Education and Care Services National Law (Queensland) Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Education and Care Services National Law (Queensland) Bill 2011.

Policy objectives and the reasons for them

The principal objectives of the Bill are to –

(a) apply the Education and Care Services National Law (the National Law) set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria) as a law of Queensland;

(b) amend the *Child Care Act 2002* so that it no longer applies to the early childhood education and care services that will be covered by the National Law; and

(c) make consequential amendments to other legislation.

In December 2009 the Council of Australian Governments (COAG) endorsed the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* (National Partnership Agreement). This included the commitment to establish a jointly governed, uniform National Quality Framework and facilitate the introduction of a new National Quality Standard for early childhood education and care services traditionally known as long day care services, family day care services, preschool (known as kindergarten in Queensland) and outside school hours care services.

A range of other early childhood education and care services will not be subject to the National Law. This includes some services that are currently licensed or regulated, for instance, occasional care services, limited hours care services and some services that receive Commonwealth budget based funding. It also includes services that are not regulated such as nannies,

babysitters, playgroups and child minding services in hotels, resorts and shopping centres.

The new national system, including national applied laws for early childhood education and care services, has been facilitated by a cooperative legislative model using an application of laws approach to confer the relevant administrative, quality assessment and review functions on State and Territory agencies and officials.

Victoria, as host jurisdiction, developed the legislation and the *Education and Care Services National Law Act 2010* (Victoria) was passed by the Victorian Parliament on 5 October 2010. The schedule to that Act sets out the Education and Care Services National Law (the National Law).

Under the National Partnership Agreement, the other States and Territories agreed to enact legislation to apply the National Law by reference, with the exception of Western Australia which will pass its own corresponding legislation.

The National Law establishes the National Quality Framework, which is comprised of –

- the National Law;
- the National Regulations;
- the National Quality Standard; and
- the prescribed rating system.

The National Quality Framework provides for a national approach to the regulation, assessment and quality improvement of early childhood education and care and outside school hours care by –

- creating a single, uniform national regulatory system to replace existing separate licensing and quality assurance processes in each jurisdiction for pre-school (kindergartens in Queensland), long day care, family day care and outside school hours care;
- instituting a new national quality assessment and public rating system for education and care services, to provide families with better information for making choices about their children's education and care as well as driving quality improvement;
- setting up a new National Quality Standard to ensure the safety, health and wellbeing of children attending long day care, family day care,

preschool and outside school hours care services, as well as improving their educational and developmental outcomes;

- giving primary responsibility for approval, monitoring and quality assessment of services to State and Territory Regulatory Authorities;
- setting up a new, joint national authority – the Australian Children's Education and Care Quality Authority – to oversee the National Quality Framework and guide the consistent and effective implementation of the new system across Australia.

Additional key features of the National Law are summarised as follows:

- a perpetual service and provider approval system, which replaces Queensland's existing three year licensing scheme;
- consideration of the fitness and propriety of providers and supervisors of education and care services;
- certified and nominated supervisor positions, responsible for overseeing and managing a service in the absence of the approved provider;
- temporary and permanent waivers where services are unable to meet specific requirements relating to physical standards, educator-to-child ratios and educator qualification requirements;
- power to publish information, including non-compliance information and a service's rating level.

Achievement of policy objectives

The Bill achieves the policy objectives by applying the National Law, set out in the schedule to the *Education and Care Services National Law Act* of Victoria, as a law of Queensland. The Bill also amends the *Child Care Act 2002* to provide that it no longer applies to the early childhood education and care services covered by the National Law.

The *Child Care Act 2002* will continue to apply to those services that are not covered by the National Law, where they are currently required to be licensed or regulated – that is, services providing education and care primarily on an ad hoc basis that is not offered fulltime or all day and where most of the children are preschool age or under (sometimes known as occasional care services and limited hours care services), certain services that receive Commonwealth budget based funding and stand alone services.

Exclusion of certain Queensland laws

Adoption of the National Law means that certain Commonwealth laws are applied as Queensland laws for the purposes of the National Quality Framework. The Commonwealth *Privacy Act 1988* and *Freedom of Information Act 1983* applies to the National Authority and to the Regulatory Authorities in relation to their functions under the National Law. The Commonwealth *Ombudsman Act 1976* applies only with respect to the National Authority.

In order for these Commonwealth laws to be effectively applied as Queensland laws, the Bill excludes the application of the Queensland *Right to Information Act 2009* and *Information Privacy Act 2009* to the National Law or to instruments made under the Law.

The Bill also excludes the application of Queensland's *Ombudsman Act 2001* to the National Law or to instruments made under that Law, except to the extent the Law and those instruments apply to the Regulatory Authority and its employees, decisions, actions and records.

The National Authority is to be based in New South Wales. Therefore, the National Law applies the New South Wales *State Records Act 1988* (NSW State Records Act) as a law of a participating jurisdiction, except to the extent that the National Law applies to a Regulatory Authority and the records of a Regulatory Authority. This applies the NSW State Records Act to the National Authority and its records. Consequently, the Bill excludes the application of Queensland's *Public Records Act 2002* to the National Law or to instruments made under that Law, except to the extent the Law and those instruments apply to the Regulatory Authority and its employees, decisions, actions and records.

In the interests of the nationally consistent application of the National Law, schedule 1 of the National Law contains miscellaneous interpretation provisions. To avoid any conflict, the operation of each jurisdiction's separate interpretation legislation needs to be excluded from application to the National Law. Therefore, the Bill excludes the application of Queensland's *Acts Interpretation Act 1954* to the National Law.

The National Law provides for the National Regulations to be made by the Ministerial Council. The National Regulations must be published on the New South Wales Legislation website, and arrangements must be made to table them in each House of Parliament in each participating jurisdiction. As the process for making the national regulations involves the Ministerial Council, and occurs outside of the participating States and Territories, it

cannot comply with jurisdiction specific legislation governing the making of subordinate legislation. Therefore, it is necessary for the application of such legislation to be excluded. The Bill excludes the application of Queensland's *Statutory Instruments Act 1992* to the National Law other than to the extent provided for in section 303 of the Law. Section 303 provides that the National Regulations may be disallowed in a participating jurisdiction in the same way that a regulation made under an Act of that jurisdiction may be disallowed. This provision ensures that the procedure set out in section 50 of the *Statutory Instruments Act 1992* for disallowing subordinate legislation applies to the National Regulations.

The National Law prescribes the financial management duties of the National Authority, including that the National Authority must facilitate the audit of its financial statements prepared in accordance with Australian Accounting Standards. The National Law also requires the financial statement to be included in the annual report of the National Authority and to be audited by a public sector auditor. Given these provisions, it is not appropriate for jurisdiction specific legislation regarding financial management and auditing to apply to the National Authority. Therefore, the Bill excludes the application of Queensland's *Auditor-General Act 2009* and *Financial Accountability Act 2009* to the National Law or to instruments made under that Law, except to the extent the Law and those instruments apply to the Regulatory Authority and its employees, decisions, actions and records.

The National Law provides that the National Authority may employ staff and that they are to be employed on the terms and conditions determined by the National Authority from time to time, subject to any relevant industrial award or agreement that applies to the staff. To put it beyond doubt that the National Authority's staff are not employed under Queensland's *Public Service Act 2008*, the Bill excludes the application of that Act to the National Law or to instruments made under that Law, except to the extent the Law and those instruments apply to the Regulatory Authority and its employees, decisions, actions and records.

Incorporation of certain *Child Care Act 2002* provisions

The Bill incorporates certain provisions from the *Child Care Act 2002* to ensure that the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act) applies in relation to services covered by the National Law, in the same way that it applies in relation to services covered by the *Child Care Act 2002*. For instance, if a corporation is the approved provider of an education and care service, the Bill provides that

an individual who becomes an officer of the corporation is not taken to be not a fit and proper person under the National Law, even though they do not hold a current working with children card, so long as an application has been made for a working with children card for the person.

Additionally, the Bill includes provisions from the *Child Care Act 2002* to continue the ability to share certain information with the Commission for Children and Young People and Child Guardian, to uphold the safety of children. This includes the requirement to notify the Commission when a prohibition notice is issued or disciplinary action is taken (e.g. suspension, amendment, or cancellation of a service/provider approval or supervisor certificate).

Provisions to enable the recording, use and disclosure of unit record level data, which were included in the *Child Care Act 2002* by the *Education and Training Legislation Amendment Act 2010* are also carried forward and included in this Bill. Those provisions are required to be continued in force for relevant services that are covered by the National Law.

Definitions

To ensure that the National Law can be applied effectively in Queensland, the Bill defines various terms used in the National Law. For instance, the term 'working with children law' is referred to in a number of contexts in the National Law. The Bill defines this term to mean the CCYPCG Act. Likewise, the Bill defines the term 'child protection law' to mean Queensland's *Child Protection Act 1999*.

As explained above, there are some types of early childhood education and care services that are currently licensed or regulated, but which will not be covered by the National Law. The National Law recognises the possibility that services which are required to be regulated under separate legislation may be provided at the same premises as approved education and care services under the National Law. For instance, a provider may operate, or intend to operate, a kindergarten service and a limited hours care service out of the same premises. The services which are not captured by the National Law, but which are regulated under separate legislation, are referred to in the National Law as associated children's services. For the purposes of the National Law, a children's service is a service which is regulated under a children's services law of a participating jurisdiction.

In order to reduce the administrative burden on the providers and the Regulatory Authorities, the National Law allows for some streamlining of processes to occur in these situations. The provider approval issued to the

provider under the National Law can authorise them to operate the education and care service covered by the National Law, as well as the associated children's service. Any conditions placed on the provider approval then apply to that provider in respect of both services, unless stated otherwise in the provider approval. Similarly, suspension or cancellation of a provider approval results in all service approvals for that provider being suspended or cancelled, including service approvals for the associated children's services.

To ensure that this streamlining of processes can operate effectively, the Bill declares that the *Child Care Act 2002* is a children's services law for the purposes of the National Law in Queensland. It also declares the chief executive of the department in which the *Child Care Act 2002* is administered to be 'children's services regulator' for the purposes of the National Law in Queensland.

Transitional matters

Part 15 of the National Law contains the transitional provisions necessary to transition existing providers and services into the new system. Part 15 uses a range of terms that have specific meaning for these transitional provisions. Many of these terms require declarations to be made by a law of a participating jurisdiction, to give meaning to the terms for the purposes of the application of the transitional provisions in the relevant participating jurisdiction.

The Bill ensures that the transitional provisions in the National Law operate as intended in Queensland, by defining various terms such as 'declared approved service', 'declared approved provider' and 'declared certified supervisor'. For compliance purposes, the Bill provides that a compliance notice issued under the *Child Care Act 2002*, given in relation to a declared approved service, is a 'declared compliance notice'. This means it is taken to be a compliance notice under the National Law.

The Bill includes other provisions to ensure a seamless transition from the *Child Care Act 2002* to the National Law, for those persons and services that will be covered by the National Law. The Bill provides that relevant provisions of the National Law about prohibition notices apply to a prohibition notice given to a person under the *Child Care Act 2002,* which is in force immediately before the commencement of the National Law in Queensland. The Bill also includes provisions to ensure that where a person had a right to review of a decision under the *Child Care Act 2002* (e.g. a decision to suspend a licence or a decision to give a compliance

notice) the decision may still be reviewed after commencement of the National Law.

Alternative ways of achieving policy objectives

In December 2007, COAG agreed to a partnership between the Australian Government and state and territory governments to pursue substantial reform in the area of early childhood development. COAG developed a reform agenda, the National Quality Agenda, reflecting its aspiration that children are born healthy and have access to the support, care and education throughout early childhood that will equip them for life and learning, and is delivered in a way that actively engages parents and meets their workforce participation needs.

The Commonwealth Government released for public comment a COAG Regulation Impact Statement (RIS) process on the National Quality Framework in 2009, with consultation extending over a three-month period from July to September. The RIS canvassed various options for a National Quality Standard, enhanced regulatory arrangements and a quality rating system, for the purposes of implementing the National Quality Agenda.

Following the release of the RIS and the consultation period, COAG agreed to a wide-ranging package of reforms for early childhood. As explained above, the National Partnership Agreement endorsed by COAG in December 2009, included the commitment to establish the National Quality Framework. COAG agreed that the new national approach will replace the current licensing and accreditation processes undertaken by States and the Commonwealth.

As one of the participating jurisdictions, Queensland has committed to apply the National Law to ensure that the jointly governed, uniform National Quality Framework is implemented across Australia as from the scheme commencement day. Therefore, the policy objectives can only be achieved by enactment of the Bill.

Estimated cost for government implementation

Funding from the Australian Government under the National Partnership Agreement is not expected to fully meet the government's costs of implementing the National Quality Framework in Queensland. DET will draw on existing resources to reduce the cost of implementing the National Quality Framework in 2010-11 and 2011-12, and will absorb any recurrent shortfall in national funding from 2012-13.

