



Australian Capital Territory

# **Education and Care Services National Law (ACT) Act 2011**

**A2011-42**

**Republication No 1**

**Effective: 1 January 2012 – 1 January 2013**

Republication date: 1 January 2012

Act not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Education and Care Services National Law (ACT) Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2012. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Education and Care Services National Law (ACT) Act 2011

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Australian Capital Territory

# Education and Care Services National Law (ACT) Act 2011

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

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01/01/12

Education and Care Services National Law (ACT)  
Act 2011

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Effective: 01/01/12 - 01/01/13

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Education and Care Services National Law (ACT) Act 2011*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Terms used in Education and Care Services National Law (ACT)

Terms used in this Act and also in the Education and Care Services National Law set out in the schedule to the Victorian Act have the same meaning in this Act as they have in that Law.

### 5 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## Part 2 Adoption of National Law

### 6 Adoption of Education and Care Services National Law

- (1) Subject to this section, the Education and Care Services National Law, as in force from time to time, set out in the schedule to the Victorian Act—
  - (a) applies as a territory law; and
  - (b) as so applying may be referred to as the Education and Care Services National Law (ACT); and
  - (c) so applies as if it were part of this Act.
- (2) A law that amends the Education and Care Services National Law set out in the schedule to the Victorian Act and is passed by the Victorian Parliament after this Act's notification day must be presented to the Legislative Assembly not later than 6 sitting days after the day it is passed.
- (3) The amending law may be disallowed by the Legislative Assembly in the same way, and within the same period, that a disallowable instrument may be disallowed.

*Note* See the Legislation Act, s 65 (Disallowance by resolution of Assembly).
- (4) If the amending law is not presented to the Legislative Assembly in accordance with subsection (2), or is disallowed under subsection (3), the Education and Care Services National Law applying under subsection (1) is taken—
  - (a) not to include the amendments made by the amending law; and
  - (b) to include any provision repealed or amended by the amending law as if the amending law had not been made.
- (5) Section 303 (4) (Parliamentary scrutiny of national regulations) of the Education and Care Services National Law set out in the schedule to the Victorian Act does not apply as a territory law.

## 7 Exclusion of territory laws

- (1) The following territory laws do not apply to the *Education and Care Services National Law (ACT)* or to the instruments made under that Law:
  - (a) the *Criminal Code 2002*;
  - (b) the *Freedom of Information Act 1989*;
  - (c) the *Legislation Act 2001*.
- (2) The following territory laws do not apply to the *Education and Care Services National Law (ACT)* or to the instruments made under that Law, except to the extent that that Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority:
  - (a) the *Annual Reports (Government Agencies) Act 2004*;
  - (b) the *Auditor-General Act 1996*;
  - (c) the *Financial Management Act 1996*;
  - (d) the *Ombudsman Act 1989*;
  - (e) the *Public Sector Management Act 1994*;
  - (f) the *Territory Records Act 2002*.

## 8 Meaning of generic terms in Education and Care Services National Law for this jurisdiction

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

***child protection law*** means the *Children and Young People Act 2008*.

*Note* A reference to a law includes a reference to the statutory instruments made or in force under the law (see *Legislation Act*, s 104).

***de facto relationship*** means a domestic partnership.



*magistrate* means a Magistrate under the *Magistrates Court Act 1930*.

*public authority* means a body established for a public purpose under an Act.

*registered teacher* means a registered teacher under the *ACT Teacher Quality Institute Act 2010*.

*superior court* means the Supreme Court.

*this jurisdiction* means the Australian Capital Territory.

## 9 Relevant tribunal or court

For the definition of *relevant tribunal or court* in the *Education and Care Services National Law (ACT)*, section 5—

- (a) the Magistrates Court is the relevant court or tribunal for that Law, section 181; and
- (b) the ACAT is declared to be the relevant court or tribunal for that Law, part 8.

## 10 Regulatory Authority

For the definition of *Regulatory Authority* in the *Education and Care Services National Law (ACT)*, section 5, the chief executive is the Regulatory Authority.

## 11 Children's services law

For the definition of *children's services law* in the *Education and Care Services National Law (ACT)* the *Children and Young People Act 2008*, chapter 20 is a children's services law.

**12 Education law**

For the definition of *education law* in the *Education and Care Services National Law (ACT)*, section 5, the *Education Act 2004* is an education law.

**13 Former education and care services law**

For the definition of *former education and care services law* in the *Education and Care Services National Law (ACT)*, section 5—

- (a) the *Children and Young People Act 2008*, chapter 20, is a former education and care services law; and
- (b) the *Education Act 2004* is a former education and care services law.

