



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

**Current as at 2 January 2014**

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Queensland

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

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

[as amended by all amendments that commenced on or before 2 January 2014]

**An Act providing for the adoption of a national law to regulate  
education and care services for children**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Education and Care Services National Law (Queensland) Act 2011*.

### **2 Commencement**

- (1) This Act commences on a day or days to be fixed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Education and Care Services National Law set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria.
- (3) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

### **3 Definitions**

- (1) In this Act—

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

*local application provisions of this Act* means the provisions of this Act other than the Education and Care Services National Law (Queensland).

*scheme commencement day* see the Education and Care Services National Law (Queensland), section 305.

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

## Part 2 Adoption of National Law

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

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

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the Education and Care Services National Law (Queensland); and
- (c) so applies as if it were part of this Act.

### 5 Minister must table amendments of Education and Care Services National Law

- (1) This section applies if the Education and Care Services National Law set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria is amended.



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- (2) The Minister must table a copy of the amendment in the Legislative Assembly.
  - (3) Failure to comply with subsection (2) does not affect the application of the amendment under section 4.

## 6 Exclusion of legislation of this jurisdiction

- (1) The following Acts of this jurisdiction do not apply to the Education and Care Services National Law (Queensland) or to instruments made under the Law—
  - (a) *Acts Interpretation Act 1954*;
  - (b) *Information Privacy Act 2009*;
  - (c) *Right to Information Act 2009*;
  - (d) *Statutory Instruments Act 1992*, other than to the extent provided for in section 303 of the Law.

- (2) To remove any doubt, it is declared that—

- (a) subsection (1)(a) does not limit the application of the *Acts Interpretation Act 1954* to the local application provisions of this Act; and

*Examples—*

- 1 In section 7, the definition *public authority* uses the term ‘public sector unit’. That term takes its meaning from the *Acts Interpretation Act 1954*, schedule 1.
    - 2 A reference in section 8 to the *Education and Care Services Act 2013* includes a reference to a regulation in force under that Act (see the *Acts Interpretation Act 1954*, section 7).
  - (b) subsection (1)(d) does not limit the application of the *Statutory Instruments Act 1992* to a regulation made under the local application provisions of this Act.
- (3) The following Acts of this jurisdiction do not apply to the Education and Care Services National Law (Queensland) or to the instruments made under the Law, except to the extent that the Law and those instruments apply to the regulatory authority and the employees, decisions, actions and records of the regulatory authority—

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- (a) *Auditor-General Act 2009*;
- (b) *Financial Accountability Act 2009*;
- (c) *Ombudsman Act 2001*;
- (d) *Public Records Act 2002*;
- (e) *Public Service Act 2008*.

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

In the Education and Care Services National Law (Queensland)—

*child protection law* means the *Child Protection Act 1999*.

*de facto relationship* see the *Acts Interpretation Act 1954*, schedule 1.

*local authority* means a local government.

*magistrate* means a magistrate appointed under the *Magistrates Act 1991*.

*public authority* means a public sector unit.

*superior court* means the Supreme Court of Queensland.

*this jurisdiction* means Queensland.

## 8 **Children's services law**

The *Education and Care Services Act 2013* is declared to be a children's services law for the purposes of the Education and Care Services National Law (Queensland).

*Note*—

See the Education and Care Services National Law (Queensland), section 5(1), definition *children's services law*.

## 9 **Children's services regulator**

The chief executive of the department in which the *Education and Care Services Act 2013* is administered is declared to be

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the children's services regulator for the purposes of the Education and Care Services National Law (Queensland).

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *children's services regulator*.

## **10 Education law**

Each of the following Acts is declared to be an education law for the purposes of the Education and Care Services National Law (Queensland)—

- (a) *Education (Accreditation of Non-State Schools) Act 2001*;
- (b) *Education (General Provisions) Act 2006*;
- (c) *Education (Overseas Students) Act 1996*;
- (d) *Education (Queensland College of Teachers) Act 2005*;
- (e) *Higher Education (General Provisions) Act 2008*.

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *education law*.

## **11 Former education and care services law**

Each of the following is declared to be a former education and care services law for the purposes of the Education and Care Services National Law (Queensland)—

- (a) the *Child Care Act 2002* as in force before its repeal;
- (b) the *Child Care Act 1991* as in force before its repeal.

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *former education and care services law*.

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## 12 Infringements law

The *State Penalties Enforcement Act 1999* is declared to be an infringements law for the purposes of the Education and Care Services National Law (Queensland).

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *infringements law*.

## 13 Public sector law

The *Public Service Act 2008* is declared to be a public sector law for the purposes of the Education and Care Services National Law (Queensland).

