministerial Council.

277 Investment of money in Authority Fund

The National Authority may invest money in the Authority Fund in accordance with the national regulations.

278 Financial management duties of National Authority

The National Authority must—

(a) ensure that its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Authority Fund; and

(c) ensure that expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, reasonable value is obtained for money expended from the Fund; and

(d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to—

  (i) the correctness, regularity and propriety of payments made from the Authority Fund; and

  (ii) receiving and accounting for payments made to the Authority Fund; and

  (iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by the National Authority in relation to the Authority Fund, if directed to do so by the Ministerial Council.

Division 2 Reporting

279 Annual report

(1) The Board must, within 4 months after the end of each financial year, submit an annual report of the National Authority for the financial year to the Ministerial Council.

(2) The annual report must include—

(a) an audited financial statement for the period to which the report relates; and

(b) a report about the National Authority's performance of its functions under this Law during the period to which the annual report relates; and

(c) an assessment of the implementation and administration of the National Quality Framework; and

(d) all directions given to the National Authority by the Ministerial Council and the Authority's response; and

(e) all directions given to the Regulatory Authorities by the Ministerial Council and the Regulatory Authorities' responses; and

(f) a report on any committees established by the Board; and

(g) any other matter determined by the Ministerial Council.

(3) The financial statement is to be prepared in accordance with Australian Accounting Standards.

(4) The financial statement is to be audited by a public sector auditor and a report is to be provided by the auditor.

(5) The Ministerial Council may extend, or further extend, the period for submission of an annual report to the Council by a total period of up to 3 months.

(6) In this section—

public sector auditor means—

(a) the Auditor-General (however described) of a participating jurisdiction or the Commonwealth; or

(b) an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction or the Commonwealth.

280 Tabling and publication of annual report

(1) The Ministerial Council must make arrangements for the tabling of the annual report of the National Authority, and the report of the public sector auditor with respect to the financial statement in the report, in the Parliament of a participating jurisdiction determined by the Ministerial Council.

(2) As soon as practicable after the annual report has been tabled in the Parliament determined under subsection (1), the National Authority must publish a copy of the report on its website.

281 Other reporting

(1) The National Authority may make any reports to the Ministerial Council that it considers necessary in the performance of its functions.

(2) The Chairperson of the Board must provide to the Ministerial Council any other reports and documents and information relating to the operations of the National Authority that the Ministerial Council requires.

(3) The Chairperson of the Board may provide to the responsible Minister of a participating jurisdiction and the Commonwealth Minister any reports and documents and information relating to the operations of the National Authority that the responsible Minister requires.

(4) The reports, documents and information referred to in subsection (2) must be provided within the time set by the Ministerial Council.

Division 3 Application of Commonwealth Ombudsman Act

282 Application of Commonwealth Ombudsman Act

(1) The Ombudsman Act applies as a law of a participating jurisdiction for the purposes of this Law except to the extent that this Law applies to a Regulatory Authority and the employees, decisions, actions and records of a Regulatory Authority.

(2) For the purposes of subsection (1), the Ombudsman Act applies—

(a) as if a reference to the Commonwealth Ombudsman were a reference to the Education and Care Services Ombudsman; and

(b) with any other modifications made by the national regulations.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the Ombudsman Act applies under subsection (1) as if a provision of the Ombudsman Act specified in the regulations were omitted; or

(b) provide that the Ombudsman Act applies under subsection (1) as if an amendment to the Ombudsman Act made by a law of the Commonwealth, and specified in the regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

Ombudsman Act means the *Ombudsman Act 1976* of the Commonwealth, as in force from time to time.

Division 4 Legal proceedings

283 Who may bring proceedings for an offence?

(1) The following persons may bring proceedings for an offence under this Law—

(a) the Regulatory Authority;

(b) a person authorised by the Regulatory Authority;

(c) a police officer.

