

**2011**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**EDUCATION AND CARE NATIONAL SERVICES LAW (ACT) BILL 2011**

**EXPLANATORY STATEMENT**

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

## Explanatory Notes

### Title of the Bill

Education and Care Services National Law (ACT) Bill 2011

### Policy Objectives of the Bill

The principal objective of the *Education and Care Services National Law (ACT) Bill 2011* is to apply a national law relating to regulation of education and care services for children, and for other purposes. This will be achieved by this Bill adopting the Education and Care Services National Law (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 Bill specifically will replace current licensing requirements (Chapter 20, *Children and Young People Act 2008*) and quality assurance processes for long day care, family day care, outside school hours care and independent preschools. The Bill will apply to all preschools in the ACT both Government and Independent. The Bill provides for a public assessment and rating system which will provide families greater access to information about the performance and quality of services.

### Reasons for the Bill

In December 2009 the Council of Australian Governments endorsed the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care. The National Partnership Agreement included the commitment to establish a jointly governed, uniform National Quality Framework and will facilitate the introduction through the national regulations of a new National Quality Standard. The National Quality Standard is organised across seven quality areas:

- Educational program and practice
- Children's health and safety
- Physical environment
- Staffing arrangements
- Relationships with Children
- Collaborative partnerships with families and communities
- Leadership and service management

This Bill establishes the various elements of the National Quality Framework including adoption and transition processes, application processes and monitoring and compliance requirements. . The Bill also sets out the roles and responsibilities of the Australian Children's Education and Care Quality Authority and the Regulatory Authorities for the states and territories. The Regulatory Authorities will be responsible for approving persons and services that provide education and care; monitoring compliance with the national law; and assessing and publicly rating services against a new National Quality Standard.

# **Notes on Provisions of the Education and Care Services National Law (ACT) Bill 2011 for the enactment of the Education and Care Services National Law Act (VIC) 2010**

## **PART 1—PRELIMINARY**

### **A Bill for**

This explanatory note provides that the purpose of this Act is to apply a National Law to regulate education and care services for children and for other purposes.

### **Clause 1- Name of Act**

This clause provides that the name of the proposed Act.

### **Clause 2- Commencement**

This clause provides that this Act comes into operation on a day fixed by the Minister by written notice. Different days may be appointed for different provisions of this Law set out in the Schedule.

### **Clause 3- Dictionary**

This clause defines that the dictionary at the end of the Act is part of this Act.

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

This clause 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.

### **Clause 5- Notes**

This clause identifies that a note included in this proposed Act is explanatory and is not part of the proposed Act.

## **PART 2—ADOPTION OF NATIONAL LAW**

### **Clause 6- Adoption of Education and Care Services National Law**

This Clause provides that the Education and Care Services National Law as set out in the Schedule, applies as a law of the Australian Capital Territory.

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.

Note that the National Law and all of its sections are explained in detail below, from page seven onwards.

### **Clause 7- Exclusion of legislation of this jurisdiction**

This Clause provides that the following Australian Capital Territory Acts do not apply to this Law or the instruments made under it:

- (a) the *Criminal Code 2002*;
- (b) the *Freedom of Information Act 1989*;
- (c) the *Legislation Act 2001*;

Furthermore, the following Acts do not apply to this Law, but are applicable to 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*; and
- (f) the *Territory Record Act 2002*.

**Clause 8- Meaning of generic terms in Education and Care Services National Law for the purposes of this jurisdiction**

This Clause defines the meaning of the generic terms, *child protection law, de facto relationship, local authority, magistrate, public authority, superior court and this jurisdiction*, for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 9- Relevant tribunal or court**

This Clause provides that the Magistrate’s Court is the relevant court and that the ACAT Tribunal is the relevant tribunal for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 10- Regulatory Authority**

This Clause provides that the Chief Executive of the Department of Disability, Housing and Community Services is the Regulatory Authority for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 11- Children’s services law**

This Clause provides that the *Children and Young People Act 2008*, chapter 20, is the declared children’s services law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 12- Education law**

This Clause provides that the *Education Act 2004* is the declared education law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 13- Former education and care services law**

This Clause provides that the *Children and Young People Act 2008*, chapter 20 is the declared former education and care services law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 14- Infringements law**

This Clause provides that the *Magistrates Court Act 1930*, part 3.8 is the declared infringements law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 15-Public sector law**

This Clause provides that the *Public Sector Management Act 1994* is the declared public sector law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 16- Working with children law**

This Clause provides that the *Working with Vulnerable People (Background Checking) Act 2011* and the regulations made under that Act is the declared working with children law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 17- Working with vulnerable people law**

This clause provides that the *Working with Vulnerable People (Background Checking) Act 2011* and the regulations made under that Act is the declared working with vulnerable people law for the purposes of the *Education and Care Services National Law (ACT) Bill 2011*.

**Clause 18- Penalty at end of provision**

This Clause provides that, where penalties are specified in a provision of the *Education and Care Services National Law (ACT) Bill 2011*, contravention of the provision is punishable by a penalty not more than the specified penalty.

**PART 3—MISCELLANEOUS**

**Clause 19- Regulations dealing with transitional matters**

This Clause provides for the making of regulations of a transitional nature as a result of the enactment of this Act.

**PART 4—TRANSITIONAL**

**Clause 20- Definitions—pt 4**

This Clause provides that the definition of licensed childcare service in part 4 is the definition provided in the *Children and Young People Act 2008*, section 728.

**Clause 21- Transitional definitions**

This Clause provides for the definition of declared terms used in section 305 of the *Education and Care Services National Law ACT 2010 (VIC)* as they apply in the Australian Capital Territory. This clause allows prescribed positions recognised in the *Children and Young People Act 2008* to be transferred over to equivalent positions in the new National Law.

Subclause (1) provides that a declared approved family day care service is a service to which a licence to operate a family day care service applies under the *Children and Young People Act 2008*, chapter 20.

Subclause (2) provides that a declared approved provider is a licensed proprietor under the *Children and Young People Act 2008*, chapter 20.

Subclause (3) provides that a declared approved service is a service to which a licence to operate a licensed childcare service as applies under the *Children and Young People Act 2008*, chapter 20.

Subclause (4) provides that a declared certified supervisor is a person who is a director of a licensed childcare service providing centre based care or school age care or who was a senior teacher of a licensed childcare service operating an independent preschool under the *Children and Young People Act 2008*, chapter 20.

Subclause (5) provides that a declared compliance order is a compliance notice issued under the *Children and Young People Act 2008*, chapter 20.

Subclause (6) provides that a declared nominated supervisor is a person who is a director of a licensed childcare service providing centre based care or school age care or who was a senior teacher of a licensed childcare service operating an independent preschool for a licensed childcare service under the *Children and Young People Act 2008*, chapter 20.

Subclause (7) provides that a declared former approval is a childcare service licence under the *Children and Young People Act 2008*, chapter 20 will be declared as a former approval.

#### **Clause 22- Transitional regulations**

This Clause provides for any necessary local provisions to the Australian Capital Territory.

Subclause 1 provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Education and Care National Law (ACT) Bill 2011*.

Subclause 2 provides that a regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not adequately or appropriately dealt with in this part.

Subclause 3 provides that a regulation under subclause 2 has effect despite anything else in the *Education and Care National Law (ACT) Bill 2011* or another Territory Law.

Subclause 4 provides that this part expire one year after it commences.

#### **Clause 23- Expiry—pt4**

This Clause provides that transitional regulations expire three years after the day of commencement of the *Education and Care Services National Law (ACT) Bill*.

## **Notes on Provisions of the National Law- the Education and Care Services National Law Act (VIC) 2010**

In clause 6 of the *Education and Care Services National Law (ACT) Bill 2011* it provides for the National Law to be applied in the ACT. The following sections provide details about the National Law. This law has already been passed

These notes have been provided by the Victorian Government to ensure consistent explanation across all States and Territories the following notes are provisions of the national law which is the Education and Care Services National Law Act (VIC) 2010. These notes provide information of how the national law. Please note that amendments have been made to ensure ACT legislation requirements, such as the *Human Rights Act (2004)*, are adequately acknowledged and addressed.

### **Major elements of the National Law**

Part 1 of the National Law sets out the objectives and guiding principles, the definitions to be used and the scope of education and care services subject to this Law.

Parts 2, 3, and 4 establish a national system of approvals to provide and operate an education and care service and to be a certified supervisor. These Parts set out the requirements for obtaining approval and the decision-making powers and responsibilities of the Regulatory Authority in participating jurisdictions. These approval processes streamline current licensing, approval and quality assurance arrangements.

Part 5 sets out the process for assessing and rating services against the National Quality Standard. All services under the National Quality Framework are subject to assessment and rating. The assessment and rating process is designed to promote continuous improvement in the provision of education and care across seven quality areas. A major objective of rating services is to provide parents with detailed information about the quality of services (across the seven quality areas and an overall rating). This Part also provides for a system of appeals and reviews of decisions relating to assessments and ratings.

Part 6 creates a range of offences regarding the operation of education and care services. These offences are primarily intended to ensure the health, safety and well-being of children and the operation of the national approvals system.

Part 7 provides for the tools that the Regulatory Authority may use to ensure compliance with the Education and Care Services National Law and is intended to ensure the safety, health and wellbeing of children attending education and care services.

Part 8 ensures the right of review of decisions made by a Regulatory Authority. Two types of review are provided for: internal review conducted by the Regulatory Authority; and external review conducted by an administrative tribunal or court or, in relation to ratings and assessments of services, by the Australian Children's Education and Care Quality Authority.

Part 9 provides powers to authorised officers engaged by Regulatory Authorities to monitor and enforce the Education and Care Services National Law.

Part 10 sets out the functions and powers of the Ministerial Council in relation to the National Quality Framework, the National Quality Standard, the Education and Care

Services National Law and the Australian Children’s Education and Care Quality Authority. The Ministerial Council will be responsible for setting standards for the operation of education and care services.

Part 11 establishes the Australian Children’s Education and Care Quality Authority and its Board and provides for the engagement of a chief executive. This Part sets out the Authority’s functions, which are consistent with, and build on, those set out in the National Partnership Agreement, including oversight of the National Quality Framework, reporting to the Ministerial Council and Regulatory Authorities, provision of advice, and information management. The Authority has the power to collect and publish information, develop protocols for communication and dispute resolution, make decisions regarding fees, undertake research and analysis, publish practice notes and guidelines for the application of this Law, and publish other guides and resources.

Part 12 sets out the functions of the Regulatory Authorities, which include approving providers and services, certifying supervisors, assessing and rating services, and monitoring compliance with the National Quality Framework, the National Quality Standard, the Education and Care Services National Law, and the national regulations.

Part 13 addresses information and privacy issues, including providing for the application of Commonwealth privacy, freedom of information laws.

Part 14 contains a range of miscellaneous provisions, including the establishment of the Australian Children’s Education and Care Quality Authority Fund, reporting requirements, legal proceedings, and provides for the development, publication and commencement of national regulations.

Part 15 provides for transition from existing legislative and regulatory arrangements to the new arrangements set out under this national Law.

### **Human Rights compliance with the ACT *Human Rights Act 2004***

In relation to addressing Human Rights compliance the following general statements are made about a number clauses, that relate to similar issues, for convenience, rather than addressing these issues in several places.

#### Right to privacy and reputation

Sections 12, 13, 14, 15 ,19, 25, 35, 42, 46, 47, 62, 75, 83, 101, 109, 118, 123, 131, 135, 150, 220, 222, 225, 227, 260, 261, 266, 267, 271, 279, 281 and 322 provide for the sharing of information between bodies in different jurisdictions in a range of circumstances. Any interference with the right to privacy and reputation occasioned by these clauses is neither unlawful nor arbitrary. There is a reasonable limit on the persons rights in that information can only be shared for particular purposes related to exercising functions under the Act. The sharing of information is necessary to ensure the regulatory bodies and government agencies are able to access all information necessary to effectively regulate the education and care sector.

#### Publication of information

Sections 153, 160, 195, 225, 261, 271, 270, 280, 301 and 302 provide that in particular circumstances the Regulatory Authority or National Authority may publish information or otherwise make the information available to the public. Such information includes registers of approved providers, approved education and care



services and certified supervisors, and information about the National Quality Framework, including ratings and prescribed information about compliance with the National Law. The regulatory Authority may also publish information about enforcement actions taken under the Bill, but that information must not include information that could identify a person other than an approved provider or certified supervisor.

Not all information dealt with under these provisions will be of a private nature. However, to the extent that these provisions do relate to private information, any interference with the right to privacy and reputation will be neither unlawful nor arbitrary. The type of information that may be published is clearly specified, and the publication of that information serves the necessary purpose of ensuring that parents and other members of the public are able to make informed decisions regarding the provision of education and care services to their children. Any interference with the right to privacy and reputation occasioned by these clauses is neither unlawful nor arbitrary. The information can only be shared for particular purposes related to exercising functions under the Act and there is no alternative reasonable way to gain this information.

#### Requirements to provide information

Clauses 10, 11, 13,14, 22, 35, 37, 40, 44, 45, 54, 56, 59, 62, 64, 83, 85, 88, 89, 95, 96, 107, 110, 119, 121, 129, 139, 141, 142, 145, 150, 152, 154, 159, 172, 174, 186, 191, 197, 199, 200, 204, 205, 206, 208, 214, 215, 216, 228, 295 and 311 provide that persons must provide information in specified circumstances to the Regulatory Authority or National Authority. Information that must be provided under the Act is in some circumstances likely to include personal details, and may include information regarding an applicant’s criminal history, medical conditions and financial status. It is particularly likely that persons will be required to provide personal information where the Regulatory Authority is assessing whether they are “fit and proper” to provide education and care services to children.

To the extent that information required under these provisions relates to individuals, these provisions engage the right to privacy and reputation. However, any interference with the right to privacy and reputation is neither unlawful nor arbitrary. The instances in which information is required to be shared are specifically defined in the Act. The provisions are necessary to respect the rights of children by ensuring that the Authorities are able to make informed decisions about the fitness of particular persons to provide, engage in, or to be present at the premises of child education and care services, to monitor compliance with the Bill and regulations, and to provide accurate information to the public and to parents of children receiving education and care about the quality of education and care services. When seeking information under the Bill, the Authorities and their officers will therefore be required to act in accordance with human rights.

# **Schedule                      Education and Care Services National Law**

## **PART 1—PRELIMINARY**

### **Short title**

Section 1 states that the short title of the Act is the Education and Care Services National Law.

### **Commencement**

Clause 2 provides for the commencement of the Act in participating jurisdictions on 1 January 2012, in accordance with each jurisdiction's Act applying this Law.

### **Objectives and guiding principles**

Section 3 identifies the objectives and guiding principles for the Education and Care Services National Law. The objective of this Law is to establish a national education and care services quality framework, which will seek to:

- (a) Ensure children's safety, health and wellbeing;
- (b) Improve educational and developmental outcomes;
- (c) Promote continuous improvement;
- (d) Establish a system of national integration and shared responsibility in the administration of the National Quality Framework;
- (e) Improve public knowledge and access to, information about the quality of education and care services; and
- (f) Enable sharing of information to reduce the regulatory burden on education and care services.