Consistency with fundamental legislative principles

Regard has been had to the fundamental legislative principles prescribed in the *Legislative Standards Act 1992* during preparation of the Bill. A number of provisions of the Bill and the National Law may impact on fundamental legislative principles. These are discussed below.

Application of National Law

The primary objective of the National Law is to establish a national education and care services quality framework for the delivery of education and care services to children across Australia. Introducing the national scheme legislation will deliver an integrated and unified national system for early childhood education and care and outside school hours care, to drive continuous improvement in the quality of services and improve educational and developmental outcomes for children attending these services. It is also intended to foster a joint system of governance to allow the perspective of all jurisdictions to be taken into account where there is shared responsibility for the regulation of quality in these services.

The application of National Law in a State or Territory Parliament for adoption by other participating States and Territories is a standard approach to implementing national legislative schemes, where Constitutional powers rest with States and Territories and not with the Commonwealth. Although the legislation for national schemes may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments.

This may be considered as undermining the institution of Parliament. In particular, the establishment of, and conferral of functions upon, a national body (such as the National Authority), may raise a concern about the lack of authority of a State government to respond to, or distance itself from, the actions of a joint Commonwealth and State regulatory authority and the pressure upon Parliaments to merely ratify the legislation.

However, the institution of Parliament is sovereign, and the Queensland Parliament will ultimately, through debate of the Bill, decide whether the proposed legislation will be passed to enable full implementation of the National Law.

Parliamentary scrutiny of national regulations

Regulations made under the National Law are to be made by Ministerial Council. This raises a concern that the power to make the regulations is not

subject to the scrutiny of the Queensland Parliament. In addition, the *Statutory Instruments Act 1992* will not apply to the National Law and the National Regulations, aside from the provisions setting out the procedure to be followed to enable the Queensland Legislative Assembly to pass a resolution disallowing subordinate legislation.

The National Law provides that a regulation made under the National Law may be disallowed in a participating jurisdiction by a House of Parliament of that jurisdiction, in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed. Therefore, although regulations made under the National Law will be made by the Ministerial Council, the Queensland Parliament will retain the power to disallow them. A regulation disallowed under this process will not cease to have effect in any participating jurisdiction (including Queensland), unless the regulation is disallowed in a majority of the participating jurisdictions.

This approach is consistent with the protocol for developing national scheme legislation, and is designed to ensure that national legislation is applied consistently in each participating jurisdiction.

Exclusion of Queensland legislation

The Bill will exclude the application of certain Queensland laws. This may be considered to breach the principle that legislation must have sufficient regard to the institution of, and laws made by the Parliament (principle in section 4(2) of the *Legislative Standards Act 1992)*.

This breach is considered justified in the interests of ensuring uniform application and operation of the National Law across all states and territories. The National Law also approaches this issue judiciously, so that, where it is not necessary to exclude the relevant Queensland legislation from application to the Regulatory Authority, the exclusion would be limited only with respect to the National Authority.

The exclusion of certain Queensland legislation only takes effect with respect to the National Law itself and instruments made under the National Law. This means that relevant Queensland legislation continues to apply to those provisions of the Bill that do not form part of the National Law.

Further details about the Bill's exclusion of relevant Queensland legislation are provided below.

- *Acts Interpretation Act 1954*

Consistency of interpretation of the National Law across all States and Territories is vital to ensuring national consistency in the application of the National Law. To facilitate this, schedule 1 of the National Law contains uniform interpretation provisions similar to those ordinarily contained in each jurisdiction's interpretation legislation.

To avoid any conflict in interpretation, the operation of each jurisdiction's separate interpretation legislation must subsequently be excluded from application to the National Law. In Queensland, this requires the *Acts Interpretation Act 1954* to be excluded from application to the National Law and instruments made under the National Law.

- *Auditor-General Act 2009* and *Financial Accountability Act 2009.*

Section 278 of the National Law prescribes the financial management duties of the National Authority, including that the National Authority must facilitate the audit of its financial statements prepared in accordance with Australian Accounting Standards (ss.278(e) and(f)). Section 279 requires the financial statement to be included in the annual report of the National Authority and to be audited by a public sector auditor.

While the National Authority is created in each jurisdiction by the application of the National Law, it will operate as a distinct and single entity, with its physical offices located in New South Wales. The provisions mentioned above will enable the National Authority to operate under a single set of requirements with regards to its financial management and auditing responsibilities.

It would be illogical, as well as administratively cumbersome and confusing if the National Authority was required to undertake these responsibilities in accordance with every jurisdiction's separate legislation regarding financial management and auditing. Therefore, the Bill excludes the application of Queensland's *Auditor-General Act 2009* and *Financial Accountability Act 2009* to the National Law and instruments made under the National Law, except to the extent that the National Law and instruments made under that Law apply to the Regulatory Authority and its employees, decisions, actions and records.

- *Information Privacy Act 2009* and *Right to Information Act 2009.*

Sections 263 and 264 of the National Law apply the Commonwealth *Privacy Act 1988* and *Freedom of Information Act 1983* as laws of a participating jurisdiction for the purposes of the National Quality

Framework, with further modifications to be made by the national regulations.

These Commonwealth Acts are to apply, as laws of the participating jurisdiction, to the National Authority and to the Regulatory Authorities, in place of any jurisdiction specific privacy and freedom of information legislation. This is to ensure that matters relating to privacy and freedom of information are managed consistently across all States and Territories.

To achieve this, the operation of the corresponding laws in each jurisdiction must be excluded. Therefore, the Bill excludes the application of Queensland's *Information Privacy Act 2009* and *Right to Information Act 2009* to the National Law and instruments made under the National Law.

- *Ombudsman Act 2001*

Section 282 of the National Law applies the Commonwealth *Ombudsman Act 1976* as a law of a participating jurisdiction, except to the extent that the National Law applies to a Regulatory Authority and its employees, decisions, actions and records.

The Commonwealth *Ombudsman Act 1976* will apply, as a law of a participating jurisdiction, to provide oversight with respect to the decisions, actions and records of the National Authority, but not to those of the Regulatory Authorities. Any jurisdiction specific ombudsman legislation would continue to apply to the jurisdiction's Regulatory Authority and its employees, decisions, actions and records.

The Bill therefore excludes the application of Queensland's *Ombudsman Act 2001* to the National Law and instruments made under the National Law, except to the extent that the National Law and instruments made under that Law apply to the Regulatory Authority and its employees, decisions, actions and records.

- *Public Records Act 2002*

As mentioned above, the National Authority will be based in New South Wales. Given this, section 265 of the National Law applies the New South Wales *State Records Act 1988* with regards to the records of the National Authority, except to the extent that the National Law applies to a Regulatory Authority and the records of a Regulatory Authority.

In a similar manner to the application of the Commonwealth *Ombudsman Act 1976,* the New South Wales *State Records Act 1988* will apply to the records of the National Authority. To enable this to occur, the Bill excludes the application of Queensland's *Public Records Act 2002* to the National

Law and instruments made under the National Law, except to the extent that the National Law and instruments made under that Law apply to the Regulatory Authority and its employees, decisions, actions and records.

- *Public Service Act 2008*

Part 11 of the National Law establishes the National Authority and section 257 provides that the National Authority may employ staff and that they are to be employed on the terms and conditions determined by the National Authority from time to time, subject to any relevant industrial award or agreement that applies to the staff.

To put it beyond doubt that the National Authority's staff will not be employed under Queensland's *Public Service Act 2008*, the Bill to excludes the application of Queensland's *Public Service Act 2008* to the National Law and instruments made under the National Law, except to the extent that the National Law and instruments made under that Law apply to the Regulatory Authority and its employees, decisions, actions and records.

- *Statutory Instruments Act 1992*

The National Law provides that the Ministerial Council will make the National Regulations for the purposes of the National Law. Section 302 provides that the National Regulations must be published on the New South Wales Legislation website, while section 303 requires the tabling of the National Regulations in each jurisdiction's House of Parliament.

As the process for making the national regulations involves the Ministerial Council, and occurs outside of the participating States and Territories, it cannot comply with jurisdiction specific legislation governing the making of subordinate legislation. Therefore, the Bill excludes the application of Queensland's *Statutory Instruments Act 1992* to the National Law to the National Law and instruments made under the National Law, other than to the extent provided for in section 303 of the National Law. Therefore, the *Statutory Instruments Act 1992* will continue to apply to any regulations made under the Bill, other than those that are made by Ministerial Council under the National Law.

Application of Commonwealth Privacy, FOI and Ombudsman laws

As explained above, the National Law applies the Commonwealth Privacy *Act 1988* and *Freedom of Information Act 1983* as laws of a participating jurisdiction for the purposes of the National Quality Framework. It also applies the Commonwealth *Ombudsman Act 1976* as a law of a participating jurisdiction, except to the extent that the National Law applies

to a Regulatory Authority and its employees, decisions, actions and records.

Crown Law has advised that the effect of the application of the National Law as State legislation will be for the relevant provisions in the National Law to "pick-up" any future amendments that are made to the Commonwealth laws when those amendments commence. This is consistent with section 14H of the *Acts Interpretation Act 1954* which provides that in an Act, a reference to a law (and law is defined to include a law of the Commonwealth) includes a reference to "the law as originally made, and as amended from time to time since it was originally made".

Consequently, the effect of the NQF Bill's application of the National Law, and thereby of the relevant Commonwealth Acts as state legislation, breaches the fundamental legislative principle that legislation should have sufficient regard for the institution of Parliament, as future amendments to the relevant Commonwealth Acts will be automatically applied in Queensland for the purposes of the National Law.

However, as explained above, the decision to apply the relevant Commonwealth Acts was taken to ensure that matters relating to privacy and freedom of information are managed consistently across all States and Territories. Therefore, this breach of the fundamental legislative principle arises as a practical necessity of taking part in national scheme legislation to achieve uniformity.

It should also be noted that the National Law provides power for the National Regulations to modify the application of the Commonwealth Acts as if an amendment to the Commonwealth Acts had not taken effect.

Amendment of an Act by another Act

The National Law includes regulation-making powers that would normally be regarded in Queensland as Henry VIII provisions – amendment of an Act by an instrument other than another Act (section 4(4)(c) of the *Legislative Standards Act 1992*). For example, section 263 provides for the Commonwealth *Privacy Act 1988* to apply as a law of a participating jurisdiction for the purposes of the National Quality Framework, with any other modifications to be made by the national regulations.

Importantly, the National Law tailors this application by providing that a reference to the Office of the Privacy Commissioner in the Commonwealth Act applies as if it were a reference to the Office of the National Education and Care Services Privacy Commissioner.

The same approach is used in relation to the Commonwealth *Freedom of Information Act 1982* (section 264) and the Commonwealth *Ombudsman Act 1976* (section 282).

This enables the establishment of separate national entities (rather than Commonwealth entities) to exercise functions in relation to privacy, freedom of information and ombudsman matters, for each participating jurisdiction. This approach addresses concerns about having State law purport to unilaterally give functions to Commonwealth entities where there is no corresponding Commonwealth law providing for that entity to perform those functions for the purpose of the State law. The Scrutiny of Legislation Committee has previously recognised that this kind of approach may be a practical necessity of taking part in national scheme legislation to achieve uniformity.

Ministerial policy directions

Under section 222 of the National Law, Ministerial Council may give written directions to the board of the National Authority with respect to the carrying out of the National Authority's functions. Ministerial Council may also give directions to the Regulatory Authorities with respect to the administration of the National Quality Framework. In each case, the Ministerial directions must be complied with. As these directions are not required to be gazetted, this may call into question the issue of whether the provision allows for an inappropriate delegation of legislative power.

However, this potential infringement is mitigated because the National Law requires directions of the Ministerial Council to be published in the annual report of the board of the National Authority, which must be tabled in the Parliament of a participating jurisdiction determined by the Ministerial Council and subsequently published on the National Authority's website.

In addition, the National Law stipulates that a direction must be consistent with the National Law and cannot be about a particular person or education and care service, or a particular application, approval, notification, assessment or proceeding; or the determination of a rating for a particular education and care service. Further, a Ministerial direction is not a legislative instrument or an instrument of a legislative character.

Transitional regulation-making power

The Bill provides that a transitional regulation may be made about a matter which is necessary to facilitate the change from the operation of the *Child Care Act 2002* to the operation of the National Law, if the Bill and the National Law do not make sufficient provision for the matter. A transitional regulation made under this provision may have retrospective effect.

The transitional regulation making power represents a breach of fundamental legislative principles, given its potential for retrospective application and its lack of specificity about the matters for which a regulation may be made. However, the development of the National Law and the National Regulations has been a complex and complicated process. Given this, it is considered prudent to include the transitional regulation making power in the Bill out of an abundance of caution, in case there is a matter that has not been sufficiently provided for, but which is later revealed to be critical. The Bill provides that the provision, together with any transitional regulation made, would expire at the end of two years after commencement of the section.