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *public sector law*.

## 14 Regulatory authority

The chief executive is declared to be the regulatory authority for this jurisdiction.

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *regulatory authority*.

## 15 Relevant tribunal or court

- (1) The magistrates court is declared to be the relevant tribunal or court for the purposes of the Education and Care Services National Law (Queensland), section 181.
- (2) QCAT is declared to be the relevant tribunal or court for the purposes of the Education and Care Services National Law (Queensland), part 8.

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *relevant tribunal or court*.

## 16 Working with children law

The *Commission for Children and Young People and Child Guardian Act 2000* is declared to be a working with children law for the purposes of the Education and Care Services National Law (Queensland).

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *working with children law*.

## 17 Penalty at end of provision

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

## 18 Transitional matters

- (1) For the purposes of the Education and Care Services National Law (Queensland)—
  - (a) a licensed home based service under the *Child Care Act 2002*, other than a service provided only from 1 home, is declared to be a declared approved family day care service; and
  - (b) a licensed centre based service under the *Child Care Act 2002*, other than a child care service to which that Act applies on the scheme commencement day, is declared to be a declared approved service; and
  - (c) a licensee under the *Child Care Act 2002*, other than a licensee for a child care service to which that Act applies on the scheme commencement day, is declared to be a declared approved provider; and
  - (d) a person who was both—
    - (i) a staff member of a licensed service, or the nominee for a licensee, under the *Child Care Act 2002*; and

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(ii) a qualified director, qualified coordinator or qualified group leader under the *Child Care Act 2002*;

is declared to be a declared certified supervisor and to be a declared nominated supervisor; and

(e) a compliance notice under the *Child Care Act 2002*, section 142, given in relation to a licensed centre based service that is declared to be a declared approved service under paragraph (b), is declared to be a declared compliance notice; and

(f) each of the following services is declared to be a declared out of scope service—

(i) a service providing a pre-preparatory learning program, at a prescribed State school or a prescribed non-State school, to a pre-preparatory age child;

(ii) a vacation care service; and

(g) a licence under the *Child Care Act 2002* is declared to be a former approval.

(2) In this section—

***pre-preparatory age child*** see the *Education (General Provisions) Act 2006*, schedule 4.

***pre-preparatory learning program*** see the *Education (General Provisions) Act 2006*, schedule 4.

***prescribed non-State school*** see the *Education (General Provisions) Act 2006*, schedule 4.

***prescribed qualification*** means a qualification prescribed under the *Child Care Regulation 2003* for a director, coordinator or group leader.

***prescribed State school*** see the *Education (General Provisions) Act 2006*, schedule 4.

***school holiday*** includes a day that the staff of a school, but not the students, are required to attend the school.

*vacation care service* means a service providing education and care to children over pre-school age only during a school holiday.

## Part 3                      Matters relating to Commissioner's Act

### Division 1                Preliminary

#### 19        Definitions for pt 3

In this part—

*children's commissioner* means the Commissioner for Children and Young People and Child Guardian under the Commissioner's Act.

*Commissioner's Act* means the *Commission for Children and Young People and Child Guardian Act 2000*.

*exemption notice* means an exemption notice in force under the Commissioner's Act.

*prescribed notice* means a prescribed notice in force under the Commissioner's Act.

### Division 2                Giving or obtaining particular information

#### 20        Giving information to children's commissioner about disciplinary action

(1) This section applies if the regulatory authority—

(a) does any of the following (the *disciplinary action*) under the Education and Care Services National Law (Queensland) (the *Law*)—

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- (i) amends a provider approval under section 23 of the Law;
  - (ii) suspends a provider approval under section 27 or 28 of the Law;
  - (iii) cancels or suspends a provider approval under section 33 of the Law;
  - (iv) amends a service approval under section 55 of the Law;
  - (v) suspends a service approval under section 72 or 73 of the Law;
  - (vi) cancels or suspends a service approval under section 79 of the Law;
  - (vii) amends a supervisor certificate under section 120 of the Law;
  - (viii) cancels or suspends a supervisor certificate under section 125 of the Law;
  - (ix) suspends a supervisor certificate under section 126 of the Law; and
- (b) reasonably believes the disciplinary action may be relevant to the functions or powers of the children's commissioner under the Commissioner's Act.
- (2) The regulatory authority must give written notice of the disciplinary action to the children's commissioner.
- (3) A notice under subsection (2) must state the following for the person against whom the disciplinary action was taken—
- (a) the person's name and address;
  - (b) the person's date and place of birth, if known;
  - (c) that disciplinary action has been taken against the person, without stating anything further about the disciplinary action.
- (4) Subsection (5) applies if the children's commissioner—