The guiding principles are as follows:

- (a) The rights and best interests of the child are paramount;
- (b) Children are successful, competent and capable learners;
- (c) The principles of equity, inclusion and diversity underlie this Law;
- (d) Australia's Aboriginal and Torres Strait Islander cultures are valued;
- (e) The role of parents and families is respected and supported;
- (f) Best practice is expected in the provision of education and care services.

These objectives and guiding principles are consistent with the COAG National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care.

### **How functions are to be exercised**

Section 4 provides that an entity with functions under the Education and Care Services National Law is to have regard to the objectives and guiding principles set out in clause 3.

### **Definitions**

Section 5 defines terms used in the Education and Care Services National Law. For the purposes of this Law an education and care service means any service providing or intended to provide education and/or care on a regular basis to children or persons 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;
- (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 delivered to school children; and

- ii. across the school, the preschool program is being delivered to fewer than 6 children.
- (c) a personal arrangement;
- (d) a service principally conducted to provide instruction in a particular activity (e.g. sporting or religious instruction);
- (e) a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service;
- (f) care provided under a child protection law of a participating jurisdiction;
- (g) a prescribed disability service;
- (h) a service of a prescribed class.

By example, this definition means that education and care services under this Law include long day care, family day care, outside school hours care and preschool programs including those delivered in schools, unless expressly excluded. The definition also means that the service is an education and care service even if it provides education and care to children or over 13 years of age.

Other services will be excluded by regulation to allow for future inclusion in this Law at a later date as determined by the Ministerial Council. Examples of services to be excluded by prescribed class are occasional or limited hours care, Multifunctional Aboriginal Children's Service, nannies, babysitters, playschools and playgroups.

For services that are not within scope of this Law, existing state and territory licensing and/or quality assurance provisions will continue to apply.

### **Interpretation generally**

Section 6 incorporates into this Law a schedule of miscellaneous provisions relating to interpretation for construing this Law. The National Partnership Agreement is declared to be a relevant document as extrinsic material under the interpretive provisions, allowing it to be considered in assisting in the Law's interpretation.

### **Single national entity**

Section 7 clarifies that only one single national entity (the Australian Children's Education and Care Quality Authority) is created rather than multiple entities in each jurisdiction. The national entity established by this Law has the power to do acts conferred on it by this Law as applied by Acts of each participating jurisdiction.

### **Extraterritorial operation of Law**

Section 8 provides for the extraterritorial operation of the Education and Care Services National Law.

### **Law binds the State**

Section 9 provides that the Education and Care Services National Law binds the State, including the Government, a Minister and any statutory corporation or other entity.

## **PART 2—PROVIDER APPROVAL**

### **Division 1—Application for provider approval**

Under this Law, a holder of a provider approval may provide an education and care service subject to obtaining a service approval for each service. To reduce the regulatory burden on providers, an approved provider under this Law is not required to seek separate licensing approval under existing State and Territory laws to provide services that are not within the scope of this Law.

#### **Application for provider approval**

Section 10 provides that one or more persons, other than a prescribed ineligible person, may apply for a provider approval. All persons applying for a provider approval must submit relevant information, and each person granted provider approval will be required to comply with any obligations attached to the approval.

This section may limit a person's right to privacy and reputation, please refer to the paragraph on page 9 specifically in relation to privacy and reputation to address this.

#### **Form of application**

Section 11 sets out the process for applying for a provider approval. Applications must be made in the jurisdiction where the applicant or one of the applicants resides, or where one of the applicant's principal offices are located.

This section may limit a person's right to privacy and reputation, please refer to the paragraph on page 9 specifically in relation to privacy and reputation to address this.

#### **Applicant must be fit and proper person**

Section 12 provides that applicants and, in the case of entities each person with management or control responsibility, must satisfy the Regulatory Authority of their fitness and propriety to be involved in the provision of an education and care service.

An exception to this requirement applies to the head of a government department administering an education law in a participating jurisdiction who, owing to his or her position, is determined to be a fit and proper person.

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

Section 13 specifies factors that may be taken into account when assessing whether a person is fit and proper, including, but not limited to, compliance history, criminal history of a participating jurisdictions and financial solvency.

This section may limit a person's right to privacy and reputation, please refer to the paragraph on page 9 specifically in relation to privacy and reputation to address this.

#### **Regulatory Authority may seek further information**

Section 14 enables a Regulatory Authority to seek further information, including, but not limited to, inquiring into a person's medical history or financial circumstances as far as they may impact on an assessment of fitness and propriety.

This section may limit a person's right to privacy and reputation, please refer to the paragraph on page 9 specifically in relation to privacy and reputation to address this.

#### **Grant or refusal of provider approval**

Section 15 provides that the Regulatory Authority may grant or refuse to grant a provider approval. The Regulatory Authority must not grant a provider approval if it is not satisfied as to matters of fitness and propriety set out in section 12.

If the Regulatory Authority has not made a decision within 60 days and has not extended this period by agreement with the applicant, the application is deemed to have been refused.

A person may seek a review of a decision to refuse to grant a provider approval as set out in Part 8 of this Law.

#### **Notice of decision on application**

Section 16 provides that the Regulatory Authority must give written notice to an applicant of the decision and the reasons for that decision on an application for a provider approval within seven days of making a decision.

#### **Duration of provider approval**

Section 17 provides that a provider approval is not time-limited and remains valid unless cancelled or surrendered. A provider approval that is suspended remains in force, but the approved provider cannot operate a service during the period of suspension.

#### **Effect of provider approval**

Section 18 provides that a person to whom provider approval is granted is a fit and proper person to operate an education and care service and an associated children's service, if the approved provider is the holder of the service approval for those services.

#### **Conditions on provider approval**

Section 19 provides that a provider approval may be granted subject to any conditions prescribed in the regulations or determined by the Regulatory Authority. All provider approvals are subject to the condition that the approved provider must comply with this Law. Penalties apply for non-compliance with a provider approval.

An approved provider may seek a review of a decision to impose a condition on a provider approval as set out in Part 8 of this Law.

#### **Copy of provider approval**

Section 20 provides that the Regulatory Authority must provide a copy of a provider approval to the approved provider and prescribes the information to be recorded on the approval.

### **Division 2—Reassessment**

#### **Reassessment of fitness and propriety**

21 provides for the Regulatory Authority to, at any time, reassess whether a person continues to be fit and proper to be involved in the provision of an education and care service. The considerations and powers of the Regulatory Authority that apply to the assessments of fitness and propriety described in Sections 13 and 14 apply to reassessments of fitness and propriety. Section 26 provides the proprietor with the opportunity to respond after the show cause notice is issued.

### **Division 3—Amendment of provider approvals**

#### **Amendment of provider approval on application**

Section 22 sets out the process by which, an approved provider may seek an amendment to a provider approval. An example of when an application for an amendment may be made is when an approved provider seeks a variation to a condition on the provider approval. The Regulatory Authority may accept or refuse

the amendment sought by an approved provider or amend the approval in another way with the written agreement of the applicant.

An approved provider may seek a review of a decision to refuse to amend a provider approval as set out in Part 8 of this Law.

#### **Amendment of provider approval by Regulatory Authority**

Section 23 provides that a Regulatory Authority may amend a provider approval at any time. An example of when this may occur is if the Regulatory Authority decides to add or remove a condition on a service approval. Any proposed amendment takes effect 14 days after the Regulatory Authority gives notice of the amendment or if another period is specified, at the end of that period.

An approved provider may seek a review of a decision to amend a provider approval as set out in Part 8 of this Law.

#### **Copy of amendment of provider approval to be provided**

Section 24 provides that a Regulatory Authority must provide a copy of an amended provider approval to the approved provider and make any necessary amendments to a service approval. The amended service approval must also be provided to the approved provider.

### **Division 4—Suspension or cancellation of provider approval**

#### **Grounds for suspension of provider approval**

Section 25 provides for the circumstances under which a provider approval may be suspended. These include the approved provider being charged with an indictable offence or no longer being considered a fit and proper person; failure to comply with a condition of provider approval or this Law; failure to comply with this Law as applying in any participating jurisdiction, action is being taken under Part 7 of this Law; the approved provider has not operated a service for more than 12 months; a transfer of a service approval has purportedly taken place without the consent of the Regulatory Authority; or failure to pay any outstanding prescribed fees.

An approved provider may seek a review of a decision to suspend a provider approval as set out in Part 8 of this Law.

This provision may engage the right to be presumed innocent until proven guilty according to law, however, the provision does not limit the right. It does not affect the criminal proceeding relating to the person. Nor does it presume that person to be guilty. Rather, it is simply a precautionary measure which protects children from exposure to persons charged with indictable offences, who may be unsuitable or inappropriate to engage in the provision of education and care services, until the matter is resolved. The suspension can only be in place for six months. Furthermore, section 29 provides that prior to any suspension, the person charged with the offence has the opportunity to make a written submission to the Regulatory Authority providing reasons why the suspension should not take place.

#### **Show cause notice before suspension**

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Section 26 provides that in considering the suspension of a provider approval, the Regulatory Authority must first give the approved provider a notice stating the intention to suspend the provider approval, the proposed period of suspension and the

reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

#### **Decision to suspend after show cause notice**

Section 27 provides that, after considering any response from an approved provider provided for under section 26, the Regulatory Authority may suspend the provider approval for a period not more than the prescribed period or decide not to suspend the provider approval.

#### **Suspension without show cause notice**

Section 28 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of children, a provider approval may be suspended for up to six months without giving a show cause notice.

#### **Notice and taking effect of suspension**

Section 29 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend a provider approval. A notice of a decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend. In relation to privacy and reputation under the Human Rights Act, this section only allows Information to only be shared for particular purposes related to exercising functions under the Bill. The sharing of such information is necessary to ensure the regulatory bodies and government agencies are able to access all information necessary to effectively regulate the education and care industry. Further, section 259 provides that for the purposes of the National Quality Framework, bodies and agencies in participating jurisdictions must comply with the Commonwealth *Privacy Act 1988*. Section 268 also imposes a duty of confidentiality on person exercising functions under the Bill in relation to protected information (meaning information that is personal to a particular individual and that identifies or could lead to the identification of that individual, where that information came to the person's knowledge because or in the course of exercising function under the Bill). This section provides that prior to any suspension, the person charged with the offence has the opportunity to make a written submission to the Regulatory Authority providing reasons why the suspension should not take place.

#### **Effect of suspension**

Section 30 provides that the effect of suspension of a provider approval is the suspension of all service approvals held by the provider (including associated children's services) except where provisions to appoint an alternative provider or transfer a service to another approved provider are enacted.

#### **Grounds for cancellation of provider approval**

Section 31 provides for the circumstances under which the Regulatory Authority may cancel a provider approval, including the Regulatory Authority's assessment that the person is not a fit and proper person or that there is an unacceptable risk to children's safety, health or wellbeing should the approved provider continue to operate the service. Other reasons include the approved provider being found guilty of an indictable offence or a serious offence under this Law as applying in any participating jurisdiction, being in breach of a condition of provider approval, or if the approved provider has not operated a service for more than 12 months.

An approved provider may seek a review of a decision to cancel a provider approval as set out in Part 8 of this Law. The person has the right not to be tried or punished more than once for an offence in respect he or she has already been convicted or acquitted in accordance with the law. The consequences are penal in nature. Their purpose is not to punish the convicted person, but to protect children by ensuring that only appropriate persons are able to engage in the provision of education and care services. This section is compatible with the right not to be punished more than once. The person also has the right to appeal a decision made to cancel a provider approval and this step is a formal part of the process.

#### **Show cause notice before cancellation**

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Section 32 provides that in considering the cancellation of a provider approval, the Regulatory Authority must first give the approved provider a notice stating the intention to cancel the provider approval and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

#### **Decision in relation to cancellation**

Section 33 provides that, after considering any response from an approved provider provided for under section 32, the Regulatory Authority may cancel the provider approval; suspend the provider approval for a period; or decide not to cancel the provider approval. Written notice of the decision must be given to the approved provider. A notice of a decision to cancel a provider approval must set out the date on which the cancellation takes effect, which is to be 14 days after the date of the decision unless otherwise stated.

#### **Effect of cancellation**

Section 34 provides that the effect of cancellation of a provider approval is the cancellation of all service approvals held by the provider (including those relating to associated children's services) except where provisions to transfer a service approval to another approved provider are enacted. This provision also allows an approved provider to apply to the Regulatory Authority to transfer a service approval within 14 days of the decision to cancel the approval. The effect of this application is that the service approval is suspended pending the Regulatory Authority's decision. If the Regulatory Authority refuses to consent to a transfer, the original decision to cancel the service approval stands.

#### **Approved provider to provide information to Regulatory Authority**

Section 35 provides that where a show cause notice is issued in relation to a proposed suspension or cancellation of a provider approval, the Regulatory Authority may require the approved provider to provide the contact information of parents of all children enrolled at each service operated by the approved provider for the purposes of informing parents of the proposed action.

#### **Notice to parents of suspension or cancellation**

Section 36 provides that the Regulatory Authority may require an approved provider, upon being advised by the Regulatory Authority of the suspension or cancellation of their provider approval, to notify parents of children enrolled at all or any services operated by the approved provider of the decision and its effect. Persons who fail to comply with this request are subject to a penalty.



Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9.

### **Voluntary suspension of provider approval**

Section 37 enables an approved provider to apply in writing to the Regulatory Authority to suspend a provider approval for no more than 12 months. The approved provider must notify parents of children attending an education and care service operated by the approved provider of an intention to seek a voluntary suspension of provider approval before making the application. This section also sets out the processes for applying to the Regulatory Authority for a suspension of provider approval, and to have a suspension lifted before the prescribed end of the stated period of suspension. If an application to suspend a provider approval is granted, any service approval held by the provider (including those related to associated children's services) is also suspended.

### **Surrender of provider approval by approved provider**

Section 38 provides for the surrender and subsequent cancellation of a provider approval by written notice to the Regulatory Authority. The approved provider must notify parents of children enrolled at the education and care service of an intention to surrender a provider approval before giving notice to the Regulatory Authority. If a provider approval is surrendered, all service approvals (including those related to associated children's services) are surrendered.

## **Division 5—Approval of person to manage or control education and care service in place of approved provider**

### **Death of approved provider**

Section 39 provides that the nominated supervisor, or any other person with day to day control of an education service, must notify the Regulatory Authority within seven days of an approved provider's death.

This section also provides for the executor of the approved provider's estate to continue to operate the approved education and care service provided the nominated supervisor or any certified supervisor continue to manage the day to day operation of the service. The executor or the estate of the approved provider may transfer, surrender or apply for a suspension of the service approval. The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval within 30 days of the death of the approved provider.

### **Incapacity of approved provider**

Section 40 provides for the legal personal representative or guardian of an approved provider to apply to the Regulatory Authority for a provider approval where the approved provider has become incapacitated.

### **Decision on application**

Section 41 provides that the Regulatory Authority must not grant a provider approval to a person under sections 39 or 40 unless satisfied that the person is a fit and proper person under the assessment provisions set out in sections 12, 13 and 14. The Regulatory Authority may grant the provider approval including granting it subject to conditions, or refuse to grant the approval. An approval may be granted for up to six months with provision for a further six month extension at the Regulatory Authority's discretion.