A similar transitional regulation making power has been included in the *Children (Education and Care Services National Law Application) Act 2010* (New South Wales), and the *Education and Care Services National Law Act 2010* (Victoria).

Use of disciplinary information when assessing a blue card applicant or holder

The Bill includes provisions similar to those in the *Child Care Act 2002,* to require the Regulatory Authority to give notice of disciplinary actions to the Commissioner for Children and Young People and Child Guardian (the children's commissioner), if there is a reasonable belief that the action may be relevant to the functions or powers of the children's commissioner under the CCYPCG Act. This information sharing provision aims to ensure children's safety is maintained by providing the children's commissioner with information that may impact on the children's commissioner's decisions regarding employment screening of child care workers.

Disciplinary actions will include:

- Amendment of a provider approval by Regulatory Authority
- Suspension of a provider approval after show cause process
- Suspension of a provider approval without show cause notice

- Suspension or cancellation of a provider approval after the show cause process relating to consideration of a ground for cancellation of the provider approval
- Amendment of a service approval by Regulatory Authority
- Suspension of a service approval after show cause process
- Suspension of a service approval without show cause process
- Suspension or cancellation of a service approval after the show cause process relating to consideration of a ground for cancellation of the service approval
- Amendment of a supervisor certificate
- Suspension or cancellation of a supervisor certificate after a show cause process
- Suspension of a supervisor certificate without a show cause process.

While the provision of the information to the children's commissioner may be considered to breach fundamental legislative principles, providing this information is justified because:

- it informs the children's commissioner's employment screening decisions for child care workers, thereby contributing to the safeguarding of children;
- such information is currently provided to the children's commissioner under the *Child Care Act 2002*; and
- the children's commissioner will be required to take into account any decision of the relevant appeals body (i.e. the Regulatory Authority or QCAT) in relation to the appeals body's review of a decision to take disciplinary action, as is currently the case.

Disclosure of information to other authorities – unit record level data

The Bill includes provisions similar to those recently included in the *Child Care Act 2002* to enable the recording, use and disclosure of unit record level (URL) data in accordance with the *National Information Agreement on Early Childhood Education and Care* (the National Information Agreement), signed by Queensland on 19 February 2010. The provisions may be perceived as affecting the right to privacy of personal information, given that URL data is data on individual children and staff members, including their name, date of birth, address and demographic information

(such as Indigenous status, language background and whether the child has a disability).

However, similarly to the current provisions in the *Child Care Act 2002*, the Bill provides adequate safeguards to ensure that the information is only recorded, used and disclosed for the purposes set out in the legislation. The Bill prohibits a person who is (or has been) authorised to collect or receive URL data from recording or using the data or intentionally disclosing the data to anyone other than as prescribed, or recklessly disclosing the data. A maximum penalty of 100 penalty units applies in the case of a contravention.

The Bill also provides that when the chief executive is using URL data for the purposes of reporting on early childhood initiatives, URL data may be reported by the chief executive only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

Further safeguards are provided as follows:

- Section 16 of the *Privacy Act 1988* (Cwth) requires the Australian Bureau of Statistics and the Australian Institute of Health and Welfare (as agencies) not to do an act or engage in practice that breaches a Commonwealth Information Privacy Principle (Commonwealth IPP). Commonwealth IPPs encompass how and when an agency can collect personal information, how it should be used and disclosed, and how it should be stored and secured.
- The National Information Agreement provides that following quality assurance, the Australian Bureau of Statistics is to return URL data to the supplying agency. Information provided to the Australian Bureau of Statistics under the terms of that Agreement will be used for purposes of the *Census and Statistics Act 1905* (Cwth), and to support the Statistician's function under the *Australian Bureau of Statistics Act 1975* (Cwth).
- Section 19 of the *Census and Statistics Act 1905* (Cwth) provides that a person commits an offence if the person is or has been the Statistician or an officer and the person either directly or indirectly divulges or communicates to another person (other than the person from whom the information was obtained) any information given under that Act. In addition, section 29 of the *Australian Institute of Health and Welfare Act 1987* (Cwth) provides a penalty of $2000 or imprisonment for 12 months or both for breach of the confidentiality provision. The confidentiality provision prohibits a person either

directly or indirectly from making a record of the information or divulging or communicating that information to any person, producing that document to any person, or being required to divulge or communicate any of that information to a court.

Criminal history assessment

Section 13 of the National Law provides that, in determining whether an applicant for provider approval is fit and proper, the Regulatory Authority must have regard to either prescribed matters relating to the criminal history of the person, or any check of the person under a working with vulnerable people law of a participating jurisdiction. As Queensland does not have a working with vulnerable people law, the Regulatory Authority in Queensland must consider the prescribed matters relating to the applicant's criminal history. However, this is limited to the extent the criminal history matter may affect the person's suitability for the role of provider of an education and care service.

Section 109 of the National Law provides that, in determining whether an applicant for a supervisor certificate is fit and proper, the Regulatory Authority must have regard to the person's working with children check, or if there is no working with children check for the person, any prescribed matters relating to the criminal history of the person. Consideration of the person's criminal history is limited to the extent it may affect the person's suitability for the role of supervisor of an education and care service.

This requirement to consider prescribed matters about a person's criminal history may be regarded as adversely affecting an individual's right to privacy, because the person is not permitted to keep their criminal history information confidential. Consideration of the criminal history of a person who proposes to become an approved provider, or a certified supervisor, is critical to ensuring the health, safety and wellbeing of children attending approved education and care services.

It should also be noted that while the legislation requires that an applicant's criminal history is to be taken into account by the Regulatory Authority, the possession of a criminal history does not necessarily make the person unsuitable to be an Approved Provider or a Certified Supervisor. The National Law ensures that natural justice is observed by providing an applicant with review and appeal rights on the basis of the person's suitability, including the Regulatory Authority's decision having had regard to the person's criminal history. The Regulatory Authority's decision to refuse to grant a provider approval is also a decision that can be appealed

to, and heard by, QCAT. This is consistent with the principles of natural justice.

Conditions may be determined by the Regulatory Authority

Section 19 of the National Law states that a provider approval may be granted subject to any conditions that are prescribed in the National Regulations or that are determined by the Regulatory Authority. A similar provision applies with respect to service approvals (section 51(4)) and supervisor certificates (section 115).

The power of the Regulatory Authority to grant approvals and issue supervisor certificates subject to any conditions it determines, may be considered to be a breach of the fundamental legislative principle in section 4(3)(a) of the *Legislative Standards Act 1992* that it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision.

However, this potential breach is justified because:

- The power to impose additional conditions is limited, as the National Regulations will prescribe the standard conditions.
- Any additional conditions considered necessary by a Regulatory Authority would be specific to the applicant. For instance, where a service operates out of shared premises (e.g. it operates from a community hall which is also used for other purposes) it may be necessary to apply specific conditions to take into account the way the service needs to operate within that environment.
- The objectives and guiding principles of the National Law form the basis for any decisions made by the Regulatory Authority, including decisions about the imposition of conditions.
- A decision to impose a condition on a provider approval, service approval or supervisor certificate is a reviewable decision. This provides sufficient natural justice if a person considers a condition imposed on their approval or certificate is unjustified.

Prohibition notices

Section 182 of the National Law empowers the Regulatory Authority to give a prohibition notice to a person who is in any way involved in providing an approved education and care service, if it is considered there may be an unacceptable risk of harm to a child if the person was allowed to remain on the service's premises, or provide education and care to children.

This power may be seen to limit an individual's rights and liberties, as a prohibition notice prevents a person from providing, being engaged at, or carrying out any other activity relating to, education and care.

However, the power to issue a prohibition notice is considered to be justified because it contributes towards safeguarding children attending education and care services – a guiding principle under the National Law.

The National Law balances an individual's rights with the need to protect children from harm by requiring that before giving a person a prohibition notice, the Regulatory Authority must give the person a show cause notice allowing the person to make a written submission. The person may subsequently apply to the chief executive for a cancellation of a prohibition notice. The National Law also provides the person with the right to seek a review of the decision to give the prohibition notice, or a decision to refuse to cancel a prohibition notice.

Power to require information

Part 9 of the National Law provides for the monitoring and enforcement powers of authorised officers. Sections 199 and 200 provide that if an authorised officer reasonably suspects that an offence has been committed against the Law, the authorised officer may require a person to give the officer information to help in conducting the investigation. Section 208 provides offences for refusing to provide information or produce a document as requested, if the person does not have a reasonable excuse.

These provisions may be perceived as being contrary to the fundamental legislative principle because the powers apply to a "person" and are not limited, for example, to an approved provider or persons who might have access to a particular document or information.

However, section 62(3) of the National Law has a safeguard by providing that it is a reasonable excuse to fail to give stated information, answer a question or produce a document if, by doing so, the individual may incriminate themselves.

Certain other Queensland legislation also contains similar provisions, for example:

- the *Property Agents and Motor Dealers Act 2000* (PAMDA) provides inspectors with broad powers to require information (section557); and
- the *Taxation Administration Act 2001* provides the commissioner and investigators with broad powers to require information or documents (sections 87 and 88).

Entry by authorised officer

Section 197 of the National Law allows an authorised officer to enter an education and care service premises at any reasonable time to exercise powers for monitoring compliance with the Law, conducting a ratings assessment, or obtaining contact information about parents of children at the service if the service approval is going to be suspended or cancelled.

Section 199 of the National Law also permits an authorised officer to enter an education and care service premises at any reasonable time, with or without the consent of the occupier, to investigate the service if the officer reasonably suspects that an offence may have been or may be being committed against the National Law.

An authorised office may also enter the business premises of the approved provider of an education and care service, with the consent of the occupier, if the officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against the National Law are present at the premises.

The powers of the authorised officer include searching the premises; inspecting, measuring and testing things; taking things from the premises and requiring the occupier to give the officer information to help in an investigation.

These powers of entry, search and seizure may be considered to breach section 4(3)(e) of the *Legislative Standards Act 1992*, which requires legislation to confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

However, the powers are essential to enable the Regulatory Authority to exercise its functions under the National Law. The National Law includes a safeguard to prohibit an authorised officer from entering a residence unless an approved education and care service is operating there at the time of entry and the occupier has consented in writing to the officer's entry.

Protection against self-incrimination

Section 211 of the National Law provides that an individual may refuse or fail to give information or do any other thing required under the Law, if doing so might incriminate the individual. However, this protection does not apply if the person is required to produce a document that must be kept under the National Law, or if giving their name or address is in accordance with the National Law, or if the individual is required to produce

information, documents or evidence under section 215 or 216 of the National Law.

Sections 215 and 216 of the National Law establishes powers for the Regulatory Authority to require information (including documents) from any person who is or has been an Approved Provider, a Certified Supervisor or a staff member of an education and care service or a family day care educator. The Regulatory Authority is also empowered to require such a person to appear before the Regulatory Authority at a stated time and place to give evidence or produce any relevant documents. Failure to comply with the request without a reasonable excuse is an offence.

The denial of protection against self-incrimination may be considered to breach the fundamental legislative principle in section 4(3)(f) of the *Legislative Standards Act 1992*, which requires legislation to provide appropriate protection against self-incrimination. However, the breach is justified because the National Law also provides that any document produced by an individual or any information obtained directly or indirectly from that document produced by them, is not admissible in evidence against the individual in any criminal proceedings (except for criminal proceedings under the National Law) or in any civil proceedings.

In addition, any protection against self-incrimination arising from the production of documents which are also required to be kept under the National Law would be defeated purely because of the pre-existing requirement to keep the documents in accordance with the National Law. This also applies with respect to the giving of an individual's name or address, where it is already required to be given under other provisions of the National Law.

Disclosure of information to other authorities

Section 271 of the National Law allows a Regulatory Authority to disclose information about education and care services to any government department, public authority and local authority, as well as the National Authority and other Regulatory Authorities, for specified purposes. The National Law requires a Regulatory Authority to disclose to the other Regulatory Authorities, information about the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor or certified supervisor. The Regulatory Authority may also disclose to the head of the government department responsible for the administration of a working with children

law, any prohibition notice issued under the National Law as applying in any participating jurisdiction.

While these disclosure provisions may be considered to infringe an individual's rights and liberties, the power to disclose the information is justified because it is critical to ensuring that the National Law can be appropriately administered in accordance with its objectives and guiding principles. Additionally, given that the National Law provides a uniform legislative framework education and care services across Australia, the sharing of information between jurisdictions is essential to the operation of the framework. For instance, the grounds for suspending a service approval in one jurisdiction may reveal a systemic problem with the services provided by the approved provider in another jurisdiction, which can only be investigated by the Regulatory Authority of that other jurisdiction.