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- (a) requests further information about the disciplinary action; and
  - (b) notifies the regulatory authority that the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner's Act.
- (5) The regulatory authority must give the children's commissioner a written notice stating the following—
- (a) the form of the disciplinary action taken;
  - (b) when the conduct happened that constituted a ground for the disciplinary action;
  - (c) the nature of the conduct that constituted a ground for the disciplinary action;
  - (d) any other information about the disciplinary action the regulatory authority considers may be relevant to employment screening under the Commissioner's Act, chapter 8, including, for example, details about the nature of the disciplinary action.
- (6) However, if the notice given under subsection (2) did not contain the person's date and place of birth, subsection (5) applies only if—
- (a) the request from the children's commissioner for the notice under subsection (5) includes the person's date and place of birth; and
  - (b) the regulatory authority confirms the person's date and place of birth with the person.
- (7) A notice given under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.
- (8) If the regulatory authority gives the children's commissioner information under subsection (5) about disciplinary action and the disciplinary action is set aside on review or appeal, the regulatory authority must notify the children's commissioner of the following—
- (a) the disciplinary action has been set aside;

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- (b) the reasons given by the entity that set the disciplinary action aside for setting it aside.

## **21 Giving information to children's commissioner about prohibition notices**

- (1) This section applies if the regulatory authority gives a person a prohibition notice under the Education and Care Services National Law (Queensland), part 7, division 3.
- (2) The regulatory authority must give written notice of the giving of the prohibition notice to the children's commissioner.
- (3) A notice under subsection (2) must state the following—
  - (a) the person's name and address;
  - (b) the person's date and place of birth, if known;
  - (c) the person has been given a prohibition notice, without stating anything further about the giving of the prohibition notice.
- (4) Subsection (5) applies if the children's commissioner—
  - (a) requests further information about the prohibition notice; and
  - (b) notifies the regulatory authority that the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner's Act.
- (5) The regulatory authority must give the children's commissioner a written notice stating the following—
  - (a) when the conduct that resulted in the prohibition notice happened;
  - (b) the nature of the conduct that resulted in the prohibition notice;
  - (c) any other information about the prohibition notice the regulatory authority considers may be relevant to employment screening under the Commissioner's Act, chapter 8, including, for example, details about the nature of the prohibition notice.

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- (6) However, if the notice given under subsection (2) did not contain the person's date and place of birth, subsection (5) applies only if—
- (a) the request from the children's commissioner for the notice under subsection (5) includes the person's date and place of birth; and
  - (b) the regulatory authority confirms the person's date and place of birth with the person.
- (7) If a prohibition notice is given in relation to conduct relating to a particular child, a notice given under subsection (2) or (5) about the prohibition notice must not contain information that identifies, or is likely to identify, the child.
- (8) If the regulatory authority gives the children's commissioner information under subsection (5) about a prohibition notice and the prohibition notice is set aside on review or appeal, the regulatory authority must notify the children's commissioner of the following—
- (a) the prohibition notice has been set aside;
  - (b) the reasons given by the entity that set the prohibition notice aside for setting it aside.

*Note—*

Also, under the Education and Care Services National Law (Queensland), section 271(5), the regulatory authority may disclose, to the chief executive of the department responsible for the administration of the Commissioner's Act, a prohibition notice as applying in any participating jurisdiction in respect of the person.

## **22 Obtaining information from children's commissioner about employment screening**

- (1) This section applies to the following individuals—
- (a) an approved provider;
  - (b) a person with management or control of an education and care service operated by an approved provider;
  - (c) a certified supervisor;

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- (d) an educator;
  - (e) an adult occupant of a family day care residence.
- (2) On receiving a written request from the regulatory authority, the children's commissioner must give the regulatory authority the following information about a stated individual mentioned in subsection (1)—
- (a) whether an application for a prescribed notice or exemption notice for the individual has been made and, if so—
    - (i) the date of the application; and
    - (ii) if the application has been withdrawn or the individual has withdrawn his or her consent to employment screening—the date of the withdrawal;
  - (b) whether a prescribed notice or exemption notice is in force for the individual and, if so—
    - (i) the date of issue of the notice; and
    - (ii) whether it is a positive prescribed notice, negative prescribed notice, positive exemption notice or negative exemption notice;
  - (c) whether a prescribed notice or exemption notice held by the individual has been cancelled and, if so, the date of the cancellation.
- (3) The children's commissioner may give the regulatory authority the information mentioned in subsection (2)(c) about an individual whether or not the regulatory authority has requested the information.
- (4) In this section—

***negative exemption notice*** means a negative exemption notice under the Commissioner's Act.

***negative prescribed notice*** means a negative notice under the Commissioner's Act.

**occupant**, of a family day care residence, means a person who—

- (a) resides in the family day care residence; or
- (b) is usually present in the family day care residence when the education and care service is delivered there.