(2) In a proceeding for an offence against this Law or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

284 When proceedings may be brought

Proceedings for an offence under this Law must be commenced within 2 years of the date of the alleged offence.

285 Offences by bodies corporate

(1) If a body corporate commits an offence against this Law, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence also commits that offence and is liable to the penalty for that offence.

(2) The penalty for an offence referred to in this section is the penalty applicable to an individual.

286 Application of Law to partnerships and eligible associations and other entities

(1) If this Law would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.

(2) If this Law would otherwise require or permit something to be done by an eligible association, the thing may be done by one or more of the members of the executive committee on behalf of the association.

(3) If this Law would otherwise require or permit something to be done by a prescribed entity, the thing may be done by one or more of the persons with management or control of the entity on behalf of the entity.

(4) An offence against this Law that would otherwise be committed by the partnership is taken to have been committed by each partner who is a person with management or control of the partnership.

(5) An offence against this Law that would otherwise be committed by an eligible association is taken to have been committed by each person who is a person with management or control of the association.

(6) An offence against this Law that would otherwise be committed by a prescribed entity is taken to have been committed by each person who is a person with management or control of that entity.

(7) The penalty for an offence that is taken to be committed under this section is the penalty applicable to an individual.

287 Multiple holders of an approval

If more than one person holds a provider approval or service approval under this Law each holder of the approval is jointly and severally responsible for compliance with this Law.

288 Double jeopardy

If a person has been convicted or found guilty in another participating jurisdiction for an offence against this Law as it applies in that jurisdiction, proceedings cannot be brought in this jurisdiction against the same person in respect of an offence concerning the same subject-matter.

289 Immunity

(1) A member of the Board of the National Authority, a committee of the Board or a Ratings Review Panel is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Law; or

(b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to an individual referred to in that subsection attaches instead to the National Authority.

(3) The Regulatory Authority (if an individual) or a member of the governing body of the Regulatory Authority is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Law; or

(b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the function under this Law.

(4) Any liability resulting from an act or omission that would, but for subsection (3), attach to an individual referred to in that subsection attaches instead to the State.

290 Immunity—education law

(1) This section applies if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under an education law of a participating jurisdiction.

(2) The Regulatory Authority may refer the matter to the relevant disciplinary body under the education law.

(3) If the Regulatory Authority refers a matter under subsection (2), a prosecution cannot be brought under this Law for an offence in relation to that matter.

291 Infringement offences

(1) An authorised officer or other person authorised by the Regulatory Authority may serve an infringement notice on a person for a contravention of—

(a) section 172, 173 or 176; or

(b) offences against the national regulations that are prescribed for the purposes of this section.

(2) The infringement penalty for an offence for which an infringement notice may be served on a person is the amount which is 10 per cent of the maximum penalty that could be imposed on the person in respect of that offence.

(3) An infringement notice must be in the form prescribed or contain the information prescribed by the infringements law of this jurisdiction.

(4) Subject to this section, the infringements law of this jurisdiction applies to infringement notices served under this section in this jurisdiction.

(5) The payment of an infringement penalty expiates the offence and is not to be considered in—

(a) assessing whether a person is a fit and proper person to be involved in the provision of, or to be a supervisor of, an education and care service; or

(b) assessing an approved education and care service under Part 5.

292 Evidentiary certificates

A certificate purporting to be signed by the chief executive officer of the National Authority or by a Regulatory Authority and stating any of the following matters is prima facie evidence of the matter—

(a) a stated document is one of the following things made, given, issued or kept under this Law—

(i) an appointment, approval or decision;

(ii) a notice, direction or requirement;

(iii) a supervisor certificate;

(iv) a register, or an extract from a register;

(v) a record, or an extract from a record;

(b) a stated document is another document kept under this Law;

(c) a stated document is a copy of a document mentioned in paragraph (a) or (b);

(d) on a stated day, or during a stated period, a stated person was or was not an approved provider or a certified supervisor;

(e) on a stated day, or during a stated period, an education and care service was or was not an approved education and care service;

(f) on a stated day, or during a stated period, an approval was or was not subject to a stated condition;

(g) on a stated day, an approval or supervisor certificate was suspended or cancelled;

(h) on a stated day, or during a stated period, an appointment as authorised officer was, or was not, in force for a stated person;

(i) on a stated day, a stated person was given a stated notice or direction under this Law;

(j) on a stated day, a stated requirement was made of a stated person.

