



New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Children (Education and Care Services) Supplementary Provisions Act 2011* (the *NSW Act*) as follows:

- (a) to more closely align the regulation of mobile and occasional education and care services, which do not fall within the scope of the *Children (Education and Care Services) National Law* (the *National Law*), with the regulation of other education and care services under that Law, including by:
 - (i) applying the objectives and guiding principles of the National Law to the NSW Act, and
 - (ii) providing for NSW mobile and occasional education and care services to be assessed and rated in the same way as other education and care services are assessed and rated under the National Law, and
 - (iii) applying the National Quality Standard and National Quality Framework to NSW mobile and occasional education and care services, and
 - (iv) making the administrative fees payable by providers of mobile and occasional education and care services the same as those payable by providers of other education and care services under the National Law,
- (b) to discontinue State regulated home based child care so that all home based child care in NSW will be regulated as a family day care service under the National Law,
- (c) to provide that child-minding services in retail shopping centres will no longer be regulated under the NSW Act,

- (d) to make it an offence to advertise an education and care service where an application for a provider approval or service approval is pending unless it is made clear that the service will only be provided once the relevant approvals have been granted,
- (e) to make other law revision and minor amendments as a consequence of changes to the National Law.

The Bill also makes minor, consequential amendments to the *Child Protection (Working with Children) Act 2012*, the *Child Protection (Working with Children) Regulation 2013* and various environmental planning instruments.

Outline of provisions

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.

Schedule 1 Amendment of Children (Education and Care Services) Supplementary Provisions Act 2011 No 70

Objectives and guiding principles of State regulated education and care services

Schedule 1 [5] and [6] extend the objectives and guiding principles that apply to the provision of education and care services under the National Law so that they apply to the provision of mobile and occasional education and care services (referred to as *State regulated education and care services*), instead of the existing NSW guiding principles. **Schedule 1 [16]** is a consequential amendment.

Discontinuation of State regulated home based education and care services

Schedule 1 [3] discontinues State regulated home based education and care services. All home based child care in NSW will be regulated as a family day care service under the National Law. The NSW Act will continue to regulate mobile education and care services and occasional education and care services (previously referred to as centre based education and care services). Child-minding services at retail shopping centres will no longer be regulated under the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*. **Schedule 1 [1], [2], [31] and [33]** are consequential amendments.

Assessment and rating of State regulated education and care services

Schedule 1 [14] extends the assessment and rating scheme under the National Law so that it applies to State regulated education and care services. State regulated education and care services will be assessed and rated by the NSW Regulatory Authority in the same way as other education and care services in NSW are assessed and rated under the National Law, except that a State regulated education and care service will not be able to appeal to the National Ratings Review Panel for a review of a rating it receives from the NSW Regulatory Authority and a State regulated education and care service will not be able to apply to the Australian Children's Education and Care Quality Authority for the highest rating under the National Law. Those matters will instead be dealt with by regulations under the NSW Act or arrangements with the Australian Children's Education and Care Quality Authority. **Schedule 1 [20], [21] and [28]** are consequential amendments.

Closer alignment of State regulated education and care services with National Law

Schedule 1 [30] further provides for the application of the National Law to State regulated education and care services, including by:

- (a) applying the National Quality Standard (as set out in the regulations to the National Law) to State regulated education and care services (**Schedule 1 [27]** is a consequential amendment), and
- (b) making specific variations in relation to the approved learning framework, education and care service staff qualifications and entry to unapproved education and care service premises, and
- (c) making the administrative fees payable by providers of State regulated education and care services the same as those payable by providers of other education and care services under the National Law.

Schedule 1 [13] enables a State regulated education and care service to apply to the NSW Regulatory Authority for a service (ie permanent) or temporary waiver from a requirement that the service comply with certain requirements of the regulations under the National Law (including the National Quality Standard set out in those regulations), which will now apply to State regulated education and care services. **Schedule 1 [18]** is a consequential amendment.

Schedule 1 [12] omits a provision that requires each State regulated education and care service to have at least 1 nominated supervisor, as this is now provided for by section 161 of the National Law, which will apply to State regulated education and care services and makes it an offence to operate an education and care service unless there is at least 1 nominated supervisor.