**positive exemption notice** means a positive exemption notice under the Commissioner's Act.

**positive prescribed notice** means positive notice under the Commissioner's Act.

## Division 3                      Application of Commissioner's Act

### 23            Pending application for working with children card or check—corporation

- (1) This section applies if—
  - (a) a corporation is the approved provider of an education and care service; and
  - (b) an individual becomes an officer of the corporation within the meaning of the *Corporations Act 2001* (Cwlth) who is responsible for managing the delivery of the education and care service; and

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *person with management or control*, paragraph (a).

- (c) the individual does not hold a current working with children card or working with children check; and
  - (d) an application for a working with children card or working with children check is made for the individual.
- (2) The individual must not be taken to be not a fit and proper person under the Education and Care Services National Law (Queensland) only because the individual does not hold a

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current working with children card or working with children check.

- (3) Subsection (2) stops applying in relation to the individual when the application mentioned in subsection (1)(d) is decided, or is withdrawn or lapses.

## **24 Pending application for working with children card or check—eligible association**

- (1) This section applies if—
- (a) an eligible association is the approved provider of an education and care service; and
  - (b) an individual becomes a member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; and

*Note—*

See the Education and Care Services National Law (Queensland), section 5(1), definition *person with management or control*, paragraph (b).

- (c) the individual does not hold a current working with children card or working with children check; and
  - (d) an application for a working with children card or working with children check is made for the individual.
- (2) The individual must not be taken to be not a fit and proper person under the Education and Care Services National Law (Queensland) only because the individual does not hold a current working with children card or working with children check.
- (3) Subsection (2) stops applying in relation to the individual when the application mentioned in subsection (1)(d) is decided, or is withdrawn or lapses.

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**25 Applications for prescribed notices or exemption notices in relation to occupants of family day care residences**

- (1) This section applies in relation to an adult (the *occupant*) who—
  - (a) resides, or intends to reside, in a family day care residence; or
  - (b) is usually present in a family day care residence when the education and care service is delivered there.
- (2) The approved provider of the approved family day care service may apply for a prescribed notice or exemption notice, and the application must be dealt with under the Commissioner's Act, as if the approved provider were proposing to start employing, or continue employing, the occupant in regulated employment as a volunteer.
- (3) To remove any doubt, it is declared that no fee is payable under this Act or the Commissioner's Act for the application.
- (4) In this section—

*regulated employment* see the Commissioner's Act, section 156.

*volunteer* see the Commissioner's Act, section 165.

**26 Death of sole holder of service approval**

- (1) This section applies if the approved provider of an education and care service dies.
- (2) The executor of the approved provider's estate does not commit an offence against the Commissioner's Act, section 197, by operating the approved education and care service under the Education and Care Services National Law (Queensland), section 39, without a current positive prescribed notice—
  - (a) during the relevant period; and
  - (b) if the executor applies for a prescribed notice within the relevant period and does not withdraw the application—until the application is decided.

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- (3) The executor of the approved provider's estate does not commit an offence against the Commissioner's Act, section 259, by operating the approved education and care service under the Education and Care Services National Law (Queensland), section 39, without a current positive exemption notice, during the relevant period.
- (4) If the executor of the approved provider's estate is a corporation, a reference in this section to the executor not committing an offence against a provision of the Commissioner's Act also applies to an executive officer of the corporation.
- (5) In this section—  
*relevant period* see the Education and Care Services National Law (Queensland), section 39(7).

## Part 4                      Other matters

### Division 1                Transitional

#### 27            Giving information to children's commissioner about disciplinary action

- (1) This section applies if, before the scheme commencement day, disciplinary action mentioned in the *Child Care Act 2002*, section 50A(1) was taken in relation to a licence for a child care service.
- (2) The *Child Care Act 2002*, section 50A continues to apply in relation to the disciplinary action, even if the service is declared under this Act to be a declared approved service.