Division 5 Service of notices

293 Service of notices

(1) If this Law requires or permits a notice to be served on a person, the notice may be served—

(a) on an individual by—

(i) delivering it to the individual personally; or

(ii) leaving it at, or by sending it by post to, the address notified to the sender by the individual as an address at which service of notices under this Law will be accepted or otherwise the address of the place of residence or business of the individual last known to the person serving the document; or

(iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(b) on a person other than an individual by—

(i) leaving it at, or by sending it by post to, the address notified to the sender by the person as an address at which service of notices under this Law will be accepted or otherwise the address of the head office, a registered office or the principal place of business of the person; or

(ii) sending it by facsimile transmission to a facsimile number notified to the sender by the person as an address at which service of notices under this Law will be accepted; or

(iii) sending it by email to an internet address notified to the sender by the person as an address at which service of notices under this Law will be accepted.

(2) Subsection (1) applies whether the word “deliver”, “give”, “notify”, “send” or “serve” or another expression is used.

(3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a notice otherwise than as provided in that subsection.

294 Service by post

If a notice authorised or required to be served (whether the word "deliver", "give", "notify", "send" or "serve" or another expression is used) on a person is served by post, service of the notice—

(a) may be effected by properly addressing, prepaying and posting a letter containing the document; and

(b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth day after the letter was posted; and

(c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

Division 6 False or misleading information

295 False or misleading information or documents

(1) A person must not give the Regulatory Authority or an authorised officer under this Law any information or document that the person knows is false or misleading in a material particular.

Penalty:

$6000, in the case of an individual.

$30 000, in any other case.

(2) Subsection (1) does not apply in respect of the giving of a document, if the person when giving the document—

(a) informs the Regulatory Authority or authorised officer, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the Regulatory Authority or authorised officer if the person has, or can reasonably obtain, the correct information.

Division 7 Protection from reprisal

296 Definitions

In this Division—

protected disclosure means a disclosure of information or provision of documents to the Regulatory Authority—

(a) pursuant to a request under this Law; or

(b) where the person making the disclosure has a reasonable belief that—

(i) an offence against this Law has been or is being committed; or

(ii) the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk;

serious detrimental action includes dismissal, involuntary transfer, loss of promotion and demotion.

297 Protection from reprisal

(1) A person must not take serious detrimental action against a person in reprisal for a protected disclosure.

Penalty:

$10 000 in the case of an individual.

$50 000 in any other case.

(2) A person takes serious detrimental action in reprisal for a protected disclosure if—

(a) the person takes or threatens to take the action because—

(i) a person has made, or intends to make, a protected disclosure; or

(ii) the person believes that a person has made or intends to make the protected disclosure; or

(b) the person incites or permits another person to take or threaten to take the action for either of those reasons.

(3) In determining whether a person takes serious detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

298 Proceedings for damages for reprisal

(1) A person who takes serious detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.

(2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.

(3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.

(4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the serious detrimental action.

299 Application for injunction or order

A person who believes that serious detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the superior court for—

(a) an order requiring the person who has taken the serious detrimental action to remedy that action; or

(b) an injunction.

300 Injunction or order

(1) If, on receipt of an application under section 299, the superior court is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure, the court may—

(a) order the person who took the serious detrimental action to remedy that action; or

(b) grant an injunction in any terms the court considers appropriate.