Schedule 1 [31] omits provisions that apply to the operation of State regulated education and care services that are now redundant because similar provisions in the National Law will instead apply to those services (for example, in relation to the information required to be provided to parents and the records required to be kept by education and care services). **Schedule 1 [20]** omits section 21 (1) (u) from the NSW Act and **Schedule 1 [22]** amends section 21 (1) (aa)–(ac) of the NSW Act, with the effect that certain operational and information requirements in Parts 6 and 13 of the National Law will apply to State regulated services. **Schedule 1 [32]** omits a redundant regulation-making power that relates to record-keeping. **Schedule 1 [23]** is a consequential amendment.

Schedule 1 [17] extends certain conditions of service approvals granted under the National Law to service approvals granted under the NSW Act for State regulated education and care services. These conditions (under section 51 of the National Law) include ensuring the safety, health and well-being of the children, meeting the educational and developmental needs of the children at an education and care service and holding public liability insurance. Currently, State regulated education and care services are subject to similar requirements under the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*.

Advertising offence

Schedule 1 [11] makes it an offence for a person to advertise or hold out that the person is willing to provide a State regulated education and care service where an application for the required provider approval or service approval is pending unless it is made clear that the service will be provided only after any such approval has been granted. The maximum penalty is \$550. **Schedule 1 [10]** is a consequential amendment.

Other amendments

Schedule 1 [1], [7]–[9], [15], [19], [25], [26] and [29] omit redundant provisions that relate to certified supervisors, which are no longer provided for under the National Law.

Schedule 1 [24] updates a reference to the Secretary of the Department of Education, who is declared to be the NSW Regulatory Authority under the National Law.

Schedule 1 [4] amends the provision that provides that lessons, coaching or private tutoring are not education and care services under the NSW Act so that it aligns with the similar exclusion under the National Law.

Savings and transitional provisions

Schedule 1 [34]–[36] update the standard savings and transitional regulation-making power and enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act and any other Act that amends the NSW Act.

Schedule 1 [37] provides that an application for a provider approval or service approval for a State regulated home based education and care service or for an approval to provide a child-minding service at a retail shopping centre may not be made after the date of assent to the proposed Act, as part of the phasing out of those services.

Schedule 2 Consequential amendments

Schedule 2.1 and 2.2 amend the *Child Protection (Working with Children) Act 2012* and the *Child Protection (Working with Children) Regulation 2013* to remove redundant references to certified supervisors and State regulated home based education and care services, as a consequence of the amendments in Schedule 1.

Schedule 2.3–2.7 amend various environmental planning instruments to update the definition of *home-based child care* so that it only refers to home based child care regulated under the National Law, because home based child care will no longer be regulated under the NSW Act (see **Schedule 1 [3]**).



New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018

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New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Bill 2018

No. , 2018

A Bill for

An Act to amend the *Children (Education and Care Services) Supplementary Provisions Act 2011* to further provide for the regulation of certain children's education and care services and to further align the regulation of those services with the *Children (Education and Care Services) National Law (NSW)*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [34]–[37] commence on the date of assent to this Act.