## **Division 6—Exercise of powers by another Regulatory Authority**

**Exercise of powers by another Regulatory Authority**

Section 42 provides for any Regulatory Authority which granted the provider approval and a Regulatory Authority in another participating jurisdiction to exercise all powers of the Regulatory Authority under this Part in respect of the provider approval, if the approved provider operates an education and care service in that participating jurisdiction.

It requires the Regulatory Authority to consult with other participating jurisdictions prior to amending, suspending or cancelling a provider approval.

## **PART 3—SERVICE APPROVAL**

### **Division 1—Application for service approval**

Under this Law, service approval authorises an approved provider to operate a long day care, pre-school or outside school hours care service at a particular premises. Family day care services, not individual family day care educators, are subject to approval based on the adequacy of the service's policies and procedures.

#### **Application for service approval**

Section 43 provides that an approved provider may apply to the Regulatory Authority for a service approval. An approved provider may only apply for a service approval if the approved provider is or will operate the education and care service. A person who has, or is in the process of applying for, a provider approval may apply for service approval. The Regulatory Authority must not grant the service approval unless the provider approval is granted.

#### **Form of application**

Section 44 sets out the steps required to apply for a service approval in the jurisdiction where the service will operate, including putting forward a nominated supervisor.

#### **Regulatory Authority may seek further information**

Section 45 enables a Regulatory Authority to seek further information that is reasonably required for the purpose of assessing an application for a service approval. The time between making a request for further information and the provision of the information is not included in the period set out in section 48 for making a decision on an application.

Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9.

#### **Investigation of application for service approval**

Section 46 provides that the Regulatory Authority may require information from applicants and undertake inquiries and investigations in considering an application for a service approval. The Regulatory Authority may inspect the education and care service premises and inspect policies and procedures of the service.

Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9. Also noting, that section 50 supports ensuring that an adequate level of information is required in a notification of decision to support the principle of a fair trial.

#### **Determination of application**

Section 47 provides that, in determining an application for a service approval, the Regulatory Authority must have regard for the National Quality Framework; except in the case of a family day care residence, the suitability of a premises; the adequacy of the policies and procedures of the service; whether the applicant has a provider approval and has put forward a certified supervisor who has consented to being a nominated supervisor for the service; or any other prescribed matters.

In addition the Regulatory Authority may have regard to whether the applicant is capable of operating the education and care service having regard to its financial and management capability and other matter the Regulatory Authority considers relevant. Also noting, that section 50 supports ensuring that an adequate level of information is required in a notification of decision of application to support the principle of a fair trial.

### **Grant or refusal of service approval**

Section 48 provides for the Regulatory Authority to grant or refuse to grant a service approval to an approved provider. Any grant of a service approval is subject to any conditions the Regulatory Authority sees fit. If the Regulatory Authority has not made a decision within 90 days and has not agreed with the applicant to extend this period, the application is deemed to be refused.

An approved provider may seek a review of a decision to refuse to grant a service approval as set out in Part 8 of this Law.

Also noting that section 50 supports ensuring that an adequate level of information is required in a notification of decision to support the principle of a fair trial.

### **Grounds for refusal**

Section 49 provides that the Regulatory Authority must not grant a service approval if doing so would constitute an unacceptable risk to the safety, health or wellbeing of children or if the applicant does not have a provider approval. The Regulatory Authority may also refuse to grant a service approval on any grounds prescribed in the national regulations.

### **Notice of decision on application**

Section 50 provides that the Regulatory Authority must notify an applicant of the decision and the reasons for the decision for a service approval within 7 days of making a decision.

### **Conditions on service approval**

Section 51 provides that a service approval is granted subject to a number of conditions including ensuring the safety, health and wellbeing of children; meeting children's educational and developmental needs; commencing ongoing operation within six months of being granted an approval unless otherwise agreed by the Regulatory Authority; and the approved provider holding the prescribed insurance. The Regulatory Authority may impose any other conditions it sees fit in order to ensure compliance with the Law. This section also provides for the applicability of conditions to an associated children's service.

Additionally, service approval for family day care services is conditional on the adequate monitoring of, and support for, family day care educators, and the engagement of sufficient co-ordinators to support family day care educators. Any additional conditions, for example, in regard to quality improvement, may be imposed on a service approval by this Law or by the Regulatory Authority. Non-compliance with a condition of a service approval is subject to penalties.

An approved provider may seek a review of a decision to impose a condition on a service approval as set out in Part 8 of this Law.

### **Copy of service approval to be provided**

Section 52 provides that the Regulatory Authority must provide a copy of a service approval to the approved provider and prescribes the information required in the approval.

### **Annual Fee**

Section 53 provides that an annual fee must be paid in respect to each service approval held. This fee will be prescribed in the national regulations.

## **Division 2—Amendment of service approval**

The rights of a person in relation to privacy and reputation are addressed in division 1 and also apply to this division.

### **Amendment of service approval on application**

Section 54 sets out the process by which, an approved provider may seek an amendment of a service approval, and the powers and obligations of the Regulatory Authority in determining an application. An example of when an application for an amendment may be made is where an approved provider seeks the removal of a condition on a service approval. The Regulatory Authority may accept or refuse the amendment sought by the approved provider, or amend the approval in another way with the written agreement of the applicant. The Regulatory Authority must make a decision within 60 days and must provide the approved provider with written notice of its decision. An amendment cannot change a location of a service.

An approved provider may seek a review of a decision to refuse to amend a service approval as set out in Part 8 of this Law.

### **Amendment of service approval by Regulatory Authority**

Section 55 provides that a Regulatory Authority may amend a service approval at any time by notice to the approved provider. For example, the Regulatory Authority may amend a service approval to add or remove a condition, or when the service approval is transferred to another approved provider. This section also provides that the Regulatory Authority must amend a service approval as it relates to an associated children's service in accordance with any direction by the children's services regulator.

An approved provider may seek a review of a decision to amend a provider approval as set out in Part 8 of this Law.

### **Notice of change to nominated supervisor**

Section 56 provides that, if an approved provider wishes to change the nominated supervisor of a service, the Regulatory Authority must be given written notice at least seven days before the new nominated supervisor is due to commence in the role.

### **Copy of amended service approval to be provided**

Section 57 provides that a Regulatory Authority must provide a copy of an amended service approval to the approved provider.

## **Division 3—Transfer of service approval**

The rights of a person in relation to privacy and reputation are addressed in division 1 and also apply to this division.

### **Service approval may be transferred**

Section 58 provides for the transfer of a service approval from one approved provider to another approved provider.

### **Regulatory Authority to be notified of transfer**

Section 59 provides that the Regulatory Authority must be notified in writing at least 42 days prior to the proposed date of the transfer of a service approval and a prescribed fee must be paid.

### **Consent of Regulatory Authority required for transfer**

Section 60 provides that a service approval cannot be transferred without the consent of the Regulatory Authority.

### **Consent taken to be given unless Regulatory Authority intervenes**

Section 61 provides that consent is taken to have been given if the Regulatory Authority, having been notified of a proposed transfer of a service approval, has not notified the parties that it intends to intervene at least 28 days before the intended date of transfer.

### **Transfer may be subject to intervention by Regulatory Authority**

Section 62 sets out the circumstances under which the Regulatory Authority may intervene in a transfer of a service approval, including, but not limited to, concerns as to the receiving approved provider's compliance history with this Law as applying in a participating jurisdiction, financial capacity and management capability to operate the service. Any decision by the Regulatory Authority to intervene must be provided by written notice to the intended transferring and receiving approved providers at least 28 days prior to the proposed date of transfer.

### **Effect of intervention**

Section 63 provides that if the Regulatory Authority intervenes a transfer cannot proceed without the Regulatory Authority's written consent.

### **Regulatory Authority may request further information**

Section 64 provides that if the Regulatory Authority has intervened in the transfer of a service approval it may seek further information from either party to the proposed transfer and undertake inquiries in relation to the receiving approved provider in deciding whether to consent to the transfer.

### **Decision after intervention**

Section 65 provides that if the Regulatory Authority has intervened in the transfer of a service approval, it may decide to consent or refuse to consent to the proposed transfer, and may impose conditions on the transfer, which must be observed.

An approved provider may seek a review of a decision to refuse to transfer a service approval as set out in Part 8 of this Law.

### **Regulatory Authority to notify outcome seven days before transfer**

Section 66 provides that if the Regulatory Authority has intervened in the transfer of a service approval, it must notify the parties to the proposed transfer of its decision to consent or refuse to consent, or its intention to suspend the transfer to allow more time for a decision at least seven days prior to the intended date of transfer. It also sets out the information required in the notice conveying a decision.

### **Transfer of service approval without consent is void**

Section 67 provides that the transfer of a service approval is void if it is made without the consent of the Regulatory Authority, contravenes the conditions of the transfer, or is purported to be made to a person other than the person listed as the receiving approved provider in the notice to the Regulatory Authority.

### **Confirmation of transfer**

Section 68 provides that both parties to a transfer must give written notice to the Regulatory Authority within two days of the transfer taking effect. Penalties apply for failure to notify the Regulatory Authority. On receipt of notice of a transfer of a service approval, the Regulatory Authority must amend the service approval and provide a copy to the receiving approved provider. The amendment to the service approval takes effect on the date of the transfer. Penalties apply for failing to notify the Regulatory Authority of the transfer of a service approval within the prescribed time.

### **Notice to parents**

Section 69 provides that the approved provider to whom a service is transferred must notify the parents of children enrolled at the service of the transfer at least two days before the transfer takes effect. Penalties apply for failing to comply with this provision.

## **Division 4—Suspension or cancellation of service approval**

### **Grounds for suspension of service approval**

Section 70 provides that, to encourage continuous improvement and compliance with this Law and the national regulations, powers are granted to the Regulatory Authority to suspend a service approval.

Circumstances under which a service approval may be suspended include the Regulatory Authority's assessment that it would not in the best interests of children for the service to continue, a condition of the service approval has not been complied with, or the service is not being managed in accordance with this Law.

Other reasons include failure of a service that is rated as having not met the National Quality Standard to improve its rating; the contravention of this Law by the approved provider; failure by the approved provider to comply with a direction, compliance notice or emergency order; the operation of a service at the premises has ceased and the service has not been transferred to another approved provider within six months; within six months of being granted a service approval an ongoing service has not commenced; or the approved provider has not paid the prescribed annual fee for the service approval.

An approved provider may seek a review of a decision to suspend a service approval as set out in Part 8 of this Law.

### **Show cause notice before suspension**

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Section 71 provides that in considering the suspension of a service approval, the Regulatory Authority must first give the approved provider a notice stating the intention to suspend the service approval, the proposed period of suspension and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

### **Decision in relation to suspension**

Section 72 provides that, after considering any response from an approved provider provided for under section 71, the Regulatory Authority may suspend the service approval or decide not to suspend the service approval.

### **Suspension of service approval without show cause**

Section 73 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children a service approval may be suspended without giving a show cause notice. Whilst the rights of the person to a fair and just trial may be limited by this provision, the immediate rights and best interests of children are paramount. There is not a less restrictive means to achieve the purposes of this provision.

### **Notice and effect of decision**

Section 74 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend a service approval. A notice of a

decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend.

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

Section 75 provides that if a Regulatory Authority considers that a service approval should be suspended to the extent that it applies to an associated children's service, it must refer the matter to the children's services regulator of this jurisdiction. The children's services regulator must notify the Regulatory Authority if it proposes to conduct an investigation or inquiry into an associated children's service, and must advise the Regulatory Authority of a decision to suspend a service approval.

### **Transfer of suspended service**

Section 76 provides that the Regulatory Authority may consent to the transfer of a service approval that has been suspended, and that the suspension ceases on the transfer taking effect unless the Regulatory Authority provides otherwise.

### **Grounds for cancellation of service approval**

Section 77 sets out the circumstances under which the Regulatory Authority may cancel a service approval, including the Regulatory Authority's assessment that there is an unacceptable risk to children's safety, health or wellbeing. Other reasons include, the service has not rectified the reason for a suspension of the approval; the service approval was obtained improperly (for example a service approval was transferred without the consent of the Regulatory Authority); or a condition of the service approval has not been complied with.

An approved provider may seek a review of a decision to cancel a service approval as set out in Part 8 of this Law.

### **Show cause notice before cancellation**

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Section 78 provides that in considering the cancellation of a service approval, the Regulatory Authority must first give the approved provider a notice stating the intention to cancel the service approval and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

### **Decision in relation to cancellation**

Section 79 provides that, after considering any response from an approved provider provided under section 78, the Regulatory Authority may cancel the service approval; suspend the service approval or decide not to cancel the service approval, and must give written notice of the decision to the approved provider. A notice of a decision to cancel a service approval must set out the date on which it takes effect, which, unless otherwise stated, is to be 14 days after the date of the decision, unless provisions to transfer the service approval are enacted as set out in section 81.

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

Section 80 provides that if a Regulatory Authority considers that a service approval should be cancelled to the extent that it applies to an associated children's service, it



must refer the matter to the children's services regulator. The children's services regulator must notify the Regulatory Authority if it proposes to conduct an investigation or inquiry into an associated children's service, and must advise the Regulatory Authority of a decision to cancel a service approval.

#### **Transfer of cancelled service**

Section 81 provides that an approved provider may apply to the Regulatory Authority for consent to transfer the service approval within 14 days of a decision to cancel a service approval. If an application is made, the cancellation does not take effect and the service approval is suspended pending the Regulatory Authority's decision. If the Regulatory Authority consents to the transfer, the decision to cancel the service approval is revoked and the suspension of the service approval ceases upon transfer unless otherwise provided. If the Regulatory Authority refuses the application, the service approval is cancelled. An application under this section cannot be made in relation only to the cancellation of an associated children's service.

#### **Effect of cancellation or suspension in another participating jurisdiction**

Section 82 provides that a cancellation or suspension of a service approval has effect in all jurisdictions. For example, the suspension or cancellation of a family day care service approval in one jurisdiction has the effect of cancelling the service approval in other jurisdictions in which the service operates.

#### **Approved provider to provide information to Regulatory Authority**

Section 83 provides that where a show cause notice is issued in relation to a proposed suspension or cancellation of a service approval, the Regulatory Authority may require the approved provider to provide the contact information of parents of all children enrolled at the service for the purposes of notifying parents of the proposed action.

#### **Notice to parents of suspension or cancellation**

Section 84 provides that the Regulatory Authority may require the approved provider, upon being advised by the Regulatory Authority of the suspension or cancellation of a service approval, to notify parents of children enrolled at the service operated by the approved provider of the decision and its effect. Failure to comply with this request is subject to a penalty.

#### **Voluntary suspension of service approval**

Section 85 enables an approved provider to apply in writing to the Regulatory Authority and pay a prescribed fee to suspend a service approval for no more than 12 months. The Regulatory Authority will consider the reasonableness of a suspension in determining whether to approve the request. The approved provider must notify the parents of children enrolled at the service of the intention to apply for a suspension of a service approval at least 14 days prior to making the application to the Regulatory Authority.