Likewise, the suspension or cancellation of a working with children check in one jurisdiction will call into question the fitness of a person to be a certified supervisor and to hold the position of nominated supervisor for a service in any other participating jurisdiction. It is important that the Regulatory Authorities of the other jurisdictions are made aware of this information so that they can decide if action is required to suspend or cancel the person's supervisor certificate and/or to issue the person with a prohibition notice.

Time limit for starting proceedings

Section 284 of the National Law provides that the time limit for commencing proceedings for offences is within two years of the date of the alleged offence. The time limits for commencing proceedings in various Queensland licensing statutes vary. For example, section 589 of the *Property Agents and Motor Dealers Act 2000* (PAMDA) provides that a proceeding for an offence under the Act must be taken within the later of – one year after the offence is committed, or six months after the commission of the offence comes to the complainant's knowledge, but within two years of the commission of the offence.

Section 187 of the *Electrical Safety Act 2002* (ES Act) has a similar provision to section 589 of the PAMDA but provides that a proceeding must be taken within three years after the commission of the offence. Section 111 of the *Queensland Building Services Authority Act 1991* (QBSA Act) provides that a prosecution for an offence may be started within two years after the alleged date of the commission of the offence or

within one year after the offence comes to the knowledge of the authority, whichever is the later.

Given the differing limitation periods in Queensland's existing licensing legislation, the time limit specified in the National Law of two years is considered to be appropriate. The time period is also comparable to the time period currently specified in Queensland's *Child Care Act 2002*, which is within the later of one year after the commission of the offence, or six months after the offence comes to the complainant's knowledge, but within two years after the commission of the offence.

Imposition of presumed responsibility

Section 285 of the National Law provides that if a body corporate commits an offence against the Law, any person with management or control of the body corporate who has failed to exercise due diligence to prevent the contravention also commits that offence and is liable to the penalty for an individual for the offence.

Legislation should not normally make a person responsible for actions or omissions over which the person has no control. However, the imposition of presumed responsibility on persons with management or control of a body corporate can be justified in this instance because the person would have a defence if they exercised due diligence to ensure the body corporate complied with the relevant provision of the National Law which is the subject of the alleged offence.

Immunity

Section 289 of the National Law provides that a member of the Board of the National Authority, a committee of the Board or a Ratings Review Panel, the Regulatory Authority (if an individual) or a member of the governing body of the Regulatory Authority is not personally liable for anything done or omitted to be done in good faith in the exercise of a function under the Law or in a reasonable belief that the act or omission was the exercise of a function under the Law. The National Law provides that any liability resulting from an act or omission that would attach instead to the National Authority, or to the State (in the case of the Regulatory Authority).

This provision may be considered to be inconsistent with the legal principle that all people should be equal before the law, as well as the fundamental legislative principle in section 4(3)(h) of the *Legislative Standards Act 1992* that legislation should not confer immunity from proceeding or

prosecution without adequate justification. However, it is not considered appropriate for an individual to be made personally liable as a consequence of carrying out his or her functions under the Education and Care Services National Law, if done in good faith.

Section 290 of the National Law provides a specific immunity from prosecution for misconduct by a registered teacher or other person who could be subject to disciplinary action under an education law. If the Regulatory Authority refers the matter to the relevant disciplinary body under the education law, a prosecution cannot be brought under the National Law. This is appropriate because it allows the disciplinary procedures under the relevant education law to be pursued as intended, without possible complications from a prosecution process under the National Law for the same alleged misconduct.

Offences

The National Law contains certain offences that may breach the fundamental legislative principle that legislation should be clear, unambiguous and precise. These offences include:

- the offence to inadequately supervise children (section 165);
- the offence to use inappropriate discipline (section 166);
- the offence relating to protection of children from harm and hazards (section 167); and
- the offence relating to required programs (section 168).

These offences have been included in the National Law consistent with the National Partnership Agreement, however their subjective nature may make them difficult to prosecute. For instance, the offence of inadequately supervising a child does not define what is meant by adequate supervision. Similarly, the offence relating to required educational programs, requires an approved provider to ensure that a program is delivered to all children educated and cared for by the service that is based on the developmental needs, interests and experiences of each child and that is designed to take into account the individual differences of each child. In some situations, it may be difficult to prove whether or not a person has committed the offence, because (for instance) the developmental needs of each child may not be known.

Procedural manuals and other guidance notes will be developed at the national level for use in administering the National Law. It is expected that such documents will provide Regulatory Authorities with direction about

the circumstances in which action should be taken in relation to the proposed offences.

Publication of non-compliance information

The National Law provides that the Regulatory Authority may publish prescribed information about enforcement actions taken under the National Law, including information about compliance notices, prosecutions, enforceable undertakings, and suspension or cancellation of approvals or certificates or any prescribed matter. Queensland's *Child Care Act 2002* currently provides for the publication of information about enforcement actions such as compliance notices and suspension or cancellation of approvals and the DET will continue to be able to publish such information under the National Law.

The publication of information about these types of enforcement actions may have a detrimental effect on providers' rights and liberties, given the potential for this to negatively impact their business reputation. However, it is considered that publication of the information is justified given parents' legitimate interest and expectation in being provided with information relating to enforcement actions taken against an education and care service that is providing, or will potentially provide, a service to their child. The parents' right to secure the wellbeing and safety of their child at that service is considered to be greater than the right of providers of education and care services to protect their business reputation.

Offence of approved provider – reversal of the onus of proof

The Bill amends the *Public Health Act 2005* to insert a new section 184A requiring an approved provider of an education and care service to ensure that the person in charge of the service complies with chapter 5, part 2 of the *Public Health Act 2005*. The new section also provides that if a person in charge of the education and care service commits an offence against a provision of chapter 5, part 2, the approved provider also commits an offence, namely, the offence of failing to ensure that the person in charge complies with the provision. If the approved provider is an individual, they will receive the same penalty that the person in charge will receive for an offence under the Bill. If the approved provider is a corporation, the maximum penalty will be 5 times the amount of the maximum penalty for an individual.

This provision is inconsistent with the principles of natural justice in section 4(3)(b) of the *Legislative Standards Act 1992* and may be seen as

reversing the onus of proof in criminal proceedings and therefore is a breach of fundamental legislative principles.

However, the provisions of chapter 5, part 2 of the *Public Health Act 2005* are designed to ensure that contagious conditions are not spread through schools and child care services. The proposed new section 184A will be similar to the existing section 184 of the *Public Health Act 2005,* which requires licensees of child care services to ensure that the person in charge of the service complies with the provisions of chapter 5, part 2.

Therefore, the inclusion of section 184A is justified as it reinforces that the approved provider is ultimately responsible for the operation of the education and care service and must have due regard for the requirements of chapter 5, part 2 of the *Public Health Act 2005* in order to protect the health of children attending the service. Additionally, given that the majority of existing licensees of child care services will become approved providers under the National Law, the new section 184A effectively continues the existing obligation on those providers.

The amendment also provides that it is a defence for the approved provider to demonstrate that they exercised reasonable diligence to ensure the person in charge complied with the provisions.

Consultation

The National Quality Framework has been jointly developed by the Australian Government and state and territory governments through COAG. As a first step towards developing the framework COAG published a discussion paper on 2 August 2008 and held public consultations during August and September 2008.

COAG also sought independent advice from an Expert Advisory Panel comprised of academics in the field of early childhood education, practitioners in early childhood education and care, and government representatives with experience in child care and early childhood education regulatory and accreditation arrangements. The Panel's report *Towards a National Quality Framework for Early Childhood Education and Care* was released in January 2009.

In July 2009 COAG agreed to seek further public comment on a series of options to improve the quality of early childhood education and care in Australia. The options are described in a Consultation Regulation Impact Statement (RIS), which the Commonwealth Government released for

public comment in 2009, with consultation extending over a three-month period from July to September 2009.

Various mechanisms were used to seek stakeholder, parent and sector views during the consultation timeframe, including peak stakeholder sessions, public consultation sessions, focus group discussions, written submissions and on-line surveys for parents and the sector. The Department of Education and Training (DET) also met with peak stakeholders to inform Queensland's negotiating position.

Careful consideration was given to the views expressed by stakeholders, including in relation to the key issues of affordability, access, workforce and regulation. Queensland negotiated some flexibility to the reforms to ensure that the right balance was achieved in the National Law between increased quality and affordability for parents, and appropriate transition periods and arrangements to ease the implementation of reforms.

The National Law was developed during 2010 and the *Education and Care Services National Law Act 2010* was passed by the Victorian Parliament on 5 October 2010.

In 2011, the Commonwealth released an Information Paper and exposure draft of the National Regulations, and conducted 19 information sessions across Queensland. The Commonwealth also consulted with a National Stakeholder Reference Group to inform the development of the National Law. At the local level, Queensland stakeholders have been regularly consulted through the DET Legislative and National Implementation Reform Committee and Early Childhood Development Forum which have representatives from employer and union groups, academics and parents.

Consistency with legislation of other jurisdictions

Under the National Partnership Agreement, jurisdictions have agreed to pass legislation to apply the National Law in their jurisdictions, with the exception of Western Australia which will pass its own corresponding legislation. Victoria, as host jurisdiction, passed the *Education and Care Services National Law Act 2010 (Victoria)* on 5 October 2010. New South Wales subsequently adopted the National Law on 23 November 2010. The other states and territories are expected to pass legislation to apply the National Law as from the scheme commencement day. Introduction and passage of the Bill will enable Queensland to honour its commitment under the National Partnership Agreement.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act is the *Education and Care Services National Law (Queensland) Act 2011*.

Commencement

Clause 2 provides for the commencement of the Act, including that different days may be appointed 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.

While it is expected that the majority of the Education and Care Services National Law will commence on 1 January 2012, it may be necessary to delay the commencement of certain provisions until a later date, which is yet to be determined. Therefore, clause 2 also provides that section 15DA of the *Acts Interpretation Act 1954* does not apply to the Act, to ensure that relevant provisions do not commence automatically on the day that is 1 year after the assent day.

Definitions

Clause 3 provides for definitions for this Act and provides that terms used in this Act and also the Education and Care Services National Law (Queensland) have the same meanings in this Act as they have in that Law.

Part 2 Adoption of National Law

Adoption of Education and Care Services National Law

Clause 4 provides that 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 applies as a law of this jurisdiction. The clause also provides that the Education and Care Services National Law, as so applying, may be referred to as the Education and Care Services National Law (Queensland) and applies as if it were a part of this Act.

The Education and Care Services National Law, as set out in the schedule to the *Education and Care Services National Law Act 2010* of Victoria, comprises various parts. Reference should be made to the Explanatory Memorandum for the Victorian Act, for explanatory notes on the individual clauses within those parts. However, the following is a brief summary of each part, as contained in that Explanatory Memorandum:

- *Part 1 of the 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 decisionmaking 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 and 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.*

Exclusion of legislation in this jurisdiction

Clause 5 provides that the following Queensland Acts 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.

Subsection (2) clarifies that the exclusion of the *Acts Interpretation Act 1954* does not limit that Act's application to the local application provisions of this Act. The local application provisions are the provisions of this Act other than the Education and Care Services National Law (Queensland).

Subsection (2) also clarifies that the exclusion of the *Statutory Instruments Act 1992* does not limit that Act's application to a regulation made under the local application provisions of this Act.

Subsection (3) provides that the following Queensland Acts do not apply to the Education and Care Services National Law (Queensland) or to 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 –

(a) *Auditor-General Act 2009*;

(b) *Financial Accountability Act 2009*;

(c) *Ombudsman Act 2001*;

(d) *Public Records Act 2002*;

(e) *Public Service Act 2008*.

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

Clause 6 defines terms used in the Education and Care Services National Law (Queensland) for the purposes of the application of the Law in this jurisdiction.

Children's services law

Clause 7 provides that the *Child Care Act 2002* is declared to be a children's services law for the purposes of the Education and Care Services National Law (Queensland).

The Education and Care Services National Law (Queensland) applies to early childhood education and care services traditionally known as long day care, family day care, outside school hours care and kindergarten services. However, it does not apply to certain other types of services that are currently licensed under the *Child Care Act 2002* – such as services providing education and care primarily on an ad hoc basis that is not offered fulltime or all day and where most of the children are preschool age or under (sometimes known as occasional care services and limited hours care services) and services that receive certain types of Commonwealth funding.

It is possible that services required to be regulated under separate legislation may be provided at the same premises as education and care services covered by the Education and Care Services National Law (Queensland). For instance, a provider may operate, or intend to operate, a kindergarten service and a limited hours care service out of the same

premises. In order to reduce the administrative burden on the providers and the Regulatory Authority, the Education and Care Services National Law (Queensland) allows for some streamlining of processes to occur in these situations.