(2) The superior court, pending the final determination of an application under section 299, may—

(a) make an interim order in the terms of subsection (1)(a); or

(b) grant an interim injunction.

Division 8 National regulations

301 National regulations

(1) The Ministerial Council may make regulations for the purposes of this Law.

(2) The national regulations may provide for any matter that is required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(3) Without limiting subsection (1), the national regulations may provide for the following—

(a) fees (including application fees and annual fees) for approvals and certificates and other things done under this Law;

(b) the indexation of fees;

(c) standards for education and care services;

(d) requirements for educational programs, including the quality of those programs and their development, documentation and delivery;

(e) requirements and standards to be complied with for the safety, health and wellbeing of children being educated and cared for by an education and care service;

(f) requirements and standards to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing education and care services;

(g) requirements and standards about the premises to be used to provide an education and care service including siting, design, layout, space, security and entitlement to occupy;

(h) requirements and standards for the staffing of education and care services including the recruitment (and conduct of criminal history or other security checks) and the appointment of staff, performance improvement, professional standards, professional development, numbers and qualifications of educators (including minimum age and requirements concerning groups of children of different ages and composition) and staffing rosters and arrangements;

(i) requirements and standards about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for education and care services;

(j) requirements and standards for partnerships between education and care services and the community in which they are located and the families of children being educated and cared for by education and care services, including requirements for services to link to other support services for children and families;

(k) requirements and standards as to the leadership and management of education and care services including governance and fitness and propriety of all staff members and volunteers, management of grievances and complaints and the provision of information to families;

(l) the records, policies and procedures to be kept by approved providers and family day care educators including enrolment and attendance information;

(m) requirements and standards about first aid and management of children's medical conditions including—

(i) the training of educators and staff members; and

(ii) plans, policies and procedures used to manage medical conditions and first aid; and

(iii) the keeping and storage of first aid kits and medications;

(n) information required to be submitted for applications made under this Law;

(o) requirements and standards for the provision and display of information by approved providers;

(p) the publication of information about enforcement actions taken under this Law, including notice and review of proposals to publish information;

(q) matters relating to the application of this Law to partnerships, eligible associations or prescribed entities;

(r) requirements relating to the receipt and payment and distribution of fees and monetary penalties payable under this Law.

(4) The national regulations—

(a) may be of a general or limited application;

(b) may differ according to differences in time, place (including jurisdiction) or circumstances;

(c) may differ according to the type or class of education and care service and the ages of children being educated and cared for by a service;

(d) may exempt any education and care service or any type or class of education and care service from complying with all or any of the regulations;

(e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a Regulatory Authority;

(f) may apply, adopt or incorporate by reference any document either—

(i) as in force at the date the national regulations come into operation or at any date before then; or

(ii) wholly or in part or as amended by the national regulations;

(g) may impose penalties not exceeding $2000 for offences against the national regulations.

302 Publication of national regulations

(1) The national regulations are to be published on the NSW Legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

303 Parliamentary scrutiny of national regulations

(1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.

(2) A committee of the Parliament of a participating jurisdiction may consider, and report to the Parliament about, the regulation in the same way the committee may consider and report to the Parliament about regulations made under Acts of that jurisdiction.

(3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed.

(4) A regulation disallowed under subsection (3) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.

(5) If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the day of its disallowance in the last of the jurisdictions forming the majority.

(6) In this section—

regulation includes a provision of a regulation.

304 Effect of disallowance of national regulation

(1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a repeal of the regulation.

(2) If a regulation ceases to have effect under section 303 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation had not been made.

(3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

(4) In this section—

regulation includes a provision of a regulation.