Schedule 1	Amendment of Children (Education and Care Services) Supplementary Provisions Act 2011	1
	No 70	2
		3
[1] Section 3 Definitions		4
	Omit the definitions of <i>centre based education and care service</i> , <i>certified supervisor</i> , <i>family day care service</i> , <i>home based education and care service</i> and <i>supervisor certificate</i> from section 3 (1).	5 6 7
[2] Section 3 (1), definition of “occasional education and care service”		8
	Insert in alphabetical order:	9
	<i>occasional education and care service</i> —see section 4.	10
[3] Section 4 Meaning of “State regulated education and care service”		11
	Omit section 4 (1). Insert instead:	12
	(1) For the purposes of this Act, each of the following is a <i>State regulated education and care service</i> :	13 14
	(a) a <i>mobile education and care service</i> , being an education and care service that visits specific premises, areas or places at specified times for the purpose of providing the care,	15 16 17
	(b) an <i>occasional education and care service</i> , being an education and care service that is provided at fixed premises (other than the home of the approved provider of the service) primarily on an ad hoc or casual basis and that does not usually offer full-time or all day education and care to children on an ongoing basis.	18 19 20 21 22
[4] Section 4 (3) (g)		23
	Omit the paragraph. Insert instead:	24
	(g) a service principally conducted to provide instruction in a particular activity,	25 26
	Note. Instruction in sport, dance, music, culture, language or religion are examples.	27 28
[5] Section 6		29
	Insert after section 5:	30
	6 Objectives and principles underlying the provision of State regulated education and care services	31 32
	(1) The National Law Alignment Provisions provide for the objectives and guiding principles that apply to the provision of State regulated education and care services.	33 34 35
	(2) A reference in sections 3 and 4 of the National Law to the national education and care services quality framework is to be read, for the purposes of the National Law Alignment Provisions, as a reference to the framework for the provision of State regulated education and care services established by this Act.	36 37 38 39 40
[6] Part 2 Guiding principles		41
	Omit the Part.	42

[7]	Section 8 Unauthorised provision of education and care service	1
	Omit “certified” from section 8 (2). Insert instead “nominated”.	2
[8]	Section 8 (2)	3
	Omit “the supervisor certificate”. Insert instead “this Act”.	4
[9]	Section 8 (3)	5
	Omit “(other than a certified supervisor of the service)” and “or a certified supervisor of the service”.	6 7
[10]	Section 9 Advertising of unauthorised education and care service	8
	Omit “this section” from section 9 (3). Insert instead “subsection (1) or (2)”.	9
[11]	Section 9 (4)	10
	Insert after section 9 (3):	11
	(4) A person must not advertise or hold out that the person is willing to provide a State regulated education and care service for which an application for any provider approval or service approval required to authorise the person to provide the proposed service is pending unless it is made clear that the service will be provided only after any such approval has been granted.	12 13 14 15 16
	Maximum penalty: \$550.	17
[12]	Section 10 Nomination of supervisor	18
	Omit the section.	19
[13]	Section 14A	20
	Insert after section 14:	21
	14A Service waivers and temporary waivers	22
	The National Law Alignment Provisions provide for the grant of service waivers and temporary waivers for State regulated education and care services and other matters relating to waivers.	23 24 25
	Note. Under Divisions 5 and 6 of Part 3 of the National Law, an approved provider of an education and care service may apply for a service (ie permanent) or temporary waiver from a requirement that the service comply with certain elements of the National Quality Standard (set out in the national regulations) or certain specified provisions of the national regulations.	26 27 28 29 30
[14]	Part 3, Division 4	31
	Omit the Division. Insert instead:	32
	Division 4 Assessment and rating	33
	15 Assessment and rating of State regulated education and care services	34
	(1) The National Law Alignment Provisions provide for the assessment by the Regulatory Authority of State regulated education and care services and the determination of rating levels (other than the highest rating level) for the services.	35 36 37 38
	(2) The regulations may make provision for the award of the highest rating level to State regulated education and care services.	39 40

(3)	Subsection (2) does not prevent the Regulatory Authority from entering into arrangements with the National Authority for the assessment of State regulated education and care services and the award of the highest rating level to those services by the National Authority.	1 2 3 4
[15]	Section 20 Extension does not affect operation of National Law in respect of nationally regulated education and care services	5 6
	Omit “, service approval or supervisor certificate” wherever occurring.	7
	Insert instead “or service approval”.	8
[16]	Section 21 Excluded provisions	9
	Omit section 21 (1) (a). Insert instead:	10
	(a) sections 1, 2 and 3 (1) and (2) (d) (preliminary matters),	11
[17]	Section 21 (1) (g)	12
	Omit the paragraph. Insert instead:	13
	(g) section 51 (8) (offence of contravening conditions of service approval),	14
[18]	Section 21 (1) (h) and (i)	15
	Omit the paragraphs.	16
[19]	Section 21 (1) (n)–(s)	17
	Omit the paragraphs.	18
[20]	Section 21 (1) (t) and (u)	19
	Omit section 21 (1) (t)–(v). Insert instead:	20
	(t) section 134 (2) and Divisions 4–6 of Part 5 (which relate to certain assessment and rating functions of the National Authority),	21 22
	(u) section 169 (7) and (8) (which relate to determinations of equivalent qualifications by the National Authority),	23 24
[21]	Section 21 (1) (x)	25
	Omit the paragraph.	26
[22]	Section 21 (1) (aa)	27
	Omit section 21 (1) (aa)–(ac). Insert instead:	28
	(aa) Part 13 (Information, records and privacy), except sections 267 (1)–(4), 270, 271, 272 (1) and 273,	29 30
[23]	Section 21 (2)	31
	Omit “exceptions”. Insert instead “modifications”.	32
[24]	Section 24 References to Regulatory Authority	33
	Omit “Director-General of the Department of Education and Communities” from the note to section 24 (1).	34 35
	Insert instead “Secretary of the Department of Education”.	36