The provider approval issued to the provider under the Education and Care Services National Law (Queensland) can authorise them to operate the education and care service under the Education and Care Services National Law (Queensland), as well as the associated children's service. Any conditions placed on the provider approval would apply to the provider in respect of both services, unless stated otherwise in the provider approval. Similarly, suspension or cancellation of a provider approval under the Education and Care Services National Law (Queensland) would result in all service approvals for that provider being suspended or cancelled, including service approvals for any associated children's services.

Clause 7 declares the *Child Care Act 2002* to be a children's services law for the Education and Care Services National Law (Queensland), to ensure that associated children's services can be appropriately dealt with under the Education and Care Services National Law (Queensland) as intended.

Children's services regulator

Clause 8 provides that the chief executive of the department in which the *Child Care Act 2002* is administered is declared to be the children's services regulator for the purposes of the Education and Care Services National Law (Queensland).

This clause is also related to the issue of recognition of associated children's services, as discussed under clause 7 above. If an application for a service approval under the Education and Care Services National Law (Queensland) includes an application for approval of an associated children's service, the Regulatory Authority can assess the applications jointly, ensuring that regard is given to any requirements for approving the associated children's service approval under the children's services law. If the service approval is granted for both services, the Regulatory Authority can place separate conditions on the associated children's service, provided that the Regulatory Authority has first consulted with the entity that regulates those services – that is, the children's services regulator.

The chief executive has regulatory responsibility for all services covered by Queensland's *Child Care Act 2002*. Therefore, the chief executive

mentioned in the *Child Care Act 2002* is the person who must be declared to be the children's services regulator.

Education law

Clause 9 declares each of the following Acts 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*.

There are strong linkages between the provision of education and care in long day care, kindergarten, family day care and outside school hours care, and the provision of education in the schooling system, given that persons who hold teaching qualifications can be employed in either sector.

The Education and Care Services National Law (Queensland) recognises these linkages in a number of ways. For instance, when determining whether an applicant for provider approval is a fit and proper person, the Regulatory Authority must have regard to the person's history of compliance with an education law of a participating jurisdiction. The Regulatory Authority must also have regard to any decision under an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law.

Former education and care services law

Clause 10 declares each of the following Acts 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 the scheme commencement day;

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

In a similar manner to the way in which the Education and Care Services National Law (Queensland) recognises the linkages with other education

laws, it also recognises the linkages with laws that formerly regulated services covered by the Education and Care Services National Law. For instance, when determining an application for service approval, the Regulatory Authority can also undertake inquiries and investigations relating to the previous licensing, accreditation or registration of a service under a former education and care services law of any participating jurisdiction.

Clause 10 declares both the *Child Care Act 2002* as it was before the scheme commencement day, and the now repealed *Child Care Act 1991*, as former education and care services laws for the purposes of the application of that term in the Education and Care Services National Law (Queensland).

Infringements law

Clause 11 declares the *State Penalties Enforcement Act 1999* to be an infringements law for the purposes of the Education and Care Services National Law (Queensland).

The Education and Care Services National Law (Queensland) provides that an infringement notice may be served on a person for a contravention of—

(a) section 172, 173 or 176; or

(b) offences against the national regulations that are prescribed for the purposes of this section.

An infringement notice must be in the form prescribed or contain the information prescribed by the infringements law of the participating jurisdiction. The Education and Care Services National Law (Queensland) also states that the infringements law of the participating jurisdiction applies to infringement notices served under the Education and Care Services National Law (Queensland) in the jurisdiction.

Queensland's *State Penalties Enforcement Act 1999* is the paramount law governing the issuing of infringement notices in this State. Therefore, to enable infringement notices to be served on a person under the Education and Care Services National Law (Queensland), clause 11 declares the *State Penalties Enforcement Act 1999* as an infringements law for the purposes of the Education and Care Services National Law (Queensland).

Public sector law

Clause 12 declares the *Public Service Act 2008* to be a public sector law for the purposes of the Education and Care Services National Law (Queensland).

The Education and Care Services National Law (Queensland) enables the Regulatory Authority to delegate any of its functions and powers to any person employed under a public sector law of this jurisdiction. Therefore, to enable such delegations to be made, clause 12 declares the *Public Service Act 2008* to be a public sector law for the purposes of the Education and Care Services National Law (Queensland).

Regulatory authority

Clause 13 declares the chief executive to be the regulatory authority for this jurisdiction.

Section 260 of the Education and Care Services National Law (Queensland) sets out the functions of the Regulatory Authority, which in effect are to undertake the things that are necessary to administer the National Quality Framework (this includes the National Law, the National Regulations, the National Quality Standards and the prescribed rating system).

The Regulatory Authority has a range of responsibilities including processing applications, assessing services against the National Quality Standards, monitoring and enforcing compliance with the Education and Care Services National Law (Queensland), and working with the National Authority to support and promote continuous quality improvements in education and care services.

In Queensland, the chief executive is the person responsible for regulating child care services under the *Child Care Act 2002*. Therefore, it is appropriate that the chief executive is also the person responsible for regulating education and care services under the Education and Care Services National Law (Queensland).

Relevant tribunal or court

Clause 14 declares the magistrates court to be the relevant tribunal or court for the purposes of the Education and Care Services National Law (Queensland), section 181. The clause also declares QCAT to be the

relevant tribunal or court for the purposes of the Education and Care Services National Law (Queensland), part 8.

The Education and Care Services National Law (Queensland) refers to a relevant tribunal or court with respect to failure to comply with an enforceable undertaking, and applying for external review of a reviewable decision.

Section 181 of the Education and Care Services National Law (Queensland) provides that if the Regulatory Authority considers that the person who gave an undertaking under section 180 (i.e. an enforceable undertaking) has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order to enforce the undertaking. The relevant tribunal or court may also bring proceedings for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given. The Queensland Magistrates Court is considered to be the appropriate body to be declared as the relevant tribunal or court in relation to enforceable undertakings under the Education and Care Services National Law (Queensland).

Section 193 of the Education and Care Services National Law (Queensland) provides that a person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision. QCAT is considered to be the appropriate body to be declared as relevant tribunal or court for the purposes of review of externally reviewable decisions under the Education and Care Services National Law (Queensland).

Working with children law

Clause 15 declares the *Commission for Children and Young People and Child Guardian Act 2000* to be a working with children law for the purposes of the Education and Care Services National Law (Queensland).

The term 'working with children law' is referred to in a number of contexts in the Education and Care Services National Law (Queensland). For instance, it is used within the definitions of the terms 'working with children card' and 'working with children check'.

In Queensland, these terms will respectively mean a positive notice blue card issued under the *Commission for Children and Young People and Child Guardian Act 2000* and a positive notice or a positive exemption notice issued under the *Commission for Children and Young People and Child Guardian Act 2000*. These terms are relevant for determining the

fitness and propriety of applicants for provider approvals and supervisor certificates.

Additionally, a supervisor certificate is immediately suspended or cancelled if the person's working with children card is suspended or cancelled. In this respect, an approved provider is obliged to notify the Regulatory Authority if the provider is notified about the suspension or cancellation of a working with children card of any nominated supervisor or certified supervisor at the service.

Where a Regulatory Authority becomes aware of the suspension or cancellation of a working with children check, working with children card or teacher registration held by a nominated supervisor or certified supervisor, the Regulatory Authority must also disclose this information to the other participating jurisdictions.

Section 170 of the Education and Care Services National Law (Queensland) creates an offence if an approved provider, nominated supervisor or family day care educator permits an unauthorised person to remain at the premises while children are being educated and cared for, unless the unauthorised person is under direct supervision. An unauthorised person includes a person who does not hold a current working with children check or working with children card, or a person who is not permitted to remain at the premises without a working with children check or card.

Penalty at end of provision

Clause 16 provides that a penalty stated at the end of a provision in the Education and Care Services National Law (Queensland), indicates that a contravention of the provision is punishable on conviction by a penalty not more than the stated penalty.

Transitional matters

Clause 17 provides for a range of transitional matters for the purposes of the Education and Care Services National Law (Queensland).

Part 15 of the Education and Care Services National Law (Queensland) contains the transitional provisions necessary to transition existing providers and services into the new system as from the scheme commencement day. Part 15 uses a range of terms that have specific meaning for these transitional provisions. Many of these terms require

declarations to be made, to give meaning to the terms for the purposes of the application of the transitional provisions.

Clause 17 provides for these declarations as follows –

(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

(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.

Subsection (2) of clause 17 defines particular terms that are used in this section.

Part 3 Matters relating to Commissioner's Act

Division 1 Preliminary

Definitions for pt 3

Clause 18 defines terms that are used in part 3 with regards to application of the *Commission for Children and Young People and Child Guardian Act 2000*. The terms defined for part 3 are ***children's commissioner***, ***Commissioner's Act***, ***exemption notice*** and ***prescribed notice***.

Division 2 Giving or obtaining particular information

Giving information to children's commissioner about disciplinary action

Clause 19 provides that the regulatory authority must give written notice to the children's commissioner of the disciplinary actions mentioned in subsection (1), if the regulatory authority reasonably believes the disciplinary action may be relevant to the functions or powers of the children's commissioner under the Commissioner's Act.

The giving of notice about disciplinary actions to the children's commissioner will enable the children's commissioner to take this information into consideration when making an employment screening decision under the Commissioner's Act in relation to persons working in the child care sector. This is consistent with section 50A of the *Child Care Act 2002* and ensures continuity with regards to the information about disciplinary action that is provided to the children's commissioner under both the *Child Care Act 2002* and this Act.

Subsection (3) provides that the notice given to the children's commissioner must state the person's name, address and date of birth (if known), as well as that disciplinary action has been taken, but without stating anything further about it.

The children's commissioner may request further information from the regulatory authority about the disciplinary action, if the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner's Act. Following such a request from the children's commissioner for further information, subsection (5) provides that the regulatory authority must give the children's commissioner a written notice stating –

(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.

Subsection (6) provides a clarification that if the original notice given to the children's commissioner under subsection (2) did not contain information about the person's date and place of birth, then subsection (5) applies only if the commissioner's request for further information includes the person's date and place of birth, and the regulatory authority confirms that with the person.

Subsection (7) states that either of the notices given to the children's commissioner under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.

If the disciplinary action is later set aside on review or appeal, then subsection (8) provides that the regulatory authority must notify the children's commissioner about this and provide the reasons why the action was set aside.

Giving information to children's commissioner about prohibition notices

Clause 20 provides that if the regulatory authority gives a person a prohibition notice under the Education and Care Services National Law (Queensland), part 7, division 3, the regulatory authority must give written notice of this to the children's commissioner.

Section 271(5) of the Education and Care Services National Law (Queensland) provides that the regulatory authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice issued in respect of a person. However, this provision is not sufficient to oblige the regulatory authority to provide the children's commissioner with the information about prohibition notices in the way currently required by section 107A of the *Child Care Act 2002*. It is important for the children's commissioner to continue to be able to take information about prohibition notices into consideration with regards to employment screening decisions for child care workers. Therefore, clause 20 provides for this, and ensures continuity with regards to the information about prohibition notices that is provided to the children's commissioner under both the *Child Care Act 2002* and this Act.

Subsection (3) provides that the notice given to the children's commissioner must state the person's name, address and date of birth (if known), as well as that the person has been given a prohibition notice, but without stating anything further about it.

The children's commissioner may request further information from the regulatory authority about the prohibition notice, if the person is an applicant for, or holder of, a prescribed notice or exemption notice under the Commissioner's Act. Following such a request from the children's commissioner for further information, subsection (5) provides that the regulatory authority must give the children's commissioner a written notice stating –

(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.

Subsection (6) provides a clarification that if the original notice given to the children's commissioner under subsection (2) did not contain information about the person's date and place of birth, then subsection (5) applies only if the commissioner's request for further information includes the person's date and place of birth, and the regulatory authority confirms that with the person.

Subsection (7) states that either of the notices given to the children's commissioner under subsection (2) or (5) must not contain information that identifies, or is likely to identify, a particular child.

If the prohibition notice is later set aside on review or appeal, then subsection (8) provides that the regulatory authority must notify the children's commissioner about this and provide the reasons why the prohibition notice was set aside.

Obtaining information from children's commissioner about employment screening

Clause 21 authorises the regulatory authority to request certain information from the children's commissioner about a range of persons including approved providers, persons with management or control of an education and care service operated by an approved provider, certified supervisors, educators and adult occupants of a family day care residence.

If requested by the regulatory authority, the children's commissioner must give the regulatory authority information about a stated individual as follows –

(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.

Subsection (3) provides that the children's commissioner may also give this information to the regulatory authority whether or not the regulatory authority has requested it.

Subsection (4) defines particular terms that are used in this section – that is, ***negative exemption notice***, ***negative prescribed notice***, ***occupant***, ***positive exemption notice*** and ***positive prescribed notice***.