**14 Infringements law**

For the definition of *infringements law* in the *Education and Care Services National Law (ACT)*, section 5, the *Magistrates Court Act 1930*, part 3.8 is an infringements law.

**15 Public sector law**

For the definition of *public sector law* in the *Education and Care Services National Law (ACT)*, section 5, the *Public Sector Management Act 1994* is a public sector law.

**16 Working with children law**

For the definition of *working with children law* in the *Education and Care Services National Law (ACT)*, in section 5, the *Working with Vulnerable People (Background Checking) Act 2011* is a working with children law.

**17 Working with vulnerable people law**

For the definition of *working with vulnerable people law* in the *Education and Care Services National Law (ACT)*, section 5, the *Working with Vulnerable People (Background Checking) Act 2011* is a working with vulnerable people law.

**18 Penalty at end of provision**

In the *Education and Care Services National Law (ACT)* 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.

## Part 3 Miscellaneous

### 19 Regulation-making power

The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Part 4 Transitional

### 20 Definitions—pt 4

In this part:

*childcare services standards*—see the *Children and Young People Act 2008*, section 887 (2) (e).

*government preschool* means a government preschool established under the *Education Act 2004*, section 20.

*licensed childcare service*—see the *Children and Young People Act 2008*, section 728.

### 21 Transitional definitions

- (1) For the definition of *declared approved family day care service* in the *Education and Care Services National Law (ACT)*, section 305, a family day care scheme that was a licensed childcare service is a declared approved family day care service.
- (2) For the definition of *declared approved provider* in the *Education and Care Services National Law (ACT)*, section 305—
  - (a) a person who was a licensed proprietor of a licensed childcare service is a declared approved provider; and
  - (b) the director-general responsible for the administration of the *Education Act 2004* is a declared approved provider.
- (3) For the definition of *declared approved service* in the *Education and Care Services National Law (ACT)*, section 305—
  - (a) a service that was a licensed childcare service is a declared approved service; and
  - (b) a government preschool is a declared approved service.

- (4) For the definition of ***declared certified supervisor*** in the *Education and Care Services National Law (ACT)*, section 305, a person is a declared certified supervisor if—
- (a) the person held any of the following positions mentioned in the childcare services standards:
    - (i) qualified service director, designated qualified team leader or qualified primary contact staff member of a licensed childcare service providing centre based care;
    - (ii) qualified service director or qualified service coordinator of a licensed childcare service providing school aged care;
    - (iii) qualified staff member of the coordination unit for a licensed childcare service providing family day care;
    - (iv) qualified senior teacher or qualified teacher of a licensed childcare service operating an independent preschool; and
  - (b) the person held, or had completed the requirements for, the qualification required under the childcare services standards for the position.
- (5) For the definition of ***declared compliance notice*** in the *Education and Care Services National Law (ACT)*, section 305, a compliance notice issued under the *Children and Young People Act 2008*, chapter 20, is a declared compliance notice.
- (6) For the definition of ***former approval*** in the *Education and Care Services National Law (ACT)*, section 305—
- (a) a childcare service licence issued under the *Children and Young People Act 2008*, chapter 20, is a former approval; and
  - (b) the establishment of a government preschool under the *Education Act 2004*, section 20, is a former approval.

**22 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.
- (4) This section expires 1 year after the day it commences.

**23 Expiry—pt 4**

This part expires 3 years after the day it commences.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- chief executive (s 163)
- domestic partnership (s 169 (2))
- Magistrates Court
- Supreme Court
- territory law.

***Education and Care Services National Law (ACT)*** means the provisions applying in this jurisdiction because of section 6.

***Victorian Act*** means the *Education and Care Services National Law Act 2010* (Vic).

*Note 1* The Victorian Act is accessible at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au).

*Note 2* A reference to a law (including a Victorian Act) includes a reference to the law as originally made and as amended (see Legislation Act, s 102).



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### Education and Care Services National Law (ACT) Act 2011 A2011-42

notified LR 3 November 2011

s 1, s 2 commenced 3 November 2011 (LA s 75 (1))

remainder commenced 1 January 2012 (s 2 and CN2011-16)

### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Transitional

pt 4 hdg exp 1 January 2015 (s 23)

#### Definitions—pt 4

s 20 exp 1 January 2015 (s 23)

def **childcare services standards** exp 1 January 2015 (s 23)

def **government preschool** exp 1 January 2015 (s 23)

def **licensed childcare service** exp 1 January 2015 (s 23)

#### Transitional definitions

s 21 exp 1 January 2015 (s 23)

#### Transitional regulations

s 22 exp 1 January 2013 (s 22 (4))

#### Expiry—pt 4

s 23 exp 1 January 2015 (s 23)

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