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## 28 QCAT reviews of decisions under Child Care Act 2002

- (1) This section applies to a decision made by the chief executive under the *Child Care Act 2002* before the scheme commencement day if—
  - (a) the decision—
    - (i) related to a licence, or an application for a licence, under that Act for a child care service; or
    - (ii) was to give a compliance notice relating to a contravention of a provision of the *Child Care Act 2002* in relation to a child care service; and
  - (b) the child care service is, on the scheme commencement day, a declared approved service; and
  - (c) immediately before the scheme commencement day—
    - (i) a person had a right under the *Child Care Act 2002*, section 163 to apply to QCAT to have the decision reviewed but had not made an application; or
    - (ii) a person had applied to QCAT under the *Child Care Act 2002*, section 163 to have the decision reviewed but QCAT had not finished dealing with the application.
- (2) If subsection (1)(c)(i) applies, the person may apply to QCAT, and QCAT may deal with the application, under the *Child Care Act 2002* as if the service were still a child care service to which that Act applied.
- (3) If subsection (1)(c)(ii) applies, QCAT may continue to deal with the application under the *Child Care Act 2002* as if the service were still a child care service to which that Act applied.
- (4) However, in exercising its powers after reviewing the decision, QCAT must make the orders it considers appropriate having regard to the provisions of the Education and Care Services National Law (Queensland).

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*Example—*

An application for review mentioned in subsection (3) concerns a decision to refuse an application for a licence under the *Child Care Act 2002*. QCAT may order that the chief executive issue the person a provider approval and service approval under this Act.

- (5) If, for a decision mentioned in subsection (1)(a)(ii), QCAT confirms the decision to give the compliance notice, it is taken to be a compliance notice under the Education and Care Services National Law (Queensland).

## **29 Chief executive reviews of compliance notice decisions under Child Care Act 2002**

- (1) This section applies to a decision made by the chief executive under the *Child Care Act 2002* before the scheme commencement day if—
- (a) the decision was to give to a person a compliance notice relating to a contravention of a provision of the *Child Care Act 2002*; and
  - (b) the contravention related to a child care service that is, on the scheme commencement day, a declared approved service; and
  - (c) immediately before the scheme commencement day—
    - (i) a person had a right under the *Child Care Act 2002*, section 164B to apply to the chief executive to have the decision reviewed but had not made an application; or
    - (ii) a person had applied to the chief executive under the *Child Care Act 2002*, section 164B to have the decision reviewed but the chief executive had not finished dealing with the application.
- (2) If subsection (1)(c)(i) applies, the person may apply to the chief executive, and the chief executive may deal with the application, under the *Child Care Act 2002* as if the service were still a child care service to which that Act applied.

- (3) If subsection (1)(c)(ii) applies, the chief executive may continue to deal with the application under the *Child Care Act 2002* as if the service were still a child care service to which that Act applied.
- (4) If the chief executive confirms the decision to give the compliance notice, it is taken to be a compliance notice under the Education and Care Services National Law (Queensland).

### **30 Authorised officers**

- (1) This section applies to an appointment of a person as an authorised officer under the *Child Care Act 2002*, section 111 that was in force immediately before the scheme commencement day.
- (2) The appointment continues as an authorisation of the person under the Education and Care Services National Law (Queensland), section 195 until it ends under that Law.
- (3) As soon as practicable after the scheme commencement day, the chief executive must issue to the person an identity card under the Education and Care Services National Law (Queensland), section 196.
- (4) Subsection (2) does not affect the operation of the appointment under the *Child Care Act 2002* on or after the scheme commencement day.

### **31 Application of Information Privacy Act 2009 and Right to Information Act 2009**

To remove any doubt, it is declared that section 6(1)(b) and (c) do not affect the application of the *Information Privacy Act 2009* and the *Right to Information Act 2009* in relation to the *Child Care Act 2002* or instruments made under that Act.

*Example—*

Before the scheme commencement day, an application is made for a licence for a child care service under the *Child Care Act 2002*. Even if the child care service becomes an education and care service, a person's right of access under the *Right to Information Act 2009* to documents of the department relating to the application is unaffected.

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## **Division 2                      Use and disclosure of URL data relating to approved kindergarten programs**

### **32            Definitions for div 2**

In this division—

***approved kindergarten program*** means a program for which an education and care service providing the program receives kindergarten program funding from the department or a central governing body.

***authorised officer***, of a central governing body, means an employee or officer of the central governing body for whom an authority is in force under section 33.

***central governing body*** means an entity, prescribed under a regulation, that receives funding from the department for an approved kindergarten program provided by 1 or more relevant services to which the entity provides all or part of the funding.

***disability*** includes a condition attributable to—

- (a) a physical, intellectual, hearing, vision or speech–language impairment, or a developmental delay; or
- (b) an autistic spectrum disorder; or
- (c) a combination of impairments mentioned in paragraph (a), a developmental delay or an autistic spectrum disorder.

***health practitioner*** means a person registered under the Health Practitioner Regulation National Law to practise a health profession.