The provision of this information to the regulatory authority will assist in relation to a range of matters under the Education and Care Services National Law (Queensland). For instance, whether a person continues to be fit and proper to hold a provider approval or a supervisor certificate, will depend on whether the person continues to hold a working with children check or card. In addition, a supervisor certificate is suspended or cancelled immediately, if the person's working with children card is suspended or cancelled. Therefore, this clause provides a mechanism by which the regulatory authority can obtain the relevant information about a person's working with children check or card.

In addition, section 170 of the Education and Care Services National Law (Queensland) creates an offence if an approved provider, nominated supervisor or family day care educator permits an unauthorised person to remain at the premises while children are being educated and cared for, unless the unauthorised person is under direct supervision. An unauthorised person includes a person who does not hold a current working with children check or working with children card, or a person who is not permitted to remain at the premises without a working with children check or card.

Section 271(4) of the Education and Care Services National Law (Queensland) obliges the regulatory authority to disclose the information to the other participating jurisdictions, when the regulatory authority becomes aware of the suspension or cancellation of a working with children check or working with children card held by a nominated supervisor or certified supervisor.

Division 3 Application of Commissioner's Act

Pending application for working with children card or check – corporation

Clause 22 applies if a corporation is the approved provider of an education and care service and an individual becomes an officer of the corporation who is responsible for managing the delivery of the service. If the individual does not hold a current working with children check, but an

application for a working with children card or working with children check is made for the individual, then they must not be taken to be not a fit and proper person under the Education and Care Services National Law (Queensland), only because they do not hold the card or check.

However, subsection (3) provides that this stops applying when the individual's application for the working with children card or check has been decided, or is withdrawn or lapses.

Pending application for working with children card or check – eligible association

Clause 23 provides for similar matters to clause 22, but in relation to eligible associations. Under the Education and Care Services National Law (Queensland), an eligible association, which is an association of a prescribed class, may hold a provider approval.

Clause 23 applies if an individual becomes a member of the executive committee of the eligible association who has the responsibility, alone or with others, for managing the delivery of the service. If the individual does not hold a current working with children check, but an application for a working with children card or working with children check is made for the individual, then they must not be taken to be not a fit and proper person under the Education and Care Services National Law (Queensland), only because they do not hold the card or check.

However, subsection (3) provides that this stops applying when the individual's application for the working with children card or check has been decided, or is withdrawn or lapses.

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

Clause 24 applies in relation to an adult who resides in a family day care residence, or is usually present when education and care is delivered there. Subsection (2) provides that the approved provider of the approved family day care service may apply for a prescribed notice or exemption notice for the person, and it 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.

Subsection (3) provides that to remove any doubt, no fee is payable either under this Act or the Commissioner's Act for the application.

Subsection (4) defines particular terms for this section.

Death of sole holder of service approval

Clause 25 provides that if an approved provider dies, the executor of their 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.

Subsection (3) provides that the executor 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 exemption notice, during the relevant period.

Subsection (4) provides that if the executor 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.

Subsection (5) defines the term ***relevant period*** for this section, with reference to section 39(7) of the Education and Care Services National Law (Queensland) – that is, the relevant period means –

(a) the period of 30 days after the death of the approved provider; or

(b) if the approved provider makes an application for a provider approval within that period, until the application is finally determined under the Education and Care Services National Law (Queensland).

Section 197 of the Commissioner's Act provides that a person must not carry on a regulated business (which includes a child care business) unless the person has a current positive notice, or the person is a transitioning person and has applied for a prescribed notice. A transitioning person is a person who was, but is no longer, a police officer or a registered teacher if certain things specified in section 197 apply to the person.

Section 259 of the Commissioner's Act provides that a person must not carry on a regulated business unless the person has a current positive exemption notice, or the person is a transitioning person, or the person does

not hold a negative exemption notice or negative notice and has applied for an exemption notice.

If an approved provider dies, section 39 of the Education and Care Services National Law (Queensland) enables the executor of the provider's estate to continue to operate any approved education and care service of the provider for the relevant period. This is permitted only if the nominated supervisor or any certified supervisor continues to manage the day to day operation of the service.

Clause 25 ensures that the executor of an approved provider's estate is not committing an offence against section 197 or section 259 of the Commissioner's Act while they continue to operate the service in accordance with section 39 of the Education and Care Services National Law (Queensland).

Part 4 Other matters

Division 1 Transitional

Giving information to children's commissioner about disciplinary action

Clause 26 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.

Subsection (2) provides that 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.

This clause ensures that section 50A of the *Child Care Act 2002* can continue to operate in relation to any disciplinary action, even if the action relates to a person to whom the Education and Care Services National Law (Queensland) applies after the commencement. For instance, if the chief executive had notified the children's commissioner about a disciplinary action, the children's commissioner may request further information under section 50A(4) and the chief executive must provide the information.

QCAT reviews of decisions under Child Care Act 2002

Clause 27 applies to a decision made by the chief executive under the *Child Care Act 2002* immediately 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 a decision 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.

In relation to a decision to which subsection (1)(c)(i) applies, subsection (2) provides that 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.

In relation to a decision to which subsection (1)(c)(ii) applies, subsection (3) provides that 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.

Subsection (4) provides that 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).

Subsection (5) provides that 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).

This clause ensures that natural justice is provided for any person to whom the Education and Care Services National Law (Queensland) applies as from the scheme commencement day, but who immediately prior to that date had a right to apply to QCAT for a review of a decision made under the *Child Care Act 2002*. It also enables the outcome of any such review to align with the Education and Care Services National Law (Queensland) where appropriate, for instance by enabling QCAT to make an order with regards to the Education and Care Services National Law (Queensland).

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

Clause 28 applies to a decision made by the chief executive under the *Child Care Act 2002* immediately before the scheme commencement day if –

(a) the decision was a decision 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.

In relation to a decision to which subsection (1)(c)(i) applies, subsection (2) provides that 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.

In relation to a decision to which subsection (1)(c)(ii) applies, subsection (3) provides that 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.

Subsection (4) provides that 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).

This clause ensures that natural justice is provided for any person to whom the Education and Care Services National Law (Queensland) applies as from the scheme commencement day, but who immediately prior to that date had a right to apply to the chief executive for a review of a decision made under the *Child Care Act 2002* to give the person a compliance notice. It also ensures that if the outcome of the review 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).

Authorised officers

Clause 29 provides that if an appointment of a person as an authorised officer under the *Child Care Act 2002*, section 111, was in force immediately before the scheme commencement day, 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.

Subsection (2) requires that, 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.

However, subsection (4) states that subsection (2) does not affect the operation of the appointment under the *Child Care Act 2002* on or after the scheme commencement day.

This clause ensures that existing authorised officers under the *Child Care Act 2002* are taken to be authorised officers under the Education and Care Services National Law (Queensland). This will ensure that sufficient authorised officers are appointed to facilitate the implementation of the Education and Care Services National Law (Queensland) as from its commencement.

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

Clause 30 declares that section 5(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.

Sections 263 and 264 of the Education and Care Services National Law (Queensland) apply the Commonwealth Privacy Act and Commonwealth

FOI Act as laws of Queensland for the purposes of the National Quality Framework. To ensure that those Acts (as applied and as modified by the National Regulations) are effectively applied as intended, sections 5(1)(b) and (c) of this Act provide that the *Information Privacy Act 2009* and the *Right to Information Act 2009* do not apply to the Education and Care Services National Law (Queensland) or to instruments made under that Law.

This clause is included to remove any doubt that applications may continue to be made under the *Information Privacy Act 2009* and *Right to Information Act 2009* about matters pertaining to the *Child Care Act 2002*. For example, if a child care service under the *Child Care Act 2002* becomes an approved education and care service under the Education and Care Services National Law (Queensland), a person's right of access under the *Right to Information Act 2009* to documents of the department relating to the service as it existed under the *Child Care Act 2002* is unaffected.

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

Definitions for div 2

Clause 31 defines a range of terms for division 2.

Authorised officers

Clause 32 provides that 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.

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

Clause 33, subsection (1) permits an authorised person for a relevant service to disclose URL data to the chief executive. As provided by section 31, a relevant service means an approved education and care service, other

than an approved family day care service, that provides an approved kindergarten program.

Subsection (2) permits an authorised person for a CGB service to disclose URL data to an authorised officer of the central governing body. Subsection (4) defines a CGB service as a relevant service that receives funding from a central governing body for an approved kindergarten program; and has been directed in writing by the central governing body to disclose URL data to it for the purpose of this section.

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

Subsection (4) defines the terms ***authorised person***, for a relevant service, and ***CGB service*** for this section.

Use and disclosure of URL data by chief executive

Clause 34 allows the chief executive to 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; and

(c) preparing the data for disclosure under section 35.

Subsection (2) also allows the chief executive to disclose URL data, including URL data that has been aggregated, to an authorised officer of a central governing body for subsection (1)(a) – that is, for qualify assuring of funding provided to relevant services and central governing bodies for approved kindergarten programs.

Subsection (3) makes it clear that URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

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

Clause 35 allows the chief executive to disclose URL data to a prescribed entity (defined as the Australian Bureau of Statistics or the Australian

Institute of Health and Welfare) for the purposes of meeting Queensland's obligations under the early childhood data agreement.

Subsection (2) stipulates that 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.

Subsection (3) defines the terms ***early childhood data agreement*** and ***prescribed entity***. The early childhood data agreement is defined as the agreement between the Commonwealth and the States called the 'National information agreement on early childhood education and care', signed on behalf of Queensland by the chief executive on 19 February 2010.

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

Clause 36 allows an authorised officer of a central governing body to 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, parents and guardians;

(c) planning, developing and implementing professional development programs for staff members of relevant services;

(d) implementing curriculum development initiatives;

(e) reporting on the central governing body's performance.

Subsection (2) stipulates that, for the purposes of subsection (1)(e), a central governing body may only report on URL data if the data has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

Subsection (3) creates an offence by providing that 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 intentionally disclose the data to anyone, other than in accordance with section 35(3), or recklessly disclose the data to anyone. The maximum penalty is 100 penalty units.

Transitional – authorised officers

Clause 37 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.

Subsection (2) provides that 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 34 of this Act to receive, use and disclose URL data for this division.

Division 3 Application of Commonwealth Acts

Application of Commonwealth Privacy Act

Clause 38 provides that 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 (AAT) were a reference to QCAT.

Subsection (2) provides that 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).

Section 263(2)(c) of the Education and Care Services National Law (Queensland) applies the *Privacy Act 1988* (Cwlth) with any modifications made by the national regulations. Section 263(3)(c) provides that the national regulations may confer jurisdiction on a tribunal or court of a participating jurisdiction.

The national regulations will provide that the *Privacy Act 1988* (Cwlth) applies as if a reference in that Act to the AAT were a reference to a relevant administrative tribunal, specifying the relevant administrative tribunal for each participating jurisdiction. QCAT is to be the relevant administrative tribunal in Queensland. However, the national regulations will not specify QCAT as the relevant administrative tribunal for Queensland.

Section 6 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) provides that an enabling Act that is an Act may confer original, review or appeal jurisdiction on QCAT; and an enabling Act that is subordinate legislation may confer review jurisdiction on the tribunal. Conferring jurisdiction on QCAT by way of the national regulations may

have been effective. However, given the operation of section 6 of the QCAT Act, to provide certainty it is considered more appropriate for an enabling Act that is an Act to confer jurisdiction on QCAT for the purposes of the application of the *Privacy Act 1988* (Cwlth).

Therefore, this clause confers the jurisdiction on QCAT and provides that this Act is taken to be an enabling Act under the QCAT Act.

Application of Commonwealth FOI Act

Clause 39 provides that 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 AAT were a reference to QCAT.

Subsection (2) provides that 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).

Section 264(2)(c) of the Education and Care Services National Law (Queensland) applies the *Freedom of Information Act 1982* (Cwlth) with any modifications made by the national regulations. Section 264(3)(c) provides that the national regulations may confer jurisdiction on a tribunal or court of a participating jurisdiction.

The national regulations will provide that the *Freedom of Information Act 1982* (Cwlth) applies as if a reference in that Act to the AAT were a reference to a relevant administrative tribunal, specifying the relevant administrative tribunal for each participating jurisdiction. QCAT is to be the relevant administrative tribunal in Queensland. However, the national regulations will not specify QCAT as the relevant administrative tribunal for Queensland.

As explained above, section 6 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) provides that an enabling Act that is an Act may confer original, review or appeal jurisdiction on QCAT; and an enabling Act that is subordinate legislation may confer review jurisdiction on the tribunal. A number of the provisions in the *Freedom of Information Act 1982* (Cwlth) relate to matters which may only be applied in relation to QCAT by an enabling Act which is not subordinate legislation. Therefore, it was not possible for the national regulations to prescribe QCAT as the relevant administrative tribunal for the purposes of the application of the *Freedom of Information Act 1982* (Cwlth). Consequently, the jurisdiction must be conferred by an enabling Act that is an Act.

Therefore, this clause confers the jurisdiction on QCAT and provides that this Act is taken to be an enabling Act under the QCAT Act.