#### **Surrender of service approval**

Section 86 provides for the surrender and subsequent cancellation of service approval upon written notification to the Regulatory Authority.

### **Division 5—Application for service waiver**

#### **Application for service waiver**

Section 87 provides that an approved provider may apply for a waiver from a requirement that an approved education and care service comply with a prescribed element or elements in the National Quality Standard or national regulations. A

service waiver will only be able to be sought for elements relating to the physical environment and staffing arrangements of a service.

### **Form of application**

Section 88 sets out the requirements for making an application to the Regulatory Authority for a waiver.

### **Powers of Regulatory Authority in considering application**

Section 89 provides that the Regulatory Authority may seek further information and inspect the premises and offices of the applicant in considering an application for a waiver.

### **Matters to be considered**

Section 90 provides that, in considering whether the grant of a service waiver is appropriate, the Regulatory Authority may have regard to whether the service is able to meet the prescribed element or elements of the National Quality Standard or the national regulations by alternative means and any matters disclosed in the application.

### **Decision on application**

Section 91 provides that the Regulatory Authority may decide to grant the service waiver or refuse the application. An applicant for a service waiver must be notified of a decision within 60 days of the application and a service approval must be issued specifying the elements in relation to which compliance has been granted.

### **Revocation of grant of service waiver**

Section 92 provides that the Regulatory Authority may revoke a service waiver. For example, this action may be taken where the Regulatory Authority considers the circumstances of the service to have changed since the original decision, or if the service has since fully complied with the elements set out in the grant of compliance. A revocation takes effect at the end of the period prescribed in regulations. An approved provider may also apply in writing to have a service waiver revoked.

An approved provider may seek a review of a decision to cancel a grant of compliance to as set out in Part 8 of this Law.

### **Effect of service waiver**

Section 93 provides that while the service waiver is in force the service will be considered to comply with the element or elements specified in the service waiver. This provision enables flexibility and recognises the variable circumstances of services throughout Australia. For example, a service operating in a rural or remote area that is unable to attract a qualified staff member may be given a service waiver to operate despite not meeting this legislative requirement to provide a service to children in remote communities.

## **Division 6—Temporary waiver**

### **Application for temporary waiver**

Section 94 provides that an approved provider may apply for a temporary waiver from the requirement to comply with a prescribed element or elements of the National Quality Standard or the national regulations. A grant of compliance can only be sought for elements relating to physical environment and staffing arrangements of a service.

### **Form of application**

Section 95 sets out the requirements for making an application to the Regulatory Authority for a temporary waiver.

### **Regulatory Authority may seek further information**

Section 96 provides that the Regulatory Authority may seek further information or inspect education and care service premises in considering an application for a temporary waiver.

A person's right to privacy and reputation may be limited by this section. "Premises", under this provision, extends to a residence at which an education and care service is operating, and to parts of a family day carer's residence that are used to provide care and education to children on behalf of a family day care service. Most of the above sections will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in these sections will interfere with a person's right to privacy and reputation, in particular to privacy in their home or correspondence, such interference is lawful and not arbitrary as these limitations are necessary to ensure the rights of children are protected. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections in the Act 1, including a requirement that certain inspections occur at a "reasonable time".

### **Special circumstances**

Section 97 provides that in considering whether the grant of a temporary waiver is appropriate, the Regulatory Authority may have regard to whether special circumstances disclosed in the application reasonably justify the grant of the temporary waiver.

### **Decision on application**

Section 98 provides that the applicant must be notified of a decision within 60 days of an application for a temporary waiver and, if granted, a service approval must be issued specifying the elements of the National Quality Standard or the national regulations on which compliance is waived. A temporary waiver must specify the period of the waiver, which can be no more than 12 months; however, an approved provider may apply for a further temporary waiver or to extend a temporary waiver.

### **Revocation of temporary waiver**

Section 99 provides that the Regulatory Authority may revoke a temporary waiver. For example, this action may be taken where the Regulatory Authority considers the circumstances of the service to have changed since the original decision, or if the service has since fully complied with the elements set out in the temporary waiver.

### **Effect of temporary waiver**

Section 100 provides that a service is not required to comply with the element or elements of the National Quality Standard specified in the waiver.

## **Division 7—Exercise of powers by another Regulatory Authority**

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

Section 101 provides for any Regulatory Authority in whose jurisdiction a family day care educator provides education and care as part of a family day care service to exercise all powers of the Regulatory Authority in respect of a service operating within that jurisdiction. A Regulatory Authority may only exercise a power to amend, suspend or cancel a service approval after consulting with the Regulatory Authority of each jurisdiction in which the family day care service operates.

## **Division 8—Associated children’s services**

### **Application of this Law to associated children’s services**

Section 102 provides that this Law does not apply to an associated children’s service except where expressly provided.

## **Division 9—Offences**

### **Offence to provide education and care service without service approval**

Section 103 provides that it is an offence for a person to provide an education and care service unless the person is an approved provider in respect to that service, and the service is an approved education and care service. In the case of family day care, provider and service approval does not apply to individual family day care educators who are providing education and care to children for an approved family day care service, but to the service itself.

### **Offence to advertise education and care service without service approval**

Section 104 provides for an offence to knowingly publish or cause to be published an advertisement to provide an education and care service without provider or service approval. It does provide for the right of an approved provider to advertise without service approval if an application for this approval has been made and is under consideration.

## **PART 4—SUPERVISOR CERTIFICATES**

### **Division 1—Application for supervisor certificate**

#### **Purpose of supervisor certificate**

Section 105 enables a person issued with a supervisor certificate to be placed in day to day charge of an approved education and care service.

#### **Application for supervisor certificate**

Section 106 provides that a person over the age of 18 may apply to the Regulatory Authority of the jurisdiction in which they ordinarily reside or intend to reside for a supervisor certificate.

This provision limits a person's right to partake in public life due to the attribute of their age. However, the discrimination is a reasonable limitation on the right due to the importance that the importance of the limitation is to ensure that persons who supervise education and care facilities have the necessary maturity to engage in the activity. It is important for the proper care and education of children in these services that supervisory positions be limited to persons of legal adult age. The limitation aims to prevent harm to children, and therefore serves to give effect to the best interests of the child. Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In this provision age is being used as a proxy measure of the maturity and capacity of an individual to act responsibly, which is necessary in this situation. It is reasonable to set an age limit reflecting an assessment of when most persons will have sufficient maturity to ensure responsible decisions are made by those in a position to supervise education and care services. There is no less restrictive means reasonable available to achieve the purpose of ensuring that minors are not allowed to act as supervisors in education and care services.

#### **Form of application**

Section 107 sets out the requirements for making an application for a supervisor certificate.

#### **Applicant must satisfy Regulatory Authority of specified matters**

Section 108 provides that an applicant must satisfy the Regulatory Authority of their fitness and propriety to be a supervisor of an education and care service, and meet the minimum requirements relating to qualifications, experience and management capability.

A person who is a registered teacher or who holds a current working with children card is taken to satisfy the fitness and propriety requirements unless there is evidence to the contrary.

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

Section 109 specifies factors that may be taken into account by the Regulatory Authority in assessing whether a person is fit and proper to supervise an education and care service, including, but not limited to, compliance history and decisions in relation to this Law as applying in any participating jurisdiction and other relevant laws.

Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9.

### **Regulatory Authority may seek further information**

Section 110 provides for the Regulatory Authority to seek further information or inquire further into issues including, but not limited to, whether the person has a medical condition which may affect his or her capacity to be a supervisor, and anything that may affect capacity to supervise an education and care service.

Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9.

### **Grant or refusal of supervisor certificate**

Section 111 provides that a Regulatory Authority may grant or refuse to grant a supervisor certificate. A Regulatory Authority is taken to have refused to grant a supervisor certificate if it has not notified an applicant of a decision within 60 days of the date of the application and has not, with the applicant's agreement, extended this period of deliberation.

A person may seek a review of a decision to refuse to grant a supervisor certificate as set out in Part 8 of this Law. This supports the principle of ensuring that a person has a right to have a fair hearing and is given the opportunity to respond.

### **Grounds for refusal**

Section 112 provides that the Regulatory Authority must refuse to grant a supervisor certificate if the applicant is under the age of 18, the Regulatory Authority is not satisfied that the person is fit and proper or has the required qualifications, experience or management capability to supervise an education and care service. Note that section 113 ensures that a due process ensures that the person is given provided with adequate level of information in regards to how the decision was made.

### **Notice of decision on application**

Section 113 provides that the Regulatory Authority must give written notice to the applicant of a decision and the reasons for the decision, to grant or refuse to grant a supervisor certificate within 7 days of the decision.

### **Conditions on certificate**

Section 114 provides that a supervisor certificate is granted subject to any conditions imposed by this Law or determined by the Regulatory Authority. The certified supervisor must, to the extent that a matter is within his or her control, comply with this Law in relation to that matter, and must notify the Regulatory Authority of any change to his or her mailing address or name. Penalties apply for non-compliance with a condition of a supervisor certificate.

A certified supervisor may seek a review of a decision to impose a condition on a supervisor certificate as set out in Part 8 of this Law.

### **Grant of supervisor certificate to specified classes of persons**

Section 115 provides for the grant of a supervisor certificate to a person or a prescribed class of persons. An application is not required and the conditions outlined in Section 114 do not apply to this certificate.

### **Issue of certificate**

Section 116 provides that the Regulatory Authority must issue a supervisor certificate if certification is granted, and sets out the information to be included on the certificate.

### **Effect of supervisor certificate**

Section 117 provides that a supervisor certificate enables a person to be a nominated supervisor and to be the responsible person present at the premises of an education and care service in the absence of the approved provider or nominated supervisor.

## **Division 2—Reassessment**

### **Reassessment of suitability**

Section 118 provides that the Regulatory Authority may reassess the fitness and propriety and other requirements for a certified supervisor at any time.

## **Division 3—Amendment of supervisor certificate**

The rights of a person in relation to privacy and reputation are addressed in division 1 and also apply to this division.

### **Amendment of supervisor certificate on application**

Section 119 provides that a certified supervisor may apply to the Regulatory Authority for an amendment of a supervisor certificate, and sets out the process for making an application. As an example, a certified supervisor may seek the removal of a condition on a supervisor certificate. The Regulatory Authority may accept or refuse the amendment sought by a certified supervisor or, amend the certificate in another way with the written agreement of the applicant.

A certified supervisor may seek a review of a decision to refuse to amend a supervisor certificate as set out in Part 8 of this Law.

### **Amendment of supervisor certificate by Regulatory Authority**

Section 120 provides that the Regulatory Authority may by written notice amend a supervisor certificate at any time, which has effect 14 days after the notice is given or at any later date stated in the notice. An example of when this action may be taken is where the Regulatory Authority decides to add or remove a condition on a supervisor certificate.

A certified supervisor may seek a review of a decision to amend a supervisor certificate as set out in Part 8 of this Law.

### **Notice of change of circumstances**

Section 121 provides that a certified supervisor must notify the Regulatory Authority of any change in his or her circumstances that affects the requirement that the person be a fit and proper person and meet the prescribed minimum requirements for qualifications, experience or management capability; or any change to matters included on the supervisor certificate, any suspension or cancellation of a working with children check or working with children card and any disciplinary proceedings under an education law. Penalties apply for non-compliance.

### **Notice of change of information**

Section 122 provides that the Regulatory Authority may amend a supervisor certificate in the event that a certified supervisor notifies of changes to information stated on a supervisor certificate.

## **Division 4—Suspension or cancellation of supervisor certificate**

The rights of a person in relation to privacy and reputation are addressed in division 1 and also apply to this division.

### **Grounds for suspension or cancellation of supervisor certificate**

Section 123 provides for the circumstances under which the Regulatory Authority may suspend or cancel a supervisor certificate, including an assessment that the person is no longer a fit and proper person to be a supervisor of an education and care service, or the person fails to comply with a condition of the supervisor certificate or a requirement of this Law.

A certified supervisor may seek a review of a decision to suspend or cancel a supervisor certificate as set out in Part 8 of this Law.

#### **Show cause notice before suspension or cancellation**

Section 124 provides that if the Regulatory Authority is considering suspending or cancelling a supervisor certificate it must first issue a show cause notice outlining the intended action, the reasons for the decision, and the process for the certified supervisor to respond to the notice. After considering any response from the supervisor received within the timeframe, the Regulatory Authority may or may not decide to suspend or cancel the supervisor certificate.

#### **Decision in relation to suspension or cancellation**

Section 125 provides that the Regulatory Authority after considering the response from the certified supervisor may suspend, cancel or decide not to suspend or cancel the supervisor certificate.

#### **Suspension of supervisor certificate without show cause notice**

Section 126 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children, a supervisor certificate may be suspended without giving a show cause notice.

#### **Notice and taking effect suspension or cancellation**

Section 127 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend a supervisor certificate. A notice of a decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend.

#### **Suspension or cancellation of certain supervisor certificates**

Section 128 provides for the suspension or cancellation of a supervisor certificate if the teacher registration of a person taken to be a fit and proper person under section 109 is suspended or cancelled. This action will not apply if the person is assessed as a fit and proper person under the regular process set out in section 109.

The supervisor certificate of a person is immediately suspended or cancelled if his or her working with children card is suspended or cancelled.

#### **Voluntary suspension of supervisor certificate**

Section 129 provides for a certified supervisor to apply in writing to the Regulatory Authority to voluntarily suspend their supervisor certificate for a period of not more than 12 months. If satisfied that the suspension of the supervisor certificate is reasonable in the circumstances, the Regulatory Authority may by written notice agree to the suspension.

#### **Surrender of supervisor certificate by certified supervisor**

Section 130 provides for the voluntary surrender and subsequent cancellation of a supervisor certificate and sets out the process for this action.



## **Division 5—Exercise of powers by another Regulatory Authority**

### **Exercise of powers by another Regulatory Authority**

Section 131 provides for the Regulatory Authority of a participating jurisdiction to exercise all the powers under this Part in respect of a supervisor certificate if the supervisor works in that jurisdiction. These powers may only be exercised after consultation with the Regulatory Authority of each participating jurisdiction in which the certified supervisor works.

## **Division 6—Offence**

### **Offence to act as supervisor without supervisor certificate**

Section 132 provides for an offence for a person to hold himself or herself out as a certified supervisor without holding a supervisor certificate.

## **PART 5—ASSESSMENTS AND RATING**

### **Division 1—Assessment and rating**

All services under the National Quality Framework will be subject to an assessment and rating process against the National Quality Standard and the requirements of the national regulations. These assessments and ratings will provide information to families about the quality of services. Under the National Quality Framework, services will be assessed against seven quality areas, and will be given one of five rating levels for each quality area and an overall rating.

#### **Assessment for rating purposes**

Section 133 provides that the Regulatory Authority that granted the service approval for an education and care service, may at any time assess or reassess a service for the purpose of rating that service against the National Quality Standard and national regulations. New services or services that have not yet been rated will have a prescribed provisional rating.

#### **Rating levels**

Section 134 provides that the rating levels to be used in this Law are prescribed by the regulations. The highest rating level may only be given by the National Authority on application by an approved provider.