Part 15 Transitional provisions

Division 1 Introductory

305 Definitions

In this Part—

declared approved family day care service, in relation to a participating jurisdiction, means an education and care service that is declared by a law of that jurisdiction to be a declared approved family day care service for the purposes of this Law;

declared approved family day care venue, in relation to a participating jurisdiction, means a place other than a residence that is declared by a law of that jurisdiction to be a declared approved family day care venue for the purposes of this Law;

declared approved provider, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared approved provider for the purposes of this Law;

declared approved service, in relation to a participating jurisdiction, means an education and care service that is declared by a law of that jurisdiction to be a declared approved service for the purposes of this Law;

declared certified supervisor, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared certified supervisor for the purposes of this Law;

declared compliance notice, in relation to a participating jurisdiction, means an order or notice under a former education and care services law that is declared by a law of that jurisdiction to be a declared compliance notice for the purposes of this Law;

declared enforceable undertaking, in relation to a participating jurisdiction, means an undertaking entered into under a former education and care services law that is declared by a law of that jurisdiction to be a declared enforceable undertaking under this Law;

declared nominated supervisor, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared nominated supervisor for the purposes of this Law;

declared out of scope service, in relation to a participating jurisdiction, means an education and care service—

(a) for which a former approval was not required under a former education and care services law; and

(b) that is declared by a law of that jurisdiction to be a declared out of scope service for the purposes of this Law;

former approval, in relation to a participating jurisdiction, means an approval, licence or other authorisation under a former education and care services law that is declared by a law of that jurisdiction to be a former approval for the purposes of this Law;

scheme commencement day means the day on which Parts 2, 3 and 4 of this Law commence.

Division 2 Education and care services

306 Approved provider

(1) Any person who immediately before the scheme commencement day was a declared approved provider is taken to be an approved provider under this Law.

(2) Subsection (1) does not apply if the declared approved provider is a prescribed ineligible person.

(3) Subsection (1) does not apply to a declared approved provider whose former approval was suspended under the former education and care services law immediately before the scheme commencement day because the provider was not a fit and proper person (however described) to operate the declared approved service.

(4) If a declared approved provider is a trust, the trustee or trustees of the trust are taken to be an approved provider under this Law.

(5) The trust must, within 30 days after the scheme commencement day, notify the Regulatory Authority of the identity of the trustees of the trust.

(6) If a notice is not given under subsection (5) within the required period, each trustee of the trust ceases to be an approved provider under this Law at the end of that period.

(7) If a person is taken under this section to be an approved provider, the person is taken to be the holder of a provider approval for the purposes of this Law.

(8) If a person is taken under this section to hold a provider approval, any conditions of the former approval relating to that person are taken to be conditions of the provider approval unless they are inconsistent with this Law.

(9) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to be the holder of a provider approval with a copy of the provider approval setting out the relevant matters in section 20.

307 Service approvals

(1) Any person who immediately before the scheme commencement day held a former approval in respect of a declared approved service (other than a declared approved family day care service) is taken to hold a service approval in respect of that service under this Law.

(2) Any person who immediately before the scheme commencement day held a former approval with respect to a declared approved family day care service is taken to hold a service approval for that family day care service under this Law.

(3) Subsection (1) and (2) do not apply if the person is a prescribed ineligible person.

(4) If subsection (1) or (2) applies, the declared approved service is taken from the scheme commencement day to be an approved education and care service.

(5) This section does not apply to a former approval that was under suspension under the former education and care services law immediately before the scheme commencement day because the person who held that approval was not a fit and proper person (however described) to operate the declared approved service.

(6) If a former approval was under suspension under the former education and care services law immediately before the scheme commencement day for a reason other than the reason in subsection (5), the service approval for the education and care service under this Law is taken to be suspended under this Law for the period of the suspension.

(7) The Regulatory Authority must determine before the expiry of the period of suspension referred to in subsection (6) (other than for a voluntary suspension) whether—

(a) the suspension should be cancelled or a further period of suspension should be imposed; or

(b) the service approval should be cancelled.

(8) Any conditions imposed on the former approval under the former education and care services law are taken to be conditions on the service approval unless the conditions are inconsistent with this Law.