***relevant service*** means an approved education and care service, other than an approved family day care service, that provides an approved kindergarten program.

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**URL data** means—

- (a) the following information about a child who is enrolled at a relevant service in an approved kindergarten program—
  - (i) the child’s name, date of birth and gender;
  - (ii) the address of the child’s primary residence;
  - (iii) whether the child identifies, or has a parent who identifies, as being of Aboriginal or Torres Strait Islander descent;
  - (iv) if the primary language of the child, or, if the child has not learned to speak, the child’s family, is not English—the primary language of the child or the child’s family;
  - (v) whether the child, or a parent of the child, holds a health care card under the *Social Security Act 1991* (Cwlth);
  - (vi) whether the child—
    - (A) has been diagnosed by a health practitioner as having, or is suspected by a health practitioner of having, a disability or long-term medical condition; and
    - (B) needs additional assistance because of the disability or medical condition;
  - (vii) the number of hours for which the child attended an approved kindergarten program during a particular period;
  - (viii) other information about the child that is prescribed under a regulation; or
- (b) the following information about a staff member of a relevant service who delivers an approved kindergarten program—
  - (i) the staff member’s name;

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- (ii) for a qualification in early childhood studies or child care studies held by the staff member—
  - (A) the name of the qualification; and
  - (B) the date on which the qualification was issued; and
  - (C) the institution that issued the qualification;
- (iii) whether the staff member holds full registration or provisional registration under the *Education (Queensland College of Teachers) Act 2005* and, if so, the staff member's identification number under that Act;
- (iv) whether the staff member identifies as being of Aboriginal or Torres Strait Islander descent;
- (v) if the primary language of the staff member is not English—the primary language of the staff member;
- (vi) other information about the staff member that is prescribed under a regulation.

### **33 Authorised officers**

The chief executive may give written authority to a person who is an employee or officer of a central governing body to receive, use and disclose URL data for this division if the chief executive is satisfied the person is, because of the person's expertise or experience, an appropriate person to be given the authority.

### **34 Disclosure of URL data to chief executive and central governing bodies by relevant services**

- (1) An authorised person for a relevant service may disclose URL data to the chief executive.
- (2) An authorised person for a CGB service may disclose URL data to an authorised officer of the central governing body.

(3) An authorised officer of a central governing body may disclose URL data received under this section to the chief executive.

(4) In this section—

*authorised person*, for a relevant service, means the following—

- (a) the approved provider of the relevant service;
- (b) a staff member of the relevant service;
- (c) an employee of the approved provider of the relevant service who administers URL data in the course of performing the employee's duties.

*CGB service* means a relevant service that—

- (a) receives funding from a central governing body for an approved kindergarten program; and
- (b) has been directed in writing by the central governing body to disclose URL data to it for the purpose of this section.

### **35 Use and disclosure of URL data by chief executive**

(1) The chief executive may use URL data received under this division for the following purposes—

- (a) quality assuring of funding provided to relevant services and central governing bodies for approved kindergarten programs;
- (b) planning for, monitoring of outcomes of, and reporting on, early childhood initiatives;
- (c) preparing the data for disclosure under section 36.

(2) For subsection (1)(a), the chief executive may disclose URL data, including URL data that has been aggregated, to an authorised officer of a central governing body.

(3) For subsection (1)(b), URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

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**36 Disclosure of URL data to Australian Bureau of Statistics and Australian Institute of Health and Welfare**

- (1) The chief executive may disclose URL data to a prescribed entity for the purpose of meeting Queensland's obligations under the early childhood data agreement.
- (2) A prescribed entity that receives URL data under this section must ensure the data is collected, stored and used in a way that ensures the privacy of the persons to whom it relates is protected.
- (3) In this section—

*early childhood data agreement* means the agreement between the Commonwealth and the States called the 'National information agreement on early childhood education and care', signed on behalf of the Queensland Government by the chief executive on 19 February 2010.

*prescribed entity* means—

- (a) the Australian Bureau of Statistics; or
- (b) the Australian Institute of Health and Welfare established under the *Australian Institute of Health and Welfare Act 1987* (Cwlth).

**37 Recording, use and disclosure of URL data by authorised officer of central governing body**

- (1) An authorised officer of a central governing body may use URL data received under this division for the following purposes—
  - (a) quality assuring and distributing funding received from the department for approved kindergarten programs;
  - (b) planning, developing and implementing services for children and parents;
  - (c) planning, developing and implementing professional development programs for staff members of relevant services;
  - (d) implementing curriculum development initiatives;



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- (e) reporting on the central governing body's performance.
- (2) For subsection (1)(e), URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.
- (3) A person who is or has been an authorised officer of a central governing body and who receives or received URL data under this division must not record or use the data, or disclose it to anyone, other than under this section or section 34(3).