#### **Rating of approved education and care service**

Section 135 enables the Regulatory Authority to determine a rating level for each quality area stated in the National Quality Standard and an overall rating for the service. In doing so the Regulatory Authority may have regard to any information obtained in the course of the rating assessment, any compliance history, any investigation of the service or any other prescribed information.

#### **Notice to approved education and care service of rating**

Section 136 provides that the Regulatory Authority must give written notice to an approved provider of an assessment and the rating decision. This notice must be given within 60 days after the completion of the assessment by an authorised officer of the service for the purpose of an assessment or after the review period under section 137.

#### **Suspension of rating assessment**

Section 137 provides for the suspension of a rating assessment if the service approval is cancelled or suspended, a compliance notice or an emergency action notice has been given or action has been taken for the emergency removal of children. In this situation the Regulatory Authority must give notice that the outcome of the rating assessment will be given within 60 days after either the end of the period for seeking a review of the decision or action, or, if a review is sought, once a decision is made.

### **Division 2—Reassessment and re-rating**

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

Section 138 provides that the Regulatory Authority may reassess a service at any time and determine new rating levels.

#### **Application for reassessment and re-rating by approved provider**

Section 139 provides that an approved provider may apply to the Regulatory Authority for a reassessment and re-rating of a service and the process for making an application. An application for a reassessment or re-rating may only be made once every two years or otherwise as agreed by the Regulatory Authority.

### **Application of Division 1**

Section 140 provides that Division 1 relating to assessments and ratings also applies to reassessments and re-ratings under this Division.

## **Division 3—Review by Regulatory Authority**

### **Review by Regulatory Authority**

Section 141 provides that an approved provider may ask the Regulatory Authority to review the rating assessment made by the Regulatory Authority within 14 days of receiving the rating notice under clause 136, and sets out the process for requesting a review.

### **Process for Review**

Clause 142 sets out the process for the Regulatory Authority to review a rating decision upon application by an approved provider and the period within which a review must be conducted. To ensure the review is independent and the principles of natural justice are provided for, the person undertaking the review must not have been involved in the original assessment. The Regulatory Authority may request further information in undertaking a review.

### **Outcome of a review by Regulatory Authority**

Section 143 provides that the Regulatory Authority may confirm or amend a rating assessment as a result of a review and must notify an approved provider of a decision and the reasons for it within 30 days of the decision being made. The rating decision made by the review is final unless an application to review the decision is made to the National Authority under section 144.

## **Division 4—Review by Ratings Review Panel**

### **Subdivision 1—Application for review**

#### **Application for further review by Ratings Review Panel**

Section 144 provides that, following a review by the Regulatory Authority, an approved provider may apply to the National Authority for further review of the rating assessment by a Ratings Review Panel. An application may only be made on the grounds that the Regulatory Authority failed to apply prescribed processes or failed to take into account relevant circumstances or facts at the time of the assessment.

#### **Form and time of application**

Section 145 sets out the process for making an application for a review by the Ratings Review Panel, which must be made within 14 days of the review decision made by a Regulatory Authority. As the review is confined to whether prescribed processes were applied and relevant circumstances and facts were taken into account, an application must not include information or evidence that was not given to the Regulatory Authority during a rating assessment or a review of a rating assessment. The National Authority must give written notice to the Regulatory Authority of the application and invite the Regulatory Authority to make a submission to the review.

### **Subdivision 2—Establishment of Ratings Review Panel**

#### **Establishment of Ratings Review Panel**

Section 146 provides for the establishment of a Ratings Review Panel by the Board of the National Authority.

**Review Panel pool**

Section 147 provides for the establishment of a Ratings Review Panel pool to act as members of the Panel, and sets out the required qualifications for members. The pool is to consist of members nominated by Regulatory Authorities and the Commonwealth Minister and may include a member of staff of the National Authority.

**Procedure of Panel**

Section 148 sets out the procedure to be followed by the Ratings Review Panel, including how it must record its deliberations.

**Transaction of business by alternative means**

Section 149 provides for the transaction of business by telephone, closed circuit television or other means.

**Subdivision 3—Conduct of Review****Conduct of review**

Section 150 sets out the parameters for a review by the Ratings Review Panel, including evidence that may be considered and information and advice that may be requested. In the interests of procedural fairness, copies of documents, information or evidence produced by the Regulatory Authority must be provided to the approved provider.

**Decision on review by Ratings Review Panel**

Section 151 provides that as a result of a review the Ratings Review Panel must make a decision of the review within 60 days, unless otherwise extended by the Chairperson of the Board, confirm the assessment of the Regulatory Authority or amend the assessment and rating levels. The outcome of the review must be conveyed to the Regulatory Authority and the approved provider within 14 days of a decision and the rating level confirmed or amended by the review becomes the rating level for the service.

**Division 5—Awarding of highest rating**

It is intended that the highest rating under the National Quality Standard and national regulations will recognise services that exhibit excellence and best practice in education and care. This rating is determined by the National Authority.

**Application for highest rating**

Section 152 enables an approved provider who satisfies the criteria established by the National Authority to apply to be assessed for the highest overall rating level and sets out the process for applying. An application may be made once every three years unless otherwise determined by the National Authority.

**Assessment of education and care service**

Section 153 provides that the National Authority may determine and publish the criteria for meeting the highest rating. The Board of the National Authority will assess if services meet the highest rating level, and in doing so must ask for, and take into account, the advice of the Regulatory Authority.

**Board may seek information and documents.**

Section 154 enables the Board to ask the approved provider for information and documents, and make any inquiries it considers appropriate for the purposes of a rating assessment.

**Decision on application**

Section 155 provides that the Board of the National Authority may confer or refuse to confer the highest rating on a service within 60 days of receiving an application, or a further 30 days under prescribed circumstances. A conferral of the highest rating lasts for three years unless revoked sooner.

**Notice of decision**

Section 156 provides that the Board must give written notice of the decision to confer or refuse to confer the highest rating level on a service to the approved provider and the Regulatory Authority.

**Reassessment of highest rating level**

Section 157 provides that the Board may at any time reassess a service.

**Revocation of highest rating level**

Section 158 provides that the Board of the National Authority must revoke the highest rating level for a service at any time if it determines that the service no longer meets the criteria for the highest rating level, or the Regulatory Authority advises that the overall rating level of the service is lower than the second highest rating level.

**Re-application for highest rating level**

Section 159 enables an approved provider that has had the highest rating level conferred on a service to re-apply for the highest rating level within 90 days before the expiry of the rating, and sets out the process for making the application.

**Division 6—Publication of rating levels****Publication of ratings**

Section 160 sets out the process by which the National Authority must publish rating levels. The publication of ratings seeks to improve public knowledge about, and access to, information about the quality of services, which is a key driver of education and care reforms. Ratings are not published until after any period for seeking review expires or a decision on a review of a rating decision is made.

## **PART 6—OPERATING AN EDUCATION AND CARE SERVICE**

In order to fulfil the objectives and principles of this Law, this Part sets out obligations for approved providers, nominated supervisors, staff members and family day care educators, and prescribes penalties for infringement or non-compliance. The penalties for the offences included in this Law reflect a scale of seriousness; and the offences are applied to the most appropriate persons in recognition of different levels of responsibility.

### **Offence to operate education and care service without nominated supervisor**

Section 161 provides that an approved provider must not operate a service without a nominated supervisor for the service.

### **Offence to operate education and care service unless responsible person is present**

Section 162 provides that an approved provider must ensure that at least one person approved or certified by the Regulatory Authority is present at an education and care service at all times. A responsible person may be the approved provider or a person with management or control of a service; the nominated supervisor of the service; or a certified supervisor who has been placed in day to day charge of the service. This provision does not apply to family day care services, which are provided for in sections 163 and 164.

### **Offence relating to appointment or engagement of family day care co-ordinators**

Section 163 provides that a family day care service must at all times employ or engage a suitably qualified co-ordinator to assist in the operation of the service and support, monitor and train the service's family day care educators.

### **Offence relating to assistance to family day care educators**

Section 164 provides that a family day care service must ensure that at least one person approved or certified by the Regulatory Authority is available and contactable to provide support to a family day care educator at all times when the service is caring for children. This person may be the approved provider or a person with management or control of the service; the nominated supervisor of the service; or a certified supervisor who has been placed in day to day charge of the service.

### **Offence to inadequately supervise children**

Section 165 provides that an approved provider, nominated supervisor or family day care educator must ensure children are adequately supervised at all times they are in the care of that service.

### **Offence to use inappropriate discipline**

Section 166 provides that an approved provider, nominated supervisor, staff member or family day care educator must ensure that no child is subject to corporal punishment or unreasonable discipline.

### **Offence relating to protection of children from harm and hazards**

Section 167 provides that an approved provider, nominated supervisor or family day care educator must ensure reasonable steps are taken to protect children from hazards likely to cause injury.

### **Offence related to required programs**

Section 168 provides that an approved provider or nominated supervisor must ensure that a program based on an approved learning framework (such as the Early Years Learning Framework or any proposed framework for school age care) is delivered to

all children and takes into account each child's needs, interests, experiences and individual differences.

**Offence relating to staffing arrangements**

Section 169 provides that an approved provider, nominated supervisor or family day care educator must ensure compliance with prescribed staffing numbers and qualifications, unless the service has been granted a temporary waiver or is taken to comply with the National Quality Standard by decision of the Regulatory Authority. This section also provides for the National Authority to determine the equivalency of qualifications, including foreign qualifications, in relation to those required under the national regulations.

**Offence relating to unauthorised persons on education and care service premises**

Section 170 provides that an approved provider, nominated supervisor or family day care educator must ensure unauthorised persons do not remain on service premises unless they are under the direct supervision of an educator or staff member of the service. This section also clarifies who is *not* considered to be an unauthorised person, including holders of a current working with vulnerable people check, and persons who are not required to hold a working with vulnerable people check; parents, or an authorised nominee of a parent; family members; and in an emergency, medical and emergency service personnel.

**Offence relating to direction to exclude inappropriate persons from education and care service premises**

Section 171 provides that a Regulatory Authority may direct an approved provider, a nominated supervisor or a family day care educator to exclude an inappropriate person from the premises for such time as the Regulatory Authority considers necessary.

For clarity, an inappropriate person is a person who may pose a risk to the safety, health or wellbeing of children; or whose behaviour, state of mind or pattern of behaviour is such that it would be inappropriate for him or her to be on the premises while children are attending, for example a person who is under the influence of drugs or alcohol.

**Offence to fail to display prescribed information**

Section 172 provides that prescribed information, including, but not limited to, service and provider approvals, nominated supervisors or the prescribed class of person to which the nominated supervisor belongs, ratings decisions, service waivers and temporary waivers must be displayed at the main entrance of a service.

**Offence to fail to notify certain circumstances to Regulatory Authority**

Section 173 provides that an approved provider must notify the Regulatory Authority in relation to changes in the name of the approved provider; management and control of the approved provider; failure to commence operating an education and care service within 6 months and an approved providers must notify the Regulatory Authority of matters in relation to operation of an education and care service including suspension, cancellation or disciplinary proceedings or other action taken against a nominated supervisor or certified supervisor; changes relating to the engagement of a nominated supervisor; and changes relating to the education and care service premises; ceasing to operate a service; and change in the principal office of the family day care service.

**Offence to fail to notify certain information to Regulatory Authority**

Section 174 provides that an approved provider must notify the Regulatory Authority of any serious incidents at the service as prescribed in the national regulations; complaints regarding the safety, health or wellbeing of a child or children; the contravention of this Law; any change relevant to an assessment of fitness and propriety; or any other prescribed information.

**Offence relating to requirement to keep enrolment and other documents**

Section 175 provides that an approved provider or a family day care educator must keep the relevant prescribed documents and make them available for inspection by an authorised officer.



## **PART 7—COMPLIANCE WITH NATIONAL LAW**

### **Division 1—Notices**

#### **Compliance directions**

Section 176 provides that, if the Regulatory Authority is satisfied that an education and care service is not complying with a specific provision of this Law, it may issue a written direction requiring the approved provider to take action to comply with a specific and limited requirement within a specified period not less than 14 days. An approved provider must comply with a compliance direction.

#### **Compliance notices**

Section 177 empowers a Regulatory Authority to issue a compliance notice if a service is not complying with any provision of this Law. The notice requires the approved provider to take specified steps to comply with that provision. An approved provider must comply with a compliance notice.

#### **Notice to suspend education and care by a family day care educator**

Section 178 provides for the Regulatory Authority to direct the approved provider of a family day care service to suspend the provision of care or education by a family day care educator in the interests of children's safety, health and wellbeing. The Regulatory Authority may give a show cause notice indicating the intention to direct the suspension of the provision of education and care and the reasons for the proposed direction. An approved provider, nominated supervisor or educator may, within 14 days after the show cause notice is given, make a submission, which must be considered by the Regulatory Authority. The Regulatory Authority must convey a final decision to the approved provider and the family day care educator. A person must comply with a direction given by the Regulatory Authority.

#### **Emergency action notices**

Section 179 empowers a Regulatory Authority to issue an emergency action notice if there is an immediate risk to the safety, health or wellbeing of children. The Regulatory Authority may direct an approved provider of a service to take action to remove or reduce the risk within a specified timeframe, which must not be more than 14 days. An approved provider must comply with this notice.

### **Division 2—Enforceable undertakings**

#### **Enforceable undertakings**

Section 180 provides for enforceable undertakings, which are an alternative compliance tool through which a person in contravention of this Law undertakes to take, or refrain from taking, certain actions to comply with this Law. By agreeing to, and complying with, an enforceable undertaking, proceedings cannot be brought against the person for the prescribed offence under this Law; however the Regulatory Authority may publish an undertaking.

#### **Failure to comply with enforceable undertakings**

Section 181 provides that, in the event of failure to comply with an enforceable undertaking, the Regulatory Authority may seek recourse to the relevant tribunal or court, and the tribunal or court may make orders regarding the undertaking, including an order to direct the person to comply with the undertaking. 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 or contravention in respect of which the undertaking was given.

### **Division 3—Prohibition notices**

#### **Grounds for issuing prohibition notice**

Section 182 provides for the Regulatory Authority to issue a prohibition notice to persons involved in providing an education and care service if it considers that there may be an unacceptable risk of harm to a child if the person were allowed to remain on the premises or to provide education and care to children.

#### **Show cause notice to be given before prohibition notice**

Section 183 provides that the Regulatory Authority must issue a show cause notice outlining the intention to give a prohibition notice and the reasons for the intended prohibition. The show cause notice must also provide the person at least 14 days to respond to the notice. The requirement for a show cause notice does not apply if the Regulatory Authority is satisfied that it is necessary in the interests of a child's safety, health or wellbeing to issue an immediate prohibition notice.

#### **Deciding whether to issue prohibition notice**

Section 184 provides that the Regulatory Authority must consider any submission received within the stated time limit from a person issued with a show cause notice, and must give notice to a person if it is decided not to issue a prohibition notice. The right to privacy and reputation under the Human Rights act by the prohibition being limited to employment in a specific industry, it is reasonable to restrict a person's access to employment in this area where there may be an unacceptable risk to children. This would be required by the right of children to such protection as is in their best interests

A person may seek a review of a decision to issue a prohibition notice as set out in Part 8 of this Law.