(9) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to hold a former approval in respect of a declared approved service with a copy of the service approval for the service setting out the relevant matters in section 52.

308 Approved family day care venues

A declared approved family day care venue existing under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be an approved family day care venue under this Law.

309 Approval of declared out of scope services

A person who operated a declared out of scope service immediately before the scheme commencement day is taken under this Law to hold a provider approval and a service approval for the declared out of scope service for the period from and including 1 January 2012—

(a) to 30 June 2012, unless paragraph (b) applies; or

(b) if the person applies under this Law to the Regulatory Authority for a provider approval and for a service approval and the applications are received by the Regulatory Authority on or before 30 June 2012, to the date on which those applications are finally determined under this Law.

310 Application for service waiver or temporary waiver

(1) This section applies to an education and care service that was exempt under a former education and care services law from a requirement of that law.

(2) The education and care service is taken to comply with an equivalent requirement under this Law for the period from and including 1 January 2012—

(a) to 31 March 2012, unless paragraph (b) applies; or

(b) if the provider of the education and care service applies to the Regulatory Authority under this Law for a temporary waiver or service waiver under this Law in respect of that requirement and the application is received by the Regulatory Authority on or before 31 March 2012, to the date on which the application is finally determined under this Law.

311 Existing applicants

(1) This section applies if a person has made an application for a former approval under a former education and care services law in respect of an education and care service before the scheme commencement day.

(2) The applicant is taken to be an applicant for a provider approval and a service approval under this Law.

(3) The Regulatory Authority may—

(a) ask the applicant for more information; and

(b) inspect—

(i) the premises of the service and the offices of the applicant; and

(ii) any documents relating to the applicant; and

(c) exercise any power under section 14 or section 46 in relation to the application.

(4) This section does not apply if the applicant is a prescribed ineligible person.

312 Existing multiple approvals to merge

(1) If the holder of a former approval held more than one former approval in respect of the same premises, the former approvals are taken to be one service approval in respect of those premises for the purposes of this Law.

(2) This section does not apply to a former approval for a family day care service.

(3) This section does not apply to a former approval to which section 311 applies.

313 Display of accreditation and rating

(1) This section applies to a declared approved service that is taken under this Part to be an approved education and care service.

(2) The approved provider must display the provisional rating of that approved education and care service in accordance with section 172 until a first rating assessment is completed and a rating level given to the service after that assessment is published under Part 5.

(3) If the education and care service was accredited by the National Child Care Accreditation Council before the scheme commencement day, the approved provider of the education and care service must continue to display that accreditation at the service together with the provisional rating until a first rating assessment is completed and a rating (other than a provisional rating) given to the service after that assessment is published under Part 5.

314 Effect of non-compliance in 3 years before scheme commencement day

(1) In determining whether to suspend or cancel under Part 2 a provider approval referred to in section 306, the Regulatory Authority—

(a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but

(b) must not suspend or cancel the provider approval solely on the basis of that non-compliance.

(2) In determining whether to suspend or cancel under Part 3 a service approval referred to in section 307(1), the Regulatory Authority—

(a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but

(b) must not suspend or cancel the service approval solely on the basis of that non-compliance.

315 Certified supervisors

(1) A person who was a declared certified supervisor immediately before the scheme commencement day is taken to be a certified supervisor under this Law.

(2) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to be a certified supervisor with a copy of the supervisor certificate setting out the relevant matters in section 116.

(3) Subsection (1) applies even if the declared certified supervisor was suspended immediately before the scheme commencement day but the person's supervisor certificate under this Law is taken to be suspended for the remaining period that the person was suspended as a declared certified supervisor.

316 Nominated supervisors

(1) A person who immediately before the scheme commencement day was a declared nominated supervisor for a declared approved service that is taken under section 307 to be an approved education and care service is taken to be the nominated supervisor for that approved education and care service.