Application of the Commonwealth Ombudsman Act

Clause 40 provides that 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 AAT were a reference to QCAT.

Subsection (2) provides that 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).

To remove any doubt, subsection (3) declares that QCAT has the jurisdiction mentioned in subsection (2) even to the extent the jurisdiction is not original, review or appeal jurisdiction.

Section 282(2)(b) of the Education and Care Services National Law (Queensland) applies the *Ombudsman Act 1976* (Cwlth) with any modifications made by the national regulations. Section 282(3)(c) provides that the national regulations may confer jurisdiction on a tribunal or court of a participating jurisdiction.

The national regulations will provide that the *Ombudsman Act 1976* (Cwlth) applies as if a reference in that Act to the AAT were a reference to a relevant administrative tribunal, specifying the relevant administrative tribunal for each participating jurisdiction. QCAT is to be the relevant administrative tribunal in Queensland. However, the national regulations will not specify QCAT as the relevant administrative tribunal for Queensland.

As explained above, section 6 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) provides that an enabling Act that is an Act may confer original, review or appeal jurisdiction on QCAT; and an enabling Act that is subordinate legislation may confer review jurisdiction on the tribunal.

The role of the AAT under the *Ombudsman Act 1976* (Cwlth) is advisory. Therefore, the type of power which the AAT may exercise under the *Ombudsman Act 1976* (Cwlth) does not meet the definition of "review jurisdiction", "original jurisdiction" or "appeal jurisdiction" in the QCAT Act. The advisory role of the AAT in the *Ombudsman Act 1976* (Cwlth) is a role which is not contemplated by the QCAT Act.

Therefore, it would have been invalid for the national regulations to confer jurisdiction on QCAT by prescribing it as the relevant administrative tribunal for the purposes of the application of the *Ombudsman Act 1976* (Cwlth). Consequently, the jurisdiction must be conferred by an enabling Act that is an Act.

In addition, as the role of the AAT under the *Ombudsman Act 1976* (Cwlth) is advisory, it is necessary to remove any doubt about whether QCAT may exercise the advisory role under the conferral of this jurisdiction, even though it is not "original jurisdiction", "review jurisdiction" or "appeal jurisdiction" for the purposes of the QCAT Act.

To address these matters appropriately, this clause confers the jurisdiction on QCAT and provides that this Act is taken to be an enabling Act under the QCAT Act. It also declares that QCAT has the advisory jurisdiction conferred by this section, even to the extent it is not original, review or appeal jurisdiction.

Division 4 External review of decisions

Meaning of *reviewable decision*

Clause 41 defines the term ***reviewable decision*** for this division, to mean a decision that, under the Education and Care Service National Law (Queensland), section 192, is a reviewable decision for external review.

Regulatory authority must give notice after making reviewable decision

Clause 42 provides that immediately after making a reviewable decision, the regulatory authority must give to the person who is the subject of the decision a notice for the decision complying with the QCAT Act, section 157(2).

Subsection (2) states that the regulatory authority may give a notice for the purpose of complying with subsection (1) and for another purpose. For example, the regulatory authority may give a person a prohibition notice stating the matters required to be stated in the prohibition notice under the Education and Care Services National Law (Queensland), section 185; and the matters required to comply with the QCAT Act, section 157(2) about the decision to give the prohibition notice.

Sections 192 and 193, in part 8 of the Education and Care Services National Law (Queensland) provide for the review of externally reviewable decisions of the regulatory authority. Section 193 provides that a person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision. As specified in clause 14 of this Bill, QCAT is declared to be the relevant tribunal or court for the purposes of the Education and Care Services National Law (Queensland), part 8.

Section 157 of the QCAT Act requires that a decision-maker for a reviewable decision must give written notice of the decision to each person who may apply to the tribunal for a review of the decision. The notice must state the matters specified in subsection 157(2), and it is sufficient compliance with this requirement for the decision-maker to give the person, as required under the enabling Act, a written notice stating those matters, as follows –

(a) the decision;

(b) the reasons for the decision;

(c) the person has a right to have the decision reviewed by the tribunal;

(d) how, and the period within which, the person may apply for the review;

(e) any right the person has to have the operation of the decision stayed under section 22 of the QCAT Act.

While the relevant provisions of the Education and Care Services National Law (Queensland) require the regulatory authority to give a person notice of a reviewable decision for external review, they do not require the notice to include the matters specified in section 157(2) of the QCAT Act. This clause therefore ensures that the regulatory authority complies with section 157 of the QCAT Act, when giving a person notice about a reviewable decision for external review.

Constitution of QCAT

Clause 43 provides that 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.

However, subsection (2) provides that 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.

Division 5 Regulations

Regulation-making power

Clause 44 provides that the Governor in Council may make regulations under the local application provisions of this Act.

Transitional regulation-making power

Clause 45 provides that a transitional regulation may make provision about a matter for which –

(a) it is necessary to make provision to allow or facilitate the change from the operation of the *Child Care Act 2002* to the operation of this Act; and

(b) this Act does not make provision or sufficient provision.

Subsection (2) permits a transitional regulation to have retrospective operation to a

day not earlier than the day this section commences.

Subsection (3) specifies that a transitional regulation must declare it is a transitional regulation.

Subsection (4) states that this section and any transitional regulation expire at the end of 2 years after the commencement of this section.

Part 5 Amendment of Acts

Division 1 Amendment of Child Care Act 2002

Clause 46 states that this division amends the *Child Care Act 2002*.

Amendment of s 5 (Meaning of *child care service*)

Clause 47 amends section 5(1) by providing that a ***child care service*** does not include an education and care service.

Amendment of s 107 (Content of prohibition notice)

Clause 48 amends section 107(a) to provide that a prohibition notice given to a person under the *Child Care Act 2002* must also state that the person is prohibited from doing any of the following –

- providing education and care to children for an education and care service;
- being engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;
- carrying out any other activity relating to education and care services.

To ensure the safety, health and wellbeing of children being provided with education and care, if a person is given a prohibition notice under the *Child Care Act 2002*, this clause ensures that the person is also prohibited from undertaking any of the activities mentioned above. These are the same activities mentioned in section 187 of the Education and Care Services National Law (Queensland).

Amendment of s 109 (Contravening prohibition notice)

Clause 49 amends section 109 to provide that while a prohibition notice is in force for a person under the *Child Care Act 2002,* in addition to the matters already stated in section 109, it is also an offence for the person to –

- provide education and care to children for an education and care service;

- be engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;
- carry out any other activity relating to education and care services.

Insertion of new pt 10, div 6

Clause 50 inserts a new division 6 and section 199 in part 10 as follows -

'Division 6 Transitional provisions for Education and Care Services National Law (Queensland) Act 2011

'199 Prohibition notices

'(1) This section applies in relation to each person for whom a prohibition notice was in force at the commencement of this section.

'(2) As soon as practicable after the commencement of this section, the chief executive must give to the person a replacement prohibition notice complying with section 107.

'(3) Section 107A does not apply in relation to the giving of the replacement prohibition notice.'.

The new section 199 is a transitional provision which applies only with respect to persons for whom prohibition notices are in force at the commencement of the section. The chief executive is required to give each person a replacement prohibition notice complying with section 107 as amended.

As stated in subsection (3), section 107A does not apply in relation to the giving of the replacement prohibition notice. Therefore, it will not be necessary for the chief executive to notify the children's commissioner about the giving of the replacement prohibition notice. However, the chief executive is required to notify the children's commissioner about the giving of the original prohibition notice. Therefore, the provisions of section 107A continue to operate in relation to the decision to give the original prohibition notice.

Amendment of sch 2 (Dictionary)

Clause 51 amends the dictionary in schedule 2 to insert definitions of the terms ***education and care service***, ***educator***, ***family day care educator***, ***staff member*** and ***supervisor***.

Division 2 Amendment of Child Protection Act 1999

Act amended

Clause 52 states that this division amends the *Child Protection Act 1999*.

Amendment of s 17 (Contact with children in school, child care centre, family day care etc.)

Clause 53, subsection (1) amends the heading of section 17 to insert 'education and care service premises' after 'school'.

Subsection (2) amends section 17(1)(c) to insert 'education or' after 'place where'.

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

Act amended

Clause 54 states that this division amends the *Child Protection (Offender Prohibition Order) Act 2008*.

Amendment of s 6 (Application)

Clause 55 amends section 6(3), examples, third dot point, after 'residing near' to insert 'education and care service premises or'.

Amendment of s 11 (Conduct that may be prohibited)

Clause 56 amends section 11(1)(c), examples, first dot point, after '200m of' to insert 'education and care service premises or'.

Amendment of schedule (Dictionary)

Clause 57 amends the dictionary in the schedule to insert a definition of ***education and care service***, with reference to the Education and Care Services National Law (Queensland), section 5(1).

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

Act amended

Clause 58 states that this division amends the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of s 368 (QCAT's principal registrar to give statistical information to commissioner)

Clause 59 amends the definition of ***prescribed reviewable decision*** in section 368(3), to include a decision mentioned in the Education and Care Services National Law (Queensland), section 192.'.

Amendment of sch 1 (Regulated employment and businesses for employment screening)

Clause 60, subsection (1) replaces the heading of schedule 1, section 4, so that it refers to **'Child care services and similar employment'**.

Subsection (2) inserts a new section 4A into schedule 1 as follows –

'4A Education and care services and similar employment

'(1) Employment is regulated employment if—

(a) it is employment as an educator in, or staff member of, an education and care service; and

(b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.

'(2) Employment is regulated employment if—

(a) any of the usual functions of the employment is carried out, or is likely to be carried out, at education and care service premises while children are being educated and cared for at the premises; and

(b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.

'(3) Employment is regulated employment if—

(a) the usual functions of the employment include, or are likely to include, providing education and care to children in the course of a commercial service other than an education and care service; and

Examples of a service mentioned in paragraph (a)—

1 babysitting service

2 nanny service

3 a service, conducted by a hotel or resort, to provide education and care to children who are short term guests

4 a service for providing adjunct care

(b) the employee is not a volunteer who is a parent of a child to whom education and care is regularly provided as part of the service.'.

The inclusion of section 4A ensures that employment in an education and care service, or other commercial service providing education and care to children, is regulated employment for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*.

Subsection (3) replaces the heading of schedule 1, section 18, so that it refers to **'Child care services and similar businesses'**.

Subsection (4) inserts a new section 18A into schedule 1 as follows –

'18A Education and care services and similar businesses

'A business is a regulated business if the usual activities of the business include, or are likely to include—

(a) operating an education and care service or another commercial service that includes providing education and care to children; or

(b) carrying out activities in premises or a vehicle in which there are children to whom education and care is being provided.'.

The inclusion of section 18A ensures that if the usual activities of a business include operating an education and care service, or providing education and care, the business is a regulated business for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*.

Amendment of sch 7 (Dictionary)

Clause 61 amends the dictionary in schedule 7 to inserts definition of the terms ***chief executive (education and care)***, ***education and care service***, ***education and care service premises*** and ***educator***.

Subsections (2) and (3) update the definition of ***adjunct care*** to include references to education and care where appropriate.

Subsections (4) and (5) amend the definition of ***disciplinary information*** to include that it also means information received by the children's commissioner under –

- the *Education and Care Services National Law (Queensland) Act 2011*, section 19 or 20; or
- the Education and Care Services National Law (Queensland), section 271.

Sections 19 and 20 of the *Education and Care Services National Law (Queensland) Act 2011* refer to the giving of information to the children's commissioner about disciplinary actions and prohibition notices, respectively.

Section 271(5) of the Education and Care Services National Law (Queensland) enables the Regulatory Authority to disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice issued under the Law as applying in any participating jurisdiction in respect of the person.

Subsections (6) and (7) amend the definition of ***notifiable person*** to include that it also means –

- if the commissioner is aware that the person is an approved provider under the Education and Care Services National Law (Queensland)—the chief executive (education and care); or
- if the commissioner is aware that the person is an adult occupant of a home in which education and care is provided in the course of an approved family day care service under the Education and Care

Services National Law (Queensland)—the approved provider of the family day care service under that Law.

Subsections (8) and (9) amend the definition of ***staff member*** to insert a new paragraph (b) as follows –

'(b) in relation to an education and care service—means an individual employed, appointed or engaged to work in or as part of the service, whether as a family day care co-ordinator, educator or otherwise, and includes the nominated supervisor and a person employed, appointed or engaged as a volunteer; or'.

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

Act amended

Clause 62 states that this division amends the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

Amendment of s 16 (Requirements for orders)

Clause 63 amends example 2 in section 16(1)(db) to insert a reference to 'education and care service premises'.

Amendment of schedule (Dictionary)

Clause 64 amends the dictionary in the schedule to insert a definition of ***education and care service premises*** with reference to the Education and Care Services National Law (Queensland), section 5(1).