Maximum penalty—40 penalty units.

### **38 Transitional—authorised officers**

- (1) This section applies to a person who, immediately before the scheme commencement day, was an authorised officer of a central governing body under the *Child Care Act 2002*, part 9, division 3, subdivision 2.
- (2) From the commencement, the person's authority to receive, use and disclose URL data for the purposes of that subdivision continues in force as an authority given under section 33 to receive, use and disclose URL data for this division.

## **Division 3 Application of Commonwealth Acts**

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

- (1) The *Privacy Act 1988* (Cwlth) applies under the Education and Care Services National Law (Queensland), section 263 as if a reference in the applied provisions to the Administrative Appeals Tribunal were a reference to QCAT.
- (2) This Act is taken to be an enabling Act under the QCAT Act that confers jurisdiction on QCAT by applying the *Privacy Act 1988* (Cwlth) as mentioned in subsection (1).

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

- (1) The *Freedom of Information Act 1982* (Cwlth) applies under the Education and Care Services National Law (Queensland), section 264 as if a reference in the applied provisions to the Administrative Appeals Tribunal were a reference to QCAT.
- (2) This Act is taken to be an enabling Act under the QCAT Act that confers jurisdiction on QCAT by applying the *Freedom of Information Act 1982* (Cwlth) as mentioned in subsection (1).

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

- (1) The *Ombudsman Act 1976* (Cwlth) applies under the Education and Care Services National Law (Queensland), section 282 as if a reference in the applied provisions to the Administrative Appeals Tribunal were a reference to QCAT.
- (2) This Act is taken to be an enabling Act under the QCAT Act that confers jurisdiction on QCAT by applying the *Ombudsman Act 1976* (Cwlth) as mentioned in subsection (1).
- (3) To remove any doubt, it is declared that QCAT has the jurisdiction mentioned in subsection (2) even to the extent the jurisdiction is not original, review or appeal jurisdiction.

### **Division 4 External review of decisions**

#### **42 Meaning of *reviewable decision***

In this division—

*reviewable decision* means a decision that, under the Education and Care Services National Law (Queensland), section 192, is a reviewable decision for external review.

#### **43 Regulatory authority must give notice after making reviewable decision**

- (1) Immediately after making a reviewable decision, the regulatory authority must give to the person who is the subject

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of the decision a notice for the decision complying with the QCAT Act, section 157(2).

- (2) The regulatory authority may give a notice for the purpose of complying with subsection (1) and for another purpose.

*Example—*

The regulatory authority may give a person a prohibition notice stating—

- (a) the matters required to be stated in the prohibition notice under the Education and Care Services National Law (Queensland), section 185; and
- (b) the matters required to be stated under subsection (1) about the decision to give the prohibition notice.

#### **44 Constitution of QCAT**

- (1) For a review of a reviewable decision, QCAT must be constituted, to the extent practicable, with at least 1 member with specialist knowledge and expertise relevant to the matter the subject of the review.
- (2) However, QCAT must not be constituted by a member who—
- (a) is, or was when the reviewable decision was made, an employee or officer of the department; or
  - (b) has been refused a provider approval, service approval or supervisor certificate; or
  - (c) has had a provider approval, service approval or supervisor certificate cancelled; or
  - (d) has been refused a licence under the *Child Care Act 2002* or the repealed *Child Care Act 1991*; or
  - (e) has had a licence under the *Child Care Act 2002* or the repealed *Child Care Act 1991* revoked.

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## **Division 5                      Regulations**

### **45            Regulation-making power**

The Governor in Council may make regulations under the local application provisions of this Act.

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 January 2014. Future amendments of the *Education and Care Services National Law (Queensland) Act 2011* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2012
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
1	none	1 January 2012	
Current as at 1 May 2013		Amendments included none	Notes

Current as at	Amendments included	Notes
23 September 2013	2013 Act No. 39	
1 January 2014	2013 Act No. 44	
2 January 2014	—	prov exp 1 January 2014