By giving the person an opportunity to make submissions and the Regulatory Authority having regard to those submissions in coming to its final decision this allows the right to reputation under the *Human Rights Act (2004)* to be addressed due to the person being able to make submissions which must be considered in the decision making process.

#### **Content of prohibition notice**

Section 185 provides that a prohibition notice must state the activities the person is prohibited from doing, inform that the person may apply for cancellation of the notice, and provide details on how an application to cancel the notice must be made.

#### **Cancellation of prohibition notice**

Section 186 provides for the process by which a prohibition notice is cancelled, including the ability of a person subject to a prohibition notice to apply for its cancellation. The Regulatory Authority must decide on an application to cancel a prohibition notice as soon as practicable.

A person may seek a review of a decision to refuse to cancel a prohibition notice as set out in Part 8 of this Law.

#### **Person must not contravene prohibition notice**

Section 187 provides that a person who is the subject of a prohibition notice must not be engaged or involved in any capacity in an education and care service, and must not fail to comply with any restrictions on any other activity relating to an education and care service. Penalties apply for non-compliance.

### **Offence to engage person to whom prohibition notice applies**

Section 188 provides that an approved provider must not engage a person who is the subject of a prohibition notice if the approved provider knows or ought to have known that a prohibition notice was in force. Penalties apply for non-compliance.

## **Division 4—Emergency removal of children**

### **Emergency removal of children**

Section 189 provides for the emergency removal of children if the Regulatory Authority considers there to be an immediate danger to the safety or health of any child educated or cared for by the service. This section ensures the protection of children and allows the Regulatory Authority the ability to protect children who are in immediate danger. This provision supports the rights of the child through the right of protection of child and family under the *Human Rights Act 2004* and the Conventions on the Rights of the Child, which advocates for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. In undertaking this action, the Regulatory Authority is empowered to use the assistance of other persons reasonably required (including police officers), enter premises without a warrant and use reasonable force as necessary.

An example of when this action may be taken is where there is reasonable belief that the environment is unsafe, children are not being adequately cared for and supervised, or reasonable precautions to protect children from hazards or harm have not been taken.

## **PART 8—REVIEW**

In addition to the provision of show cause notices in this Law, to ensure adequate application of the principles of natural justice, this Part provides for internal and external review of decisions made by the Regulatory Authority. These provisions go to ensuring the principles of a fair trial being compliance with Human Rights requirements, within the administration context.

### **Division 1—Internal review**

#### **Reviewable decision—internal review**

Section 190 provides that a reviewable decision for internal review is a decision of the Regulatory Authority to impose conditions on, or otherwise amend or refuse to amend, a provider approval, service approval or supervisor certificate; refuse to grant a provider approval, service approval or supervisor certificate; to suspend a provider approval, service approval or supervisor certificate without prior issuance of a show cause notice; refuse to consent to the transfer of a service approval; revoke a service waiver; or issue a compliance direction or compliance notice.

#### **Internal review of reviewable decisions**

Section 191 sets out the procedure for internal reviews of decisions by a Regulatory Authority. A person who is the subject of a reviewable decision may make a written application to the Regulatory Authority for review of the decision within 14 days of being notified of the decision. The person who conducts the review must not have been involved in the original assessment, and may ask the applicant for further information.

The review must be conducted within 30 days of receipt of the application, which may be extended by up to 30 additional days if a request for further information is made, or by agreement with the applicant. At the end of the review, the Regulatory Authority may confirm the original decision or make any other decision it deems appropriate.

### **Division 2—External review**

#### **Reviewable decision—external review**

Section 192 provides that a reviewable decision for external review is a decision of the Regulatory Authority under Section 191, other than in relation to a compliance direction or compliance notice; a decision to suspend or cancel a service approval, provider approval or supervisor certificate; a decision to direct a family day care service to suspend the provision of education or care by a family day care educator; or a decision to issue or refuse to cancel a prohibition notice.

#### **Application for review of decision of Regulatory Authority**

Section 193 provides that a person who is the subject of a reviewable decision may apply to the relevant tribunal or court for review of the decision within 30 days of notification of the decision to be reviewed. The court or tribunal may confirm or amend the decision of the Regulatory Authority or substitute another decision for the decision of the Regulatory Authority, and in doing so may have regard to a decision of a relevant tribunal or court in another participating jurisdiction under this Law.

### **Division 3—General**

#### **Relationship with Act establishing administrative body**

Section 194 provides that this Part of the Education and Care Services Law applies despite any provision to the contrary in any Act that establishes the relevant tribunal or court.

## **PART 9—MONITORING AND ENFORCEMENT**

### **Division 1—Authorised officers**

#### **Appointment of authorised officers**

Section 195 provides for the Regulatory Authority to appoint authorised officers who meet the requirements determined by the National Authority.

#### **Identity card**

Section 196 provides that an authorised officer must be issued with an identity card, which must be carried in the exercise of the authorised officer's functions and produced upon request. Penalties apply for failure to produce an identity card on request.

### **Division 2—Powers of entry**

#### **Powers of entry for assessing and monitoring approved education and care service**

Section 197 empowers an authorised officer to, at any reasonable time, enter the premises of an approved education and care service or premises where an authorised officer believes on reasonable grounds that an approved service is operating, for the purposes of monitoring compliance with this Law; a rating assessment; or obtaining contact information of parents of children educated or cared for by a service as set out in sections 35 and 83. The authorised officer may not enter a residence unless an approved education and care service is operating at the residence at the time of entry, or the occupier has given written consent.

This section also sets out powers and procedures in relation to inspecting premises; taking photographs, recordings or sketches; taking documents and records; and asking for information from any person on the premises.

“Premises”, under this provision, extends to a residence at which an education and care service is operating, and to parts of a family day carer's residence that are used to provide care and education to children on behalf of a family day care service.

These provisions engage the right to privacy and reputation. However, most of the sections will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. Even if the exercise of the powers in these sections will interfere with a person's privacy, home or correspondence, such interference is lawful and not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections in the Bill, including a requirement that certain inspections occur at a “reasonable time”; the return of items seized during a search; and a limit on the exercise of such powers at unlicensed premises without a search warrant. The importance of ensuring children are protected from harm, means that any limitation imposed by this section is reasonably justifiable in a free and democratic society.

#### **National Authority representative may enter service premises in company with Regulatory Authority**

Section 198 provides that a representative of the National Authority may enter a service during its regular operating hours in the company of an authorised officer of the Regulatory Authority for the sole purpose of informing the National Authority of

the rating and assessment processes of the Regulatory Authority to promote consistency across participating jurisdictions.

### **Powers of entry for investigating approved education and care service**

Section 199 provides that an authorised officer may, with or without consent, enter and inspect the premises of an education and care service at any reasonable time if there are reasonable grounds for suspecting that an offence against this Law may have been or may be committed. The premises or anything at the premises may be inspected, recorded, photographed or copied and the authorised officer may ask for information from any person at the premises. Evidence may also be seized. There is requirement to apply for a search warrant.

“Premises”, under this provision, extends to a residence at which an education and care service is operating, and to parts of a family day carer’s residence that are used to provide care and education to children on behalf of a family day care service. Most of the above section will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in these sections will interfere with a person’s privacy, home or correspondence, such interference is lawful and not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections in the Bill, including a requirement that certain inspections occur at a “reasonable time”; the return of items seized during a search; and a limit on the exercise of such powers at unlicensed premises without a search warrant. The powers under this section are also necessary to ensure the protection of offences against the Act, which are necessary to ensure the protection of children in family day care services.

### **Powers of entry to business premises**

Section 200 provides that an authorised officer may, with the consent of the occupier, enter the principal offices or any other business premises of an approved provider if the authorised officer reasonably believes that documents or other evidence of the commission of an offence against this Law are present. The authorised officer must first inform the occupier of their rights in relation to the entry and search of the premises. Such searches can not take place without the consent of the occupier. The above section will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in these sections will interfere with a person’s privacy or correspondence, such interference is lawful and not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections in the Bill, including a requirement that certain inspections occur at a “reasonable time”; the return of items seized during a search; and a limit on the exercise of such powers at unlicensed premises without a search warrant. The powers under this section are also necessary to ensure the protection of offences against the Act, which are necessary to ensure the protection of children in family day care services.

### **Entry to premises with search warrant**

Section 201 sets out the procedure for applying for, granting and executing a search warrant. A Regulatory Authority is also empowered to enter other premises with a search warrant if it believes on reasonable grounds that evidence relevant to the commission of an offence exists at the premises.

“Premises”, under this provision, extends to a residence at which an education and care service is operating, and to parts of a family day carer’s residence that are used to provide care and education to children on behalf of a family day care service. Most of the above section will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in this section will interfere with a person’s privacy, home or correspondence, such interference is lawful and not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections in the Bill, including a requirement that certain inspections occur at a “reasonable time”. The powers under this section are also necessary to ensure the protection of offences against the Act, which are necessary to ensure the protection of children in family day care services.

### **Seized items**

Section 202 provides for procedures in circumstances where documents or other things are taken by an authorised officer, including a requirement to return the item within 60 days, unless proceedings have commenced or a court has extended this timeframe. The authorised officer must provide the owner of the evidence with reasonable access to the item.

### **Court may extend period**

Section 203 sets out the process for an authorised officer to apply to a court for an extension of the period for which a document may be held.

## **Division 3—Other powers**

### **Power to require name and address**

Section 204 empowers an authorised officer to require a person who has committed an offence or is reasonably suspected of committing an offence against this Law to provide evidence of their correct name and address.

### **Power to require evidence of age, name and address of person**

The regulations of the Education and Care Services National Law will set down minimum age requirements for specified positions of authority within an education and care service.

Section 205 empowers an authorised officer to require a person to state and provide evidence of their correct date of birth, and to require the person to state their name and residential address if they are unable to comply with the request for proof of age, or the proof of age shows that the person has not attained the required minimum age.

Under the principle of the right to privacy and reputation this provision may limit this right. An authorised officer may in defined circumstances request specified persons to state and supply evidence of their name, residential address and age. The information collected will be protected will be in accordance of the Commonwealth *Privacy Act (1988)* by filing information in a client in-confidence file. Individuals will be provided a statement in accordance with the privacy principles. The Department recording and use of that information will be in accordance with the principles of the *Privacy Act (1988)*.

### **Power of authorised officers to obtain information, documents and evidence**

Section 206 provides for an authorised officer to, by written notice, require a person to provide information specified in the notice for the purposes of monitoring



compliance with this Law, a rating assessment or obtaining contact information of parents of children attending a service as set out in sections 35 and 83.

#### **Division 4—Offences relating to enforcement**

##### **Offence to obstruct authorised officer**

Section 207 provides that a person must not obstruct an authorised officer in exercising powers under this Law.

##### **Offence to fail to assist authorised officer**

Section 208 provides that a person must not refuse to answer a question, refuse to provide information or fail to comply with a requirement under an authorised officer's powers of entry without a reasonable excuse.

##### **Offence to destroy or damage notices or documents**

Section 209 provides that a person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept under or in accordance with this Law.

##### **Offence to impersonate authorised officer**

Section 210 provides that a person must not impersonate an authorised officer.

##### **Protection against self incrimination**

Section 211 provides that an individual may refuse to give or produce information to an authorised officer that might tend to incriminate the person. An individual may not, however, refuse to produce a document that is required to be kept under this Law or to give their name or address as required under this Law. Any such document provided and any information obtained from that document is not admissible in any criminal or civil proceedings, except for criminal proceedings under this Law.

##### **Warning to be given**

Section 212 provides that before requiring information or documents, an authorised officer must produce identification, warn that failure to comply constitutes an offence, and advise individuals about the effect of section 211 relating to the protection against self incrimination.

##### **Occupier's consent to search**

Section 213 provides that an occupier must be given a copy of their written consent to entry and inspection, and the lack of written consent is presumed to mean that the occupier did not consent to the search.

#### **Division 5—Powers of Regulatory Authority**

##### **Powers of Regulatory Authority to obtain information for rating purposes**

Section 214 provides that the Regulatory Authority may seek information and documents from an approved provider and make inquiries for the purpose of a rating assessment.

##### **Power of Regulatory Authority to obtain information, documents and evidence by notice**

Section 215 provides that if the Regulatory Authority reasonably suspects that an offence against this Law has been, or is being, committed, it may by written notice require a person to provide relevant information or documents specified in the notice or appear to give evidence or any relevant document specified in the notice. A person required to appear to give evidence may give such evidence via telephone, video conference or other electronic means unless the Regulatory Authority has reasonable

grounds to require the evidence to be given in person. The Regulatory Authority must warn the person that failure to comply with the requirement is an offence and inform the person of the effects of complying under sections 217, 218 and 219.

A person is not excused from answering a question, providing information or documents on the ground that the answer, information or document may tend to incriminate the person. At the time the person is required to provide information under this section he or she will not have been charged with an offence. The privilege against self-incrimination is not limited by this provision firstly, because the privilege has not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of compliance in relation to a regulatory regime. Information may only be obtained for the purpose of monitoring compliance with the National Law. Secondly, the provision provides both a direct and indirect use of immunity for evidence provided under the provision. This preserves the right against self-incrimination by providing that any answers or information provided by a person under this provision, and any further information obtained as a direct or indirect result of that answer or information, cannot be used against that person in a criminal proceeding (except a proceeding under the provision itself). Therefore, this provision is compatible with the right to a fair hearing.

#### **Power of Regulatory Authority to obtain information, documents and evidence at education and care service**

Section 216 provides that if the Regulatory Authority reasonably suspects that an offence against this Law has been, or is being, committed, it may require a person at an education and care service to provide information or documents relevant to the suspected offence. The Regulatory Authority must warn the person that failure to comply with the requirement is an offence and inform the person of the effects of complying under sections 217, 218 and 219. A person must not be required to remain at a service for more than a reasonable time in providing such information or documents.

#### **Offence to fail to comply with notice or requirement**

Section 217 provides that a person must not refuse or fail to comply with a requirement of a Regulatory Authority to produce information or documents or otherwise appear to give evidence under sections 215 and 216.

#### **Offence to hinder or obstruct Regulatory Authority**

Section 218 provides that a person must not obstruct or hinder the Regulatory Authority in its exercise of powers under section 215 and 216.

#### **Self incrimination not an excuse**

Section 219 provides that a person is not excused from complying with a requirement of a Regulatory Authority under sections 215 and 216 on the ground that complying may incriminate the person. However, the answers or information provided by an individual, and any information obtained because of that answer or information, are not admissible in evidence against the person in any criminal proceedings (other than proceedings under this section) or in any civil proceedings if the person objected to answering the question or providing the information on the ground that it might incriminate them or the individual was not appropriately warned of their rights. Information obtained from a document or documents that are required to be kept under this Law are, however, admissible against the person in criminal proceedings under this Law.