[25] Section 24 (2)	1
Omit “, service approvals and supervisor certificates”.	2
Insert instead “and service approvals”.	3
[26] Section 24 (3)	4
Omit “, service approvals or supervisor certificates”.	5
Insert instead “or service approvals”.	6
[27] Section 26 References to matters that relate to national scheme only	7
Insert “(except in relation to the National Quality Standard)” after “Council” in section 26 (b).	8 9
[28] Section 26 (c)	10
Omit section 26 (c) and (d). Insert instead:	11
(c) references to the highest rating level for an education and care service,	12
[29] Section 26 (f)	13
Omit the paragraph.	14
[30] Sections 27–27B	15
Omit section 27. Insert instead:	16
27 References to National Quality Framework and National Quality Standard	17
(1) A reference in the National Law to the National Quality Framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the following:	18 19 20
(a) this Act (including the National Law Alignment Provisions),	21
(b) the regulations under this Act,	22
(c) the National Quality Standard,	23
(d) the rating system provided for by the regulations under this Act.	24
(2) A reference in the National Law to the National Quality Standard is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the National Quality Standard approved by the Ministerial Council under the National Law as in force from time to time.	25 26 27 28
(3) The regulations may make further provision for the application of the National Quality Standard to State regulated education and care services, including by modifying the National Quality Standard as it applies to those services.	29 30 31
27A Specific variations	32
(1) A reference in section 168 of the National Law to an approved learning framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the learning framework approved by the Ministerial Council under the National Law as in force from time to time.	33 34 35 36
(2) A reference in the National Law to qualifications required or approved under that Law includes, for the purpose of the National Law Alignment Provisions, a reference to any qualifications that have been determined by the National Authority to be equivalent to the qualifications required by the regulations under the National Law.	37 38 39 40 41

(3)	A reference in section 201 of the National Law to section 103 of the National Law is to be read, for the purpose of the National Law Alignment Provisions, as a reference to section 8 of this Act.	1 2 3
	Note. Accordingly the power to enter premises under section 201 of the National Law where a contravention of section 103 of the National Law is suspected is, for the purposes of the National Law Alignment Provisions, a power to enter premises where a contravention of section 8 of this Act is suspected.	4 5 6 7
27B	Fees	8
(1)	The amount of a fee payable under the National Law Alignment Provisions in respect of a State regulated education and care service is the fee payable under the National Law in respect of an education and care service other than a family day care service.	9 10 11 12
(2)	The Regulatory Authority may waive, reduce, defer or refund any fee payable or paid to it under the National Law Alignment Provisions if there are exceptional circumstances.	13 14 15
[31]	Part 5 Other operational requirements	16
	Omit the Part.	17
[32]	Section 36 Regulations	18
	Omit section 36 (2) (b).	19
[33]	Section 36 (2) (c)	20
	Omit “centre based” wherever occurring. Insert instead “occasional or mobile”.	21
[34]	Schedule 1 Savings, transitional and other provisions	22
	Omit clause 1 (1). Insert instead:	23
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	24 25
[35]	Schedule 1, clause 1 (2)	26
	Insert “and has effect despite anything to the contrary in this Schedule” after “later date”.	27
[36]	Schedule 1, clause 1 (4)	28
	Insert after clause 1 (3):	29
(4)	Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.	30 31 32 33