(2) Subsection (1) ceases to apply if—

(a) the approved provider does not confirm the nomination within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority; or

(b) the person advises the Regulatory Authority in writing that the person does not consent to being the nominated supervisor of the education and care service.

317 Notices and undertakings

(1) A declared compliance notice in force under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be a compliance notice under this Law.

(2) A declared enforceable undertaking in force under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be an enforceable undertaking under this Law.

318 Offences

The Regulatory Authority may bring or continue a prosecution for any offence under a former education and care services law in relation to a service that is taken to be an education and care service.

Division 3 National Authority

319 First meeting of National Authority

Despite section 239, the Ministerial Council is to convene the first meeting of the Board of the National Authority.

320 First chief executive officer of National Authority

(1) Despite section 248, the first chief executive officer of the National Authority is to be appointed by the Chairperson of the Ministerial Council on the basis of a consensus recommendation of the Ministerial Council.

(2) The appointment is to be on the remuneration and other terms and conditions set out in the appointment.

(3) Any amount payable to the first chief executive officer under the appointment is payable from the Authority Fund.

321 First annual report of National Authority

Despite section 279, the first annual report of the National Authority—

(a) is to be made within 4 months after the end of the financial year ending 30 June 2012; and

(b) is to cover the period from the first meeting of the National Authority until 30 June 2012.

Division 4 General

322 Information retention and sharing

(1) The Regulatory Authority must, in accordance with the national regulations, keep all prescribed information held by the Regulatory Authority (or any regulatory body under the former education and care services law) in relation to—

(a) the licensing or approval of education and care services under the former education and care services law; and

(b) the monitoring and enforcement of the former education and care services law in relation to education and care services.

(2) Information referred to in subsection (1) may be—

(a) used for information purposes under this Law; and

(b) held by the Regulatory Authority in any form; and

(c) made available to the Regulatory Authorities of other participating jurisdictions and the National Authority.

(3) A provider of an education and care service existing immediately before the scheme commencement day must, in accordance with the national regulations—

(a) continue to keep all documents required under the former education and care services law to be kept in respect of the service; and

(b) make those documents available to the Regulatory Authority on request.

Penalty:

$4000 in the case of an individual.

$20 000 in any other case.

323 Approved learning framework

A declared approved learning framework is taken to be an approved learning framework under this Law.

324 Savings and transitional regulations

(1) The national regulations may contain provisions (***savings and transitional provisions***) of a savings or transitional nature—

(a) consequential on the enactment of this Law in a participating jurisdiction; or

(b) to otherwise allow or facilitate the change from the operation of a former education and care services law of a participating jurisdiction to the operation of this Law.

(2) Savings and transitional regulations may have retrospective operation to a day not earlier than the day on which section 1 of this Law commences.

Schedule 1 Miscellaneous provision relating to interpretation

(Section 6)

Part 1 Preliminary

1 Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2 General

2 Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3 Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4 Material that is, and is not, part of this Law

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5 References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act;

together with a reference to the jurisdiction.

6 References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7 Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8 Use of extrinsic material in interpretation

(1) In this clause—

extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9 Effect of change of drafting practice and use of examples

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10 Use of examples

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11 Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3 Terms and references

12 Definitions

(1) In this Law—

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a function, includes impose.

contravene includes fail to comply with.

country includes—

(a) a federation; or

(b) a state, province or other part of a federation.

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent.

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression.

document includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device).

electronic communication means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity.

expire includes lapse or otherwise cease to have effect.

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

fail includes refuse.

financial year means a period of 12 months beginning on 1 July.

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

function includes a power, authority or duty.

Gazette means the Government Gazette of this jurisdiction.

gazetted means published in the Gazette.

Gazette notice means notice published in the Gazette.

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

individual means a natural person.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

insert, in relation to a provision of this Law, includes substitute.

instrument includes a statutory instrument.

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property.

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* (Cwlth).

make includes issue or grant.

minor means an individual who is under 18.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 of the 12 months of the year.