## PART 10—MINISTERIAL COUNCIL

Under the governance arrangements set out in the National Partnership Agreement, the National Quality Framework will be a jointly governed national system with a three-tiered governance structure that includes the Ministerial Council, the National Authority and State and Territory Regulatory Authorities. At the apex of this structure with overall responsibility for the National Quality Framework is the Ministerial Council.

Part 10 provides for the responsibilities, powers and functions of the Ministerial Council for Education, Early Childhood Development and Youth Affairs (the Ministerial Council).

### Functions of Ministerial Council

Section 220 provides that the functions of the Ministerial Council are:

- (a) to oversee the implementation and operation 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 purpose of this Law;
- (g) to monitor the implementation and operation of, and recommend improvements 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 service under this Law;
- (j) to appoint the members of the Board of the National Authority;
- (k) to monitor and review the performance of the National Authority;
- (l) any other responsibilities conferred on the Ministerial Council under this Law.

This section also provides that the Ministerial Council must have regard to the objectives and guiding principles of this Law in carrying out its responsibilities.

### Powers of Ministerial Council

Section 221 provides that the Ministerial Council, in its oversight function within this Law has the power to make recommendations to the Board of the National Authority in relation to the exercise of the National Authority's functions; refer any matter to the Board of the National Authority for consideration and advice; make regulations in accordance with this Law; and anything necessary and convenient to perform its functions.

### Directions

Section 222 provides that the Ministerial Council may give directions to the Board of the National Authority in relation to the exercise of the National Authority's functions regarding the collection and use of information; reporting and accountability to the Ministerial Council and Regulatory Authorities; the rating level system to be used in rating education and care services; and the application of the National Quality Framework. The Ministerial Council may also give directions to a Regulatory Authority with respect to its administration of the National Quality Framework.

In the interests of maintaining objectivity and impartiality, a direction under this section cannot be about a particular person or education and care service, a particular application, approval, notification, assessment or proceeding, or the determination of a rating for a particular education and care service.

A direction to the National Authority does not have legislative standing; it must be given in writing to the Chairperson of the Board of the National Authority and must not be inconsistent with this Law or regulations. The Board of the National Authority or a Regulatory Authority must comply with a direction given to the Authority by the Ministerial Council.

### **How Ministerial Council exercises powers**

Section 223 clarifies that directions are to be given by resolution of the Ministerial Council in accordance with its procedures. This section also provides that changes in membership of the Ministerial Council do not affect acts or things done by the Council.

## **PART 11—AUSTRALIAN CHILDREN'S EDUCATION AND CARE QUALITY AUTHORITY**

This Part establishes the second tier of the governance structure for the National Quality Framework: the Australian Children's Education and Care Quality Authority, as a national authority responsible for guiding the implementation and ongoing administration of the Framework across Australia. The National Authority will play a key role in monitoring and promoting national consistency in the implementation and operation of the National Quality Framework, and the Board of the National Authority will report directly to the Ministerial Council.

### **Division 1—The National Authority**

#### **National Authority**

Section 224 establishes the Australian Children's Education and Care Quality Authority as a body corporate with perpetual succession. The National Authority has a common seal, may sue and be sued in its corporate name, and represents the State.

#### **Functions of National Authority**

Section 225 sets out the functions of National Authority. These functions are consistent with, and build on, those set out in the National Partnership Agreement, and include guiding implementation and administration of the National Quality Framework, reporting, provision of advice, and keeping national registers of approved providers, services and supervisors and publishing practice notes and guidelines.

The National Authority may also determine the qualifications for educators under this Law and is responsible for establishing consistent procedures for operation of the National Quality Framework. In carrying out its functions, the National Authority must ensure that the regulatory burden on services is minimised as far as possible and must have regard to the objectives and guiding principles of this Law.

#### **National Authority may advise and seek guidance of Ministerial Council**

Section 226 provides that, if the National Authority considers it necessary, it may advise or seek guidance from the Ministerial Council.

#### **Powers of National Authority**

Section 227 provides that the National Authority has all the powers of an individual, particularly in relation to contracts, property, borrowing and investment, the development and supply of resources to the education and care sector, and anything necessary or convenient in the exercise of its functions. The National Authority may collect, hold and use information; develop protocols for communication and dispute resolution among the National Authority, Regulatory Authorities and the relevant Commonwealth Department; make decisions regarding fees; and undertake research and analysis.

Not all information dealt with under this provision will be of a private nature and therefore only some parts will relate to privacy and reputation and need to be compliant with the *Human Rights Act 2004*. The right to privacy and reputation may be limited through application of this clause, however, to the extent that this provision does relate to private information, any limitations on the right to privacy and reputation will be neither unlawful or arbitrary. The provision only relates to information obtained by the Regulatory Authority or National Authority under the Bill itself. Any use of that information will be restricted to legitimate purposes under

the Bill. The collection, retention and use of such information is necessary to effectively regulate the provision of education and care related services for children, as it allows the Regulatory and National authorities to make decisions and carry out functions in regulating the industry with the best information possible. This enables those bodies to protect the rights and interests of children by ensuring they are receiving appropriate care and education. There are no other more suitable options to ensure the rights of children are protected.

### **Co-operation with participating jurisdictions and Commonwealth**

Section 228 enables the National Authority to perform its functions in co-operation with, or with the assistance of, a participating jurisdiction or the Commonwealth. The National Authority may request and use information for the purpose of performing its functions, and a person or body subject to such a request is authorised to provide information to the National Authority.

### **National audit functions**

Section 229 provides for the National Authority to undertake processes relating to audit and evaluation in relation to the administration of the National Quality Framework. The National Authority will report to the Ministerial Council on the outcomes of any audit or evaluation.

## **Division 2—The Board of the National Authority**

### **Subdivision 1—Establishment and responsibilities**

#### **National Authority Board**

Section 230 establishes the Australian Children's Education and Care Quality Authority Board as the governing body of the National Authority.

#### **Responsibilities of Board**

Section 231 sets out the functions of the Board, including ensuring the effective and efficient functioning of the National Authority, and reporting to the Ministerial Council.

#### **Membership of Board**

Section 232 provides that the Board must consist of up to 13 members (one member appointed for each State and Territory, four members appointed for the Commonwealth, and one Chairperson appointed by consensus by the Ministerial Council). The Deputy Chairperson is to be appointed from the 12 appointed Board members by consensus of the Ministerial Council. This section also sets out Board members' required professional skills and expertise and provides that the Ministerial Council must seek to ensure a balance of skills and expertise in its appointment of members.

### **Subdivision 2—Members**

#### **Terms of office of members**

Section 233 provides that members hold office on terms and conditions determined by the Ministerial Council (which may include appointment on a part-time basis). It also provides that a period of appointment is for not more than a three year term for Board members and a maximum period of appointment of two consecutive terms.

#### **Remuneration**

Section 234 provides for remuneration for Board members as set by the Ministerial Council.

### **Vacancy in the office of member**

Section 235 sets out the circumstances under which the office of a Board member shall become vacant, and the grounds under which the Ministerial Council may remove a Board member.

### **Acting positions**

Section 236 provides for acting arrangements for the Chairperson, Deputy Chairperson and members of the Board.

### **Leave of absence**

Section 237 provides for leave of absence to be granted to the Chairperson of the Board of the National Authority and other members of the Board.

### **Disclosure of conflict of interest**

Section 238 seeks to protect the independence and impartiality of the Board by providing that a Board member must disclose a direct or indirect pecuniary or other interest in a matter being considered by the Board that may be cause for conflict of interest. After declaring the interest a board member must not be present at, or take any part in, the deliberation and decision-making process, or be provided with any written material on the matter in question unless otherwise decided by the Board or Ministerial Council. In relation to Human Rights and the provision of the right to privacy and reputation this section may limit this right. However, disclosure need only occur in defined circumstances and such disclosures are essential to ensure the proper functioning of the Board and the Authority. The potential limitations are reasonable as the person will make the declaration themselves and there is no other less restrictive means to obtain this information and achieve the same outcome.

## **Subdivision 3—Procedure of Board**

### **General procedure**

Section 239 sets out the procedures for convening meetings of the Board.

### **Quorum**

Section 240 sets the quorum for Board meetings at nine, including the Chairperson or Deputy Chairperson. A quorum must have five participating jurisdictions present, plus a member representing the Commonwealth.

### **Chief executive officer may attend meetings of the Board**

Section 241 provides that the chief executive officer may attend meetings of the Board, in an advisory role. As the chief executive officer is not a member of the Board, he or she does not have voting privileges.

### **Presiding member**

Section 242 provides for the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson to preside over Board meetings.

### **Voting**

Section 243 sets out the voting procedures for Board meetings, including provision for a second casting vote by the Chairperson or Deputy Chairperson in the case of an equal vote. It also provides that if a decision to recommend a matter to the Ministerial Council is not arrived at by consensus, the Ministerial Council must be advised of the reasons for, and extent of, the minority opinion. This will assist the Ministerial Council in its deliberations by providing more information and alternative points of view on the matter.

### **Defects in appointment of members**

Section 244 provides that a decision is not invalidated by any defects in the appointment of members of the Board. This measure is required to safeguard the continuous operation of the National Quality Framework from challenges to the Board's decisions on these grounds.

#### **Transaction of business by alternative means**

Section 245 provides for the transaction of business by telephone, closed circuit television or other means.

#### **Delegation by Board**

Section 246 provides for the Board to delegate any of its functions to the Regulatory Authority; the chief executive of a government entity or department of a participating jurisdiction; the chief executive officer of the National Authority; any other entity, with the approval of the Ministerial Council; or a committee established by the Board.

#### **Committees**

Section 247 provides that the Board of the National Authority may establish and determine the procedure of committees to assist it in the performance of its functions. The National Authority must report to the Ministerial Council on the activities of a committee.

### **Subdivision 4—Chief executive officer of the National Authority**

#### **Chief executive officer**

Section 248 establishes the process for the appointment of the chief executive officer of the National Authority, which may be made only after the Ministerial Council has endorsed the appointment on the recommendation of the Board.

#### **Functions of chief executive officer**

Section 249 provides that the chief executive officer reports to the Board of the National Authority. The chief executive officer's functions include responsibility for the day to day management of the National Authority, and working in collaboration with Regulatory Authorities and the Commonwealth.

#### **Terms and conditions of appointment**

Section 250 sets out the terms and conditions of appointment for the chief executive officer after endorsement of the Board's recommendation by the Ministerial Council.

#### **Remuneration**

Section 251 provides for the Board to decide the remuneration for the chief executive officer.

#### **Vacancy in office**

Section 252 provides for the office to become vacant upon the resignation or death of the chief executive officer, or upon termination by the Board.

#### **Resignation**

Section 253 provides for the process for the resignation of the chief executive officer.

#### **Termination of appointment**

Section 254 sets out the circumstances for termination of the appointment of the chief executive officer by the Board. Relevantly, these include for physical or mental incapacity that significantly impacts upon the ability of the chief executive officer to perform the role. This section engages the right to take part in public life by potentially restricting a person's access to public office. We acknowledge that this section may limit this right, however, a chief executive officer with a physical or



mental incapacity will not be treated differently because he or she has an impairment, but rather because he or she has become unable to perform the functions of a chief executive officer. This is considered reasonable because the duties of a chief executive require the capacity to perform all parts of the role.

**Acting chief executive officer**

Section 254 provides for the Board to appoint a person to act as the chief executive officer for a period no longer than 6 months.

**Disclosure of interests**

Section 256 provides for the full disclosure of interests by the chief executive officer.

**Subdivision 5—Staff, consultants and contractors**

**Staff of National Authority**

Section 257 provides for the National Authority to employ staff and decide on terms and conditions of employment.

**Staff seconded to National Authority**

Section 258 provides for the National Authority to second staff from a government agency of a participating jurisdiction or the Commonwealth in consultation with those parties.

**Consultants and contractors**

Section 259 provides for the National Authority to engage consultants and contractors, and decide on terms and conditions of engagement.

## PART 12—REGULATORY AUTHORITIES

The third tier of the governance structure is the Regulatory Authority in each jurisdiction. The Regulatory Authority remains accountable to State and Territory Ministers. It will be the main point of day to day contact for services through its operational responsibility for the National Quality Framework

### **Functions of Regulatory Authority**

Section 260 sets out the functions of the Regulatory Authority, including administering the National Quality Framework, assessing and rating education and care services, approving providers and services, certifying supervisors and monitoring and enforcing compliance with this Law and the national regulations. The Regulatory Authority is also responsible for investigating complaints against services, information collection and reporting and collaborating with and supporting the National Authority.

### **Powers of Regulatory Authority**

Section 261 sets out the powers of the Regulatory Authority. These powers relate to fees, funding and collecting, maintaining, sharing and publishing information.

Section 261 (2) (b) provides that for the purposes of the National Quality Framework, bodies and agencies in participating jurisdictions must comply with the Commonwealth *Privacy Act 1988*. In relation to privacy and reputation the human rights of the person may be affected in relation to freedom. There is no other option available that would provide a better way of obtaining this information.

Not all information dealt with under this provision will be of a private nature and therefore only some parts will relate to limiting a person's right to privacy and reputation and need to be complaint with the Human Rights Act (2004). However to the extent that this provision does relate to private information, any interference with the right to privacy and reputation will be neither unlawful or arbitrary. The provision only relates to information obtained by the Regulatory Authority or National Authority under the Bill itself. Any use of that information will be restricted to legitimate purposes under the Bill. The collection, retention and use of such information is necessary to effectively regulate the provision of education and care related services for children, as it allows the Regulatory and National authorities to make decisions and carry out functions in regulating the industry with the best information possible. This enables those bodies to protect the rights and interests of children by ensuring they are receiving appropriate care and education.

This section also imposes a duty of confidentiality on person exercising functions under the Bill in relation to protected information.

### **Delegations**

Section 262 provides for the Regulatory Authority to delegate functions.

## **PART 13—INFORMATION, RECORDS AND PRIVACY**

In the interests of the nationally consistent application of this Law, Commonwealth information and privacy laws will be applied instead of separate laws in each participating jurisdiction.

### **Division 1—Privacy**

#### **Application of Commonwealth Privacy Act**

Section 263 provides that the Commonwealth *Privacy Act (1998)* applies as a law for any participating jurisdiction for the purposes of this Law, and provides for the Office of the Privacy Commissioner as a reference to the Office of the National Education and Care Services Privacy Commissioner.

### **Division 2—Application of Commonwealth FOI Act**

#### **Application of Commonwealth FOI Act**

Section 264 provides that the Commonwealth Freedom of Information Act applies as a law for any participating jurisdiction for the purposes of this Law, and provides for the Office of the Freedom of Information Commissioner as a reference to the Office of the National Education and Care Services Freedom of Information Commissioner.

### **Division 3—Application of New South Wales State Records Act**

#### **Application of New South Wales State Records Act**

Section 265 provides that the New South Wales State Records Act applies as a law for any participating jurisdiction for the purposes of this Law except to the extent that this Law applies to a Regulatory Authority and the records of a Regulatory Authority. The applicable state records law for each jurisdiction will apply relevant to the Regulatory Authority for that jurisdiction.

### **Division 4—Registers**

As provider approvals and supervisor certificates are nationally recognised and valid across all jurisdictions, this Division makes provision for the keeping of registers of approved providers and certified supervisors by the National Authority. A register of services operating within a jurisdiction will also be kept by the Regulatory Authority.