[37] Schedule 1, Part 3	1
Insert after Part 2:	2
Part 3 Provision consequent on enactment of Children (Education and Care Services) Supplementary Provisions Amendment Act 2018	3 4 5
3 Transitional provision for home based education and care services and retail shopping centre child-minding services	6 7
On and from the date of assent to the <i>Children (Education and Care Services) Supplementary Provisions Amendment Act 2018</i> , a person may not apply to the Regulatory Authority:	8 9 10
(a) for a provider approval or service approval for a home based education and care service under the National Law Alignment Provisions, or	11 12
(b) for an approval to provide a centre based education and care service that is a child-minding service at a retail shopping centre under Part 8 of the <i>Children (Education and Care Services) Supplementary Provisions Regulation 2012</i> .	13 14 15 16

Schedule 2	Consequential amendments	1
2.1	Child Protection (Working with Children) Act 2012 No 51	2
[1]	Section 5 Definitions	3
	Omit the definitions of <i>certified supervisor</i> and <i>home based education and care service</i> from section 5 (1).	4 5
[2]	Section 5 (1), definition of “notifiable person”	6
	Omit “home based education and care service or” from paragraph (c).	7
[3]	Section 6 Child-related work	8
	Omit “certified supervisor” from section 6 (3) (b).	9
	Insert instead “nominated supervisor (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i> ”.	10 11
[4]	Section 10 Adult persons residing with authorised carers or persons providing family day care services	12 13
	Omit “home based education and care service or” wherever occurring in section 10 (1) and (2).	14 15
[5]	Section 11B Responsible agency must verify person has clearance or current application	16 17
	Omit “a home based education and care service or” from section 11B (1) (c).	18
[6]	Section 17 Interim bars	19
	Omit “home based education and care service or” from section 17 (1) (c).	20
2.2	Child Protection (Working with Children) Regulation 2013	21
[1]	Clause 18 Proof of identity	22
	Omit “home based education and care service or” from clause 18 (3) (a).	23
[2]	Schedule 1 Savings and transitional provisions	24
	Omit “certified” wherever occurring in clause 2 (7) (f). Insert instead “nominated”.	25
2.3	Standard Instrument (Local Environmental Plans) Order 2006	26
	Standard instrument, Dictionary	27
	Omit the definition of <i>home-based child care</i> . Insert instead:	28
	<i>home-based child care</i> means a family day care residence (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i>) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.	29 30 31 32 33 34
	Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the <i>Children (Education and Care Services) National Law (NSW)</i> .	35 36 37

2.4 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017	1 2
Clause 5 Interpretation	3
Omit the definition of <i>home-based child care</i> from the note to clause 5 (1). Insert instead:	4
<i>home-based child care</i> means a family day care residence (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i>) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.	5 6 7 8 9 10
Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the <i>Children (Education and Care Services) National Law (NSW)</i> .	11 12 13
2.5 Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011	14 15
Dictionary	16
Omit the definition of <i>home-based child care</i> . Insert instead:	17
<i>home-based child care</i> means a family day care residence (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i>) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.	18 19 20 21 22 23
Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the <i>Children (Education and Care Services) National Law (NSW)</i> .	24 25 26
2.6 Sydney Local Environmental Plan (Green Square Town Centre) 2013	27
Dictionary	28
Omit the definition of <i>home-based child care</i> . Insert instead:	29
<i>home-based child care</i> means a family day care residence (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i>) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.	30 31 32 33 34 35
Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the <i>Children (Education and Care Services) National Law (NSW)</i> .	36 37 38
2.7 Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013	39 40
Dictionary	41
Omit the definition of <i>home-based child care</i> . Insert instead:	42
<i>home-based child care</i> means a family day care residence (within the meaning of the <i>Children (Education and Care Services) National Law (NSW)</i>) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of	43 44 45 46

whom are under the age of 13 years and no more than 4 of whom are children
who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator
educates and cares for children as part of a family day care service—see the *Children
(Education and Care Services) National Law (NSW)*.

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