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

Act amended

Clause 65 states that this division amends the *Education (Accreditation of Non-State Schools) Act 2001*.

Amendment of s 6 (Meaning of *non-State school*)

Clause 66, subsection (1) amends section 6(2)(e), after 'provide' to insert 'education and care or'.

Subsection (2) amends section 6(3) to insert a definition of ***education and care*** to mean education and care provided by an approved education and care service under the Education and Care Services National Law (Queensland).

Division 7 Amendment of Education (General Provisions) Act 2006

Act amended

Clause 67 states that this division amends the *Education (General Provisions) Act 2006*.

Replacement of s 429A (Prohibition on use of certain terms)

Clause 68 replaces section 429A with a new section 429A (Prohibition on use of particular terms).

The previous section 429A provided that a licensee under the *Child Care Act 2002* must not use a prohibited term mentioned in subsection 429A(1) in describing child care provided under a licence held by the licensee. The new section 429A retains this, and additionally provides that an approved provider under the Education and Care Services National Law (Queensland) must not use a prohibited term mentioned in subsection 429A(1) in describing education and care provided under a service approval held by the approved provider. This prevents the use of any names, initials, words or descriptions that might suggest that either a licensee or an approved provider is offering education in the preparatory year.

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

Act amended

Clause 69 states that this division amends the *Education (Queensland Studies Authority) Act 2002*.

Amendment of s 8 (Development and purchase functions)

Clause 70, subsection (1) amends section 8(1)(d) and (f), after 'implementation in' to insert 'education and care services and'.

Subsection (2) replaces section 8(1)(h) with a new section 8(1)(h) as follows –

'(h) to develop resources and services for the professional development of educators in education and care services and carers in child care services in support of the implementation in education and care services and child care services of approved kindergarten guidelines.'.

Subsection (3) amends section 8(3), definition *purchase*, after 'or in' to insert 'education and care services and'.

Amendment of s 9 (Accreditation function)

Clause 71 amends section 9(b), after 'implementation in' to insert 'education and care services and'.

Amendment of s 20 (Notification of approved or accredited syllabus or guideline)

Clause 72 replaces section 20(2)(c) with a new section 20(2)(c) as follows –

'(c) for a kindergarten guideline—

(i) each approved provider of an education and care service other than a service that provides education and care only to children over preschool age; and

(ii) each licensee of a child care service other than a school age care service.'.

Amendment of s 79 (Regulation-making power)

Clause 73 amends section 79(2)(a)(ii), after 'implementation in' to insert 'education and care services and'.

Amendment of sch 2 (Dictionary)

Clause 74, subsection (1) amends the dictionary in schedule 2 to omit the definition of ***kindergarten guideline***.

Subsection (2) then amends schedule 2 to insert a new definition of ***kindergarten guideline***, and definitions of other terms as follows –

children over preschool age means children who attend school in the preparatory year or a higher year.

education and care service means an approved education and care service under the Education and Care Services National Law (Queensland).

educator see the Education and Care Services National Law (Queensland), section 5(1).

kindergarten guideline means a guideline about learning and age-appropriate teaching and assessment practices, in education and care services and child care services, for the years before the preparatory year.

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

Act amended

Clause 75 states that this division amends the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

Amendment of sch 1 (Other entities that are not public sector employers)

Clause 76 amends schedule 1 to insert the following –

'10 the Australian Children's Education and Care Quality Authority established under the Education and Care Services National Law (Queensland)'.

Part 11 of the Education and Care Services National Law (Queensland) provides for the establishment of a national authority, the Australian Children's Education and Care Quality Authority (ACECQA). Section 7 of the National Law provides that the National Law, as applied, has the effect that an entity established by the National Law is one single national entity – that is, only one single national entity is created, rather than separate entities in each jurisdiction. Therefore, with regards to workplace relations matters for ACECQA, it is intended that ACECQA is a national system employer under the *Fair Work Act 2009* (Cwlth).

Although ACECQA will be established as a single national entity, there may be a question about whether the 'version' of ACECQA established by each jurisdiction's application of the National Law is within scope of each jurisdiction's workplace relations referral to the Commonwealth and therefore, whether ACECQA is a national system employer.

By listing ACECQA in schedule 1 of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009,* this clause removes all doubt that ACECQA is a national system employer and not a Queensland public sector employer.

Division 10 Amendment of Gaming Machine Act 1991

Act amended

Clause 77 states that this division amends the *Gaming Machine Act 1991*.

Amendment of s 55D (Community comments)

Clause 78 amends the example in section 55D(1) to insert a reference to 'education and care service premises' after 'child care centre'.

Amendment of sch 2 (Dictionary)

Clause 79 amends the dictionary in schedule 2 to insert a definition of the term ***education and care service premises*** with reference to the Education and Care Services National Law (Queensland), section 5(1).

Division 11 Amendment of Industrial Development Act 1963

Act amended

Clause 80 states that this division amends the *Industrial Development Act 1963*.

Amendment of schedule (Dictionary)

Clause 81, subsection (1) amends the dictionary in the schedule to insert a definition of the term ***education and care service premises*** with reference to the Education and Care Services National Law (Queensland), section 5(1).

Subsection (2) amends the examples of paragraph (b) in the definition of *ancillary industry* to insert 'education and care service premises after 'Child care centres,'.

Division 12 Amendment of Public Health Act 2005

Act amended

Clause 82 states that this division amends the *Public Health Act 2005*.

Amendment of s 158 (Definitions for ch 5)

Clause 83 amends section 158 to insert definitions of the terms ***approved provider***, ***education and care service***, ***educator***, ***family day care co-ordinator*** and ***family day care service*** with reference to the Education and Care Services National Law (Queensland).

Subsections (2) and (3) amend the definition of the term *person in charge* to include that for an education and care service, this means –

(i) for an education and care service other than a family day care service—an individual mentioned in the Education and Care Services National Law (Queensland), section 162(1)(a) to (c) who, in accordance with that section, is present at the service; or

(ii) for a family day care service—the family day care co-ordinator for the service.

Amendment of ch 5, pt 2, div 1, hdg

Clause 84 amends the heading for Chapter 5, part 2, division 1 to insert '**, education and care service**' after 'school'.

Amendment of s 161 (When parent must not send a child to school or child care service)

Clause 85 amends the heading of section 161 to insert '**, education and care service**' after 'school'.

Subsection (2) amends section 161(1)(b) to insert ', education and care service' after 'school' after 'a school'.

Subsection (3) amends section 161(2), to insert ', education and care service' after 'school'.

Replacement of s 162 (When teacher or carer must advise person in charge)

Clause 86 replaces section 162 in its entirety with the following –

'162 When teacher, educator or carer must advise person in charge

'(1) This section applies if a person who is a teacher, educator or carer reasonably suspects a child attending the person's school, education and care service or child care service may have a contagious condition.

'(2) The person must advise the person in charge about the person's suspicion.'.

The effect of this is to insert references to teachers and educators at education and care services, so as to ensure that a person who is a teacher or educator at an education and care service must notify the person in charge if they suspect a child attending the education and care service may have a contagious condition.

Amendment of s 163 (Person in charge may advise parent about suspicion of contagious condition)

Clause 87 amends section 163(1), to insert ', education and care service' after 'in charge of a school', and amends section 163(2)(b), to insert ', education and care service' after 'school'.

Amendment of s 164 (Person in charge may direct parent not to send child to school or child care service)

Clause 88 amends the heading of section 164 to insert '**, education and care service**' after 'school'. The clause also amends section 164(1)(a) and (2)(a) to insert ', education and care service' after 'school'.

Amendment of s 165 (Person in charge may advise parent of child not vaccinated about suspicion of vaccine preventable condition)

Clause 89 amends section 165(1) to insert ', education and care service' after 'in charge of a school'.

Amendment of s 166 (Person in charge may direct parent not to send child to school or child care service)

Clause 90 amends the heading of section 166 to insert '**, education and care service**' after 'school'. The clause also amends section 166(1)(a) and (2)(a) to insert ', education and care service' after 'school'.

Amendment of s 167 (Chief executive may authorise examination of children at school or child care service)

Clause 91 amends the heading of section 167 to insert '**, education and care service**' after 'school'. The clause also amends section 167(1)(a) to insert ', education and care service' after 'school'.

Amendment of s 169 (Chief executive may direct person in charge in relation to child)

Clause 92 amends section 169(1)(a) and (c) to insert ', education and care service' after 'school'. The clause also amends section 169(2) and (3) to insert ', education and care service' after 'in charge of a school'.

Amendment of s 170 (Person in charge must include information in direction)

Clause 93 amends section 170(1) to insert ', education and care service' after 'school'.

Amendment of s 171 (When person in charge may readmit child before prescribed period ends)

Clause 94 amends section 171(1) and (3) to insert ', education and care service' after 'school'. The clause also amends section 171(2) to insert ', education and care service' after 'in charge of the school'.

Amendment of s 172 (Chief executive may require details if child suspected of having a contagious condition)

Clause 95 amends section 172(1)(a) and (3) to insert ', education and care service' after 'school'. The clause also amends section 172(2) to insert ', education and care service after 'in charge of the school'.

Amendment of s 173 (Giving health information held by the department)

Clause 96 amends section 173(1) and (3) to insert ', education and care service' after 'school'.

Amendment of s 179 (Protection for persons acting under pt 2)

Clause 97 amends section 179(1) to insert ', education and care service' after 'school'.

Amendment of s 180 (Directions to person in charge of school or child care service)

Clause 98 amends the heading of section 180 to insert '**, education and care service**' after 'school'. The clause also amends section 180(1) to insert ', education and care service' after 'at a school'. In addition, the clause renumbers section 180(2)(b) as section 180(2)(c) and inserts a new section 180(2)(b) as follows –

'(b) for a direction to be given to the person in charge of an education and care service—the chief executive of the department that administers the Education and Care Services National Law (Queensland); or'.

Amendment of s 181 (Temporary closure of school or child care service)

Clause 99 amends the heading of section 181 to insert '**, education and care service**' after 'school'. The clause also amends section 181(1) to

insert ‘, education and care service’ after ‘in charge of a school’. In addition, the clause renumbers section 181(2)(b) as section 181(2)(c) and inserts a new section 181(2)(b) as follows –

‘(b) if the closure relates to an education and care service—the Minister who administers the Education and Care Services National Law (Queensland); or’.

Amendment of s 182 (Review of Minister’s order to close school or child care service)

Clause 100 amends the heading of section 182 to insert ‘**, education and care service**’ after ‘school’. The clause also amends section 182 to insert ‘, education and care service’ after ‘school’.

101 Amendment of ch 5, pt 2, div 6, hdg

Clause 101 amends the heading of Chapter 5, part 2, division 6, to insert ‘**or approved provider**’ after ‘Licensee’.

Insertion of new s 184A

Clause 102 inserts a new section 184A in Chapter 5, part 2, division 6 as follows –

‘184A Approved provider must ensure person in charge complies with pt 2

‘(1) An approved provider of an education and care service must ensure that the person in charge of the service complies with this part.

‘(2) If a person in charge of the education and care service commits an offence against a provision of this part, the approved provider also commits an offence, namely, the offence of failing to ensure that the person in charge complies with the provision.

Maximum penalty—

(a) if the approved provider is an individual—the penalty for the contravention of the provision by the person in charge; or

(b) if the approved provider is a corporation—a penalty equal to 5 times the amount of the penalty under paragraph (a).

'(3) Evidence that the person in charge has been convicted of an offence against a provision of this part is evidence that the approved provider committed the offence of failing to ensure that the person in charge complies with the provision.

'(4) However, it is a defence for a approved provider to prove the approved provider exercised reasonable diligence to ensure the person in charge complied with the provision.'.

The proposed new section 184A will be similar to the existing section 184 of the *Public Health Act 2005,* which requires licensees of child care services to ensure that the person in charge of the service complies with the provisions of chapter 5, part 2 of that Act. The section reinforces that the approved provider is ultimately responsible for the operation of the education and care service and must have due regard for the requirements of chapter 5, part 2 of the *Public Health Act 2005* in order to protect the health of children attending the service.

Amendment of sch 2 (Dictionary)

Clause 103 amends the dictionary in schedule 2 to insert definitions of the terms ***approved provider***, ***education and care service***, ***educator***, ***family day care co-ordinator*** and ***family day care service***.

This clause also amends the definition of *person in charge*, paragraph so that it correctly refers to the amended definition of that term in section 158.

Division 13 Amendment of Sanctuary Cove Resort Act 1985

Act amended

Clause 104 states that this division amends the *Sanctuary Cove Resort Act 1985*.

Amendment of sch 1 (Names of and uses for zones)

Clause 105 amends schedule 1, part 2 to insert '• education and care service premises'.

This clause also amends schedule 1, part 3 to insert a definition of ***education and care service premises*** with reference to the Education and Care Services National Law (Queensland), section 5(1).