Northern Territory means the Northern Territory of Australia.

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter.

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

office includes position.

omit, in relation to a provision of this Law or an Act, includes repeal.

party includes an individual or a body politic or corporate.

penalty includes forfeiture or punishment.

power includes authority.

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceeding means a legal or other action or proceeding.

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; or

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act.

record includes information stored or recorded by means of a computer.

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance.

sign includes the affixing of a seal or the making of a mark.

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

the Law means this Law.

13 Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14 Meaning of “may” and “must” etc

(1) In this Law, the word ***may***, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word ***must***, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

15 Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16 Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17 Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18 References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19 References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20 Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to—

  (i) the Division, designated by the number, of the Part in which the reference occurs; and

  (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

  (iii) the subsection, designated by the number, of the section in which the reference occurs; and

  (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

  (v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

  (vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

  (vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

21 Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example. A reference to "sections 5 to 9" includes both section 5 and section 9. It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Part 4 Functions and powers

22 Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23 Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24 Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind);

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25 Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26 Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing;

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27 Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy;

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29 Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be—

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If—

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;

then—

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

(10) If—

(a) the delegator is a body; and

(b) there is a change in the membership of the body;

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be the delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30 Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If a provision of a Victorian Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of a Victorian Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***);

then—

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect;

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subclause (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4);

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the

empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5 Distance, time and age

31 Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6 Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day;

this provision has effect until the last moment of the specified day.

33 Repealed Law provisions not revived

If a provision of this Law is repealed or amended by a Victorian Act, or a provision of a Victorian Act, the provision is not revived merely because the Victorian Act or the provision of the Victorian Act—

(a) is later repealed or amended; or

(b) later expires.

34 Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35 Continuance of repealed provisions

If a Victorian Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36 Law and amending Acts to be read as one

This Law and all Victorian Acts amending this Law are to be read as one.

Part 7 Instruments under Law

37 Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8 Application to coastal sea

38 Application

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

Schedule 2 Powers of entry by search warrant

1 Application for warrant

(1) An authorised officer may apply to a magistrate of a participating jurisdiction for a search warrant in relation to premises if the officer believes on reasonable grounds that—

(a) a person is or has been operating an education and care service at the premises in contravention of this Law; or

(b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

2 Issue of warrant

(1) The magistrate may issue the warrant in respect of premises only if the magistrate is satisfied there are reasonable grounds to believe that—

(a) a person is operating an education and care service at the premises in contravention of this Law; or

(b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.

(2) The warrant must state—

(a) that a stated authorised officer may, with necessary and reasonable help and force—

(i) enter the premises and any other premises necessary for entry; and

(ii) exercise the authorised officer's powers under this Schedule; and

(b) the matter for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the premises may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

3 Application by electronic communication

(1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including the authorised officer's remote location.

(2) The application—

(a) may not be made before the authorised officer prepares the written application under clause 1(2); but

(b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under subclause (1); and

(b) the way the application was made under subclause (1) was appropriate.

(4) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise—

(i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and

(ii) the authorised officer must complete a form of warrant including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

(5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with clause 1(2) and (3); and

(b) if the authorised officer completed a form of warrant under subclause (4)(b), the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.

(8) Despite subclause (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and

(b) the original warrant is not produced in evidence—

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This clause does not limit clause 1.

4 Procedure before entry under warrant

(1) Before entering premises under a warrant, an authorised officer must do or make a reasonable attempt to do the following—

(a) identify himself or herself to a person present at the premises who is an occupier of the premises by producing the authorised officer's identity card;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the premises;

(d) give the person an opportunity to allow the authorised officer immediate entry to the premises without using force.

(2) However, the authorised officer need not comply with subclause (1) if the authorised officer reasonably believes that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

5 Powers after entering premises

(1) This clause applies if an authorised officer enters premises under clause 4.

(2) The authorised officer may for the purposes of the investigation do the following—

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Schedule;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);

(g) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.