#### **Register of approved providers**

Section 266 provides that the National Authority must keep a register of approved providers which may be inspected or copied.

#### **Register of education and care services**

Section 267 provides that the Regulatory Authority must keep and publish a register of education and care services including the rating levels for each service, which may be inspected or copied.

#### **Register of certified supervisors**

Section 268 provides that the National Authority must keep a register of certified supervisors, which may be inspected or copied.

#### **Register of family day care educators**

Section 269 provides that the approved provider of a family day care service must keep a register of family day care educators and any other person engaged by the service, and must provide this information to the Regulatory Authority on request.

## **Division 5—Publication of information**

### **Publication of information**

Section 270 prescribes the information that may be published by the Regulatory Authority or the National Authority. This includes publication of ratings; enforcement actions, including compliance notices; prosecutions; enforceable undertakings; suspensions and cancellations. Information that could lead to the identification of a person other than an approved provider, certified supervisor or a person who is being prosecuted for an offence under this Law must not be published.

Comments in relation to Human Rights compliance for privacy and reputation are addressed in the paragraph on page 9.

## **Division 6—Disclosure of information**

### **Disclosure of information to other authorities**

Section 271 provides for the disclosure of information to prescribed parties in respect of education and care services for the purposes of this Law; research and development of national policy; funding education and care services; providing payment to persons using education and care services; compliance and disciplinary action. A disclosure of information is subject to the privacy provisions set out in section 263 and any protocols approved by the National Authority.

Information that could lead to the identification of a person other than an approved provider, certified supervisor, family day care educator who has been suspended from providing education and care, prohibited person or a person who is being prosecuted for an offence under this Law must not be disclosed.

Comments in relation to Human Rights compliance for privacy and reputation, and publication are addressed in the summary paragraphs on page 9.

### **Disclosure of information to education and care services**

Section 272 provides that, upon the request of an approved provider, the Regulatory Authority may disclose whether a person is subject to a prohibition notice or whether a family day care educator has been suspended from providing education and care at the direction of the Regulatory Authority. This disclosure is subject to the privacy provisions set out in section 263 and any protocols approved by the National Authority.

### **Duty of confidentiality**

Section 273 provides that, unless under certain circumstances prescribed in this section, a person must not disclose protected information. Penalties apply for contravening this provision. This section supports the requirements placed in the Privacy Act (1998) by ensuring privacy provisions are upheld.

## **PART 14—MISCELLANEOUS**

### **Division 1—Finance**

#### **Australian Children’s Education and Care Quality Authority Fund**

Section 274 establishes the Australian Children's Education and Care Quality Authority Fund, to be administered by the National Authority.

#### **Payments into Authority Fund**

Section 275 prescribes the money provided by a participating jurisdiction’s Parliament for the purposes of the fund and other funds and property to be paid into the Authority Fund.

#### **Payments out of Authority Fund**

Section 276 prescribes the purposes for which payments may be made out of the Authority Fund, including for administering the Law and allocating, transferring or reimbursing monies to a participating jurisdiction.

#### **Investment of money in Authority Fund**

Section 277 provides that the National Authority may invest money in the Authority Fund as prescribed.

#### **Financial management duties of National Authority**

Section 278 provides for the financial management duties of the National Authority, including ensuring financial statements are prepared in accordance with the Australian Accounting Standards.

### **Division 2—Reporting**

#### **Annual report**

Section 279 outlines the timelines and required content for the National Authority’s annual report, including a financial report; assessment of the implementation and administration of the National Quality Framework; reporting on committees; and Ministerial Council directions given to the National Authority and the Regulatory Authorities. Australian Accounting Standards will apply to the preparation of financial statements.

#### **Tabling and publication of annual report**

Section 280 provides for the tabling of the annual report in the Parliament of a participating jurisdiction determined by the Ministerial Council, and its publication on the National Authority’s website.

#### **Other reporting**

Section 281 provides for the National Authority to make any reports to the Ministerial Council that it considers necessary and for the Ministerial Council or individual Ministers to request a report from the National Authority.

### **Division 3—Application of Commonwealth Ombudsman Act**

#### **Application of Commonwealth Ombudsman Act**

Section 282 provides that the Commonwealth Ombudsman Act applies as a law for any 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. This section provides for the Commonwealth Ombudsman as a reference to the National Education and Care Services Ombudsman.

## **Division 4—Legal proceedings**

### **Who may bring proceedings for an offence?**

Section 283 provides for proceedings for an offence to be brought by a Regulatory Authority, a person authorised by the Regulatory Authority or a police officer.

### **When proceedings may be brought**

Section 284 provides that proceedings for an offence under this Law must be commenced within two years of the date of the alleged offence.

### **Offences by bodies corporate**

Section 285 provides for a director or other person concerned with the management of a body corporate that has committed an offence to also be guilty and liable if they failed to exercise due diligence to prevent the contravention.

### **Application of Law to partnerships and eligible associations and entities**

Section 286 provides that if this Law requires or permits something to be done by a partnership or eligible association, the thing may be done by, as relevant, one or more of the partners on behalf of the partnership or one or more of the members of the executive committee on behalf of the eligible association. An offence is taken to be committed by, for partnerships, each partner who is a person with management and control of the service; for eligible associations, each person with management or control of the association; and for prescribed entities, each person with management or control of that entity.

### **Multiple holders of an approval**

Section 287 provides that, in the case of multiple holders of a provider or service approval, each holder of the approval is jointly and severally responsible for compliance under this Law.

### **Double jeopardy**

Section 288 provides that if a person has been convicted or found guilty in another participating jurisdiction for an offence against this Law, proceedings cannot be brought in this jurisdiction against the same person in respect of the same offence and subject matter.

### **Immunity**

Section 289 provides that a member of the Board of the National Authority, a committee of the Board or the Ratings Review Panel and the Regulatory Authority or a member of the governing body of a Regulatory Authority are not personally liable for actions and omissions done in good faith in the exercise of functions under this Law. Any liability that would otherwise attach to such individuals attaches instead to the National Authority or the State as relevant.

### **Immunity—education law**

Section 290 provides that if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under a jurisdiction's education law, the Regulatory Authority may refer the matter to the relevant disciplinary body. If the Regulatory Authority refers a matter to a disciplinary body, a prosecution cannot be brought under this Law for an offence in relation to that matter.

### **Infringement offences**

Section 291 provides that an authorised officer may serve an infringement notice for infringements relating to displaying prescribed information (section 172), notifying

the Regulatory Authority of certain circumstances (section 173), complying with a compliance direction (section 176) and any other offences prescribed in the regulations.

An infringement penalty is 10 per cent of the maximum penalty that could be imposed on a person in respect of the offence. The payment of an infringement penalty expiates the offence, which means the infringement cannot be considered in making a decision on the fitness and propriety of a person or the assessment of a service.

### **Evidentiary certificates**

Section 292 provides for a certificate signed by the chief executive of the National Authority or by a Regulatory Authority to be taken as prima facie evidence in prescribed matters stated in the document.

## **Division 5—Service of notices**

### **Service of notices**

Section 293 sets out the circumstances under which a notice, order or document can be served or taken to be served on a person.

### **Service by post**

Section 294 provides for the service and effect of documents by post.

## **Division 6—False or misleading information**

### **False or misleading information or documents**

Section 295 provides that it is an offence for a person to give the Regulatory Authority or an authorised officer, information or documents that he or she knows to be false or misleading.

## **Division 7—Protection from reprisal**

This Division seeks to enable the reporting of concerns about possible breaches of this Law or the national regulations by providing protections to persons who provide information to the Regulatory Authority.

### **Definitions**

Section 296 defines protected disclosure as disclosure of information or provision of documents to the Regulatory Authority pursuant to a request made under this Law or where there is reasonable belief that an offence has been, or is being committed under this Law or the safety, health and wellbeing of a child is at risk. Serious detrimental action is defined to include dismissal, involuntary transfer, loss of promotion or demotion.

This may result in the disclosure of private or confidential material. However, any interference with the right to privacy and reputation occasioned by this section is neither unlawful nor arbitrary. The circumstances in which material may be disclosed are clearly defined, and the section is necessary to ensure that persons are able to alert the Regulatory Authority to breaches of the National Law without fear of reprisal. This section is compatible with the *Human Rights Act (2004)*.

### **Protection from reprisal**

Section 297 prohibits a person from taking or threatening to take serious detrimental action against a person in reprisal for a protected disclosure.

**Proceedings for damages for reprisal**

Section 298 provides for proceedings seeking damages to be taken against a person who takes serious detrimental action in reprisal for a protected disclosure.

**Application for injunction or order**

Section 299 sets out procedures available to a person who believes that serious detrimental action has been or may be taken against them for a protected disclosure.

**Injunction or order**

Section 300 sets out possible actions to be taken by the superior court if it is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure.

**Division 8—National regulations****National regulations**

Section 301 provides for the making, publishing and commencement of national regulations. The Ministerial Council is responsible for making regulations, which may include, but are not limited to, fees; standards for education and care services; requirements for educational programs; information required to be submitted, displayed or published; and penalties.

**Publication of national regulations**

Section 302 provides for regulations to be published on the New South Wales Legislation website and for the regulation to commence on the day specified in the regulation.

**Parliamentary scrutiny of national regulations**

Section 303 provides for any House of the Parliament in a participating jurisdiction to disallow a regulation made under this Law. A regulation will only cease to have effect if it is disallowed in a majority of participating jurisdictions.

**Effect of disallowance of national regulation**

Section 304 provides that the disallowance of a regulation by a majority of participating jurisdictions has the same effect as a repeal of the regulation. As a result, any law or provision of a law repealed or amended by a regulation subject to section 303 is revived as if the disallowed regulation had not been made.



## **PART 15—TRANSITIONAL PROVISIONS**

This Part provides for the transfer from existing legislative and regulatory arrangements to the new arrangements set out under this Law.

### **Division 1—Introductory**

#### **Definitions**

Section 305 sets out definitions of declared terms for the purposes of the transitional provisions under this Law. By declaring a definition relevant to each jurisdiction, the approvals and actions will move across from former children's services or other laws to this law. The Regulatory Authority must provide a copy of the approvals under this Law to the approved provider or certified supervisor by 1 July 2012.

### **Division 2—Education and care services**

#### **Approved Provider**

Section 306 provides for holders of a former approval under existing arrangements to be taken to be an approved provider, and the former approval held by the person or trust is taken to be a provider approval under this Law.

#### **Service approvals**

Section 307 provides for holders of a former approval to operate a service to be taken to hold a service approval under this Law. This does not extend to prescribed ineligible persons or approvals that were under suspension at the time of transition to this Law because the person who held that approval was not a fit and proper person. Other suspensions, including voluntary suspensions, and conditions are to be transferred in tact under this Law. The Regulatory Authority must provide each declared service with a copy of the service approval by 1 July 2012.

#### **Approved family day care venues**

Section 308 provides that a declared approved family day care venue existing under a former education and care services law immediately before the commencement day is taken to be an approved family day care venue under this Law.

#### **Approval of declared out of scope services**

Section 309 provides for a person who operated a declared out of scope service to be taken to hold a provider and service approval for the declared out of scope service for the period 1 January to 1 July 2012. If the person applies under this Law for a provider approval and service approval before 1 July 2012, this period is extended until the applications are determined.

#### **Application for service waiver or temporary waiver**

Section 310 provides that a service that was exempt from a requirement of a previous Law is taken to comply with the equivalent requirement of this Law for the period 1 January 2012 to 1 April 2012 and, if the provider applies to the Regulatory Authority for a service waiver or temporary waiver under this Law by 1 April 2012, this period is extended until such application is determined.

#### **Existing applicants**

Section 311 provides that an application made under a former law that has not been decided before the commencement of this Law is taken to be an application for a provider approval and service approval under this Law. It also provides that the Regulatory Authority may seek more information or inspect premises and documents in considering the application.

### **Existing multiple approvals to merge**

Section 312 provides that where, under the former law, multiple approvals were held for the same premises, these are taken to become one service approval under this Law. This does not apply to former approvals for family day care services.

### **Display of accreditation and rating**

Section 313 provides that a service that was accredited by the National Childcare Accreditation Council must continue to display its accreditation until a rating is given under this Law. It must also display a notice informing of the service's provisional rating and that the service is approved to operate.

### **Effect of non-compliance in three years before scheme commencement day**

Section 314 provides that in determining whether to suspend or cancel a provider approval or service approval, the Regulatory Authority may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the three years preceding the commencement of this Law, but must not suspend or cancel an approval based solely on this information.

The person has the right not to be tried or punished more than once for an offence in respect he or she has already been convicted or acquitted in accordance with the law. The consequences are penal in nature. Their purpose is not to punish the convicted person, but to protect children by ensuring that only appropriate persons are able to engage in the provision of education and care services. This section is compatible with the right not to be punished more than once.

### **Certified supervisors**

Section 315 provides that a declared certified supervisor is taken to be a certified supervisor under this Law. The Regulatory Authority must issue a supervisor certificate by 1 July 2012.

### **Nominated supervisors**

Section 316 provides that a declared nominated supervisor is taken to be the nominated supervisor of an education and care service under this Law unless the approved provider of the service fails to confirm the nomination or a declared nominated supervisor does not consent to being the nominated supervisor for that service.

### **Orders, directions and undertakings**

Section 317 provides that orders, directions and undertakings given under the former law will remain in force under this Law.

### **Offences**

Section 318 provides that the Regulatory Authority may bring or continue a prosecution for an offence under the former education and care services law, which in the ACT is the *Children and Young People Act 2008*.

## **Division 3—National Authority**

### **First meeting of National Authority**

Section 319 provides that the Ministerial Council is to convene the first meeting of the Board of the National Authority.

### **First chief executive officer of National Authority**

Section 320 provides that the first chief executive officer of the National Authority is to be appointed by the Chairperson of the Ministerial Council by consensus

recommendation of the Ministerial Council, with remuneration and other terms and conditions set out in the appointment.

#### **First annual report of National Authority**

Section 321 provides that the first annual report of the National Authority is to be made within 90 days of the end of the financial year ending 30 June 2012, and is to cover the period from the first meeting of the National Authority to 30 June 2012.

### **Division 4—General**

#### **Information retention and sharing**

Section 322 provides that the Regulatory Authority must keep all documents that were required for monitoring and enforcement under the former laws and may make them available to the National Authority and other Regulatory Authorities in participating jurisdictions. These documents may be used for information purposes such as informing rating assessments and fit and proper deliberations under this Law. Providers must also keep all documents required under the former law, which in the ACT is the *Children and Young People Act 2008*, and must make them available to the Regulatory Authority upon request.

#### **Approved learning framework**

Section 323 provides that a declared approved learning framework is taken to be an approved learning framework under this Law.

#### **Savings and transitional regulations**

Section 324 provides for savings and transitional arrangements to be made in the regulations.

## **SCHEDULES**

### **Schedule 1**

This Schedule provides miscellaneous provisions relating to Interpretation of the National Law.

### **Schedule 2**

This Schedule provides for powers of entry by search warrant.