## 5 List of legislation

### **Education and Care Services National Law (Queensland) Act 2011 No. 38**

date of assent 24 November 2011

ss 1–2 commenced on date of assent

s 4 (to the extent it applies pts 1–2, pt 3 (other than s 70(d)), pt 4, pt 5 (other than ss 152, 153(2)–(4), 154–159, div 6), pt 6 (other than s 172(d)), pts 7–12, pt 13 (other than ss 266–268, 270(1)(d), (2), (3)), pts 14–15, schs 1–2 of the Education and Care Services National Law set out in the schedule to the Education and Care Services National Law Act 2010 of Victoria as a law of this jurisdiction) commenced 1 January 2012 (2011 SL No. 277)

s 4 (to the extent it applies s 70(d), pt 4, ss 152, 153(2)–(4), 154–159, pt 5 div 6, s 172(d), pts 7–12, ss 266–268, 270(1)(d), (2), (3) of the Education and Care Services National Law set out in the schedule to the Education and Care Services National Law Act 2010 of Victoria as a law of this jurisdiction) commenced 1 May 2013 (2013 SL No. 56)

remaining provisions commenced 1 January 2012 (2011 SL No. 277)

amending legislation—

### **Treasury and Trade and Other Legislation Amendment Act 2013 No. 39 ss 1, 110(1) sch 3 pt 1**

date of assent 23 September 2013

commenced on date of assent

### **Education and Care Services Act 2013 No. 44 ss 1–2, 269 sch 1 pt 2**

date of assent 23 September 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2014 (2013 SL No. 264)

## 6 List of annotations

### **Exclusion of legislation of this jurisdiction**

s 6 amd 2013 No. 39 s 110(1) sch 3 pt 1; 2013 No. 44 s 269 sch 1 pt 2

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

s 7 amd 2013 No. 39 s 110(1) sch 3 pt 1

### **Children’s services law**

s 8 amd 2013 No. 44 s 269 sch 1 pt 2

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**Children's services regulator**

s 9 amd 2013 No. 44 s 269 sch 1 pt 2

**Former education and care services law**

s 11 amd 2013 No. 44 s 269 sch 1 pt 2

**Applications for prescribed notices or exemption notices in relation to occupants of family day care residences**

s 25 amd 2013 No. 44 s 269 sch 1 pt 2

**Recording, use and disclosure of URL data by authorised officer of central governing body**

s 37 amd 2013 No. 44 s 269 sch 1 pt 2

**Transitional regulation-making power**

s 46 exp 1 January 2014 (see s 46(4))

**PART 5—AMENDMENT OF ACTS**

pt hdg om R1 (see RA s 7(1)(k))

**Division 1—Amendment of Child Care Act 2002**

div 1 (ss 47–52) om R1 (see RA ss 7(1)(k) and 40)

**Division 2—Amendment of Child Protection Act 1999**

div 2 (ss 53–54) om R1 (see RA ss 7(1)(k) and 40)

**Division 3—Amendment of Child Protection (Offender Prohibition Order) Act 2008**

div 3 (ss 55–58) om R1 (see RA ss 7(1)(k) and 40)

**Division 4—Amendment of Commission for Children and Young People and Child Guardian Act 2000**

div 4 (ss 59–62) om R1 (see RA ss 7(1)(k) and 40)

**Division 5—Amendment of Dangerous Prisoners (Sexual Offenders) Act 2003**

div 5 (ss 63–65) om R1 (see RA ss 7(1)(k) and 40)

**Division 6—Amendment of Education (Accreditation of Non-State Schools) Act 2001**

div 6 (ss 66–67) om R1 (see RA ss 7(1)(k) and 40)

**Division 7—Amendment of Education (General Provisions) Act 2006**

div 7 (ss 68–69) om R1 (see RA ss 7(1)(k) and 40)

**Division 8—Amendment of Education (Queensland Studies Authority) Act 2002**

div 8 (ss 70–75) om R1 (see RA ss 7(1)(k) and 40)

**Division 9—Amendment of Fair Work (Commonwealth Powers) and Other Provisions Act 2009**

div 9 (ss 76–77) om R1 (see RA ss 7(1)(k) and 40)

**Division 10—Amendment of Gaming Machine Act 1991**

div 10 (ss 78–80) om R1 (see RA ss 7(1)(k) and 40)

**Division 11—Amendment of Industrial Development Act 1963**

div 11 (ss 81–82) om R1 (see RA ss 7(1)(k) and 40)



**Division 12—Amendment of Public Health Act 2005**

**div 12** (ss 83–104) om R1 (see RA ss 7(1)(k) and 40)

**Division 13—Amendment of Sanctuary Cove Resort Act 1985**

**div 13** (ss 105–106) om R1 (see RA ss 7(1)(k) and 40)

## **7 Forms notified or published in the gazette**

Lists of forms are no longer included in reprints. Now see the separate forms document published on the website of the Office of the Queensland Parliamentary Counsel at <[www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)> under Information—Current annotations. This document is updated weekly and the most recent changes are marked with a change bar.

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