



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]**).