



New South Wales

Children (Education and Care Services) Supplementary Provisions Act 2011 No 70

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New South Wales

Children (Education and Care Services) Supplementary Provisions Act 2011 No 70

Act No 70, 2011

An Act to regulate the provision of certain children's education and care services; to align the regulation of those services with the *Children (Education and Care Services) National Law (NSW)*; and for other purposes. [Assented to 28 November 2011]

Section 1	Children (Education and Care Services) Supplementary Provisions Act 2011 No 70
Part 1	Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

approved education and care service means a State regulated education and care service for which a service approval exists.

approved provider means:

- (a) a person who holds a provider approval granted under the National Law Alignment Provisions, or
- (b) a person who is taken to be an approved provider under Division 3 of Part 4.

centre based education and care service—see section 4.

certified supervisor means a person who holds a supervisor certificate.

education and care service—see section 4.

exempt premises—see section 5.

family day care service has the same meaning as it has in the National Law.

home based education and care service—see section 4.

mobile education and care service—see section 4.

National Law means the *Children (Education and Care Services) National Law (NSW)*.

National Law Alignment Provisions—see section 17.

provider approval means a provider approval under the National Law Alignment Provisions.

Regulatory Authority means the Regulatory Authority for this jurisdiction within the meaning of the National Law.

service approval means a service approval under the National Law Alignment Provisions.

State regulated education and care service—see section 4.

supervisor certificate means a supervisor certificate under the National Law Alignment Provisions.

- (2) Notes included in this Act do not form part of this Act.

4 Meaning of “State regulated education and care service”

- (1) For the purposes of this Act, each of the following education and care services is a *State regulated education and care service*:
- (a) a *home based education and care service*, being an education and care service in which the care (not being care organised or arranged by a family day care service) is provided by the carer at the home of the carer, not being the home of any of the children receiving the care (other than a child related to the carer),
 - (b) a *mobile education and care service*, being an education and care service that visits specific premises, areas or places at specified times for the purpose of providing the care,
 - (c) a *centre based education and care service*, being an education and care service that is provided at fixed premises (other than the home of the approved provider of the service),
 - (d) an education and care service of a kind prescribed by the regulations.
- (2) An *education and care service* is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 6 years and who do not ordinarily attend school (disregarding any children who are related to the person providing the care).
- (3) However, a *State regulated education and care service* does not include any of the following:
- (a) a service that is an education and care service within the meaning of the National Law (disregarding this Act),
 - (b) a service provided by a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
 - (c) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned,
 - (d) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised,
 - (e) a service involving medical or clinical care provided by a hospital,

- (f) a regular child-minding service:
 - (i) that is provided in connection with a hospital, health service or a recreational or commercial facility, and
 - (ii) that is provided by or on behalf of the person conducting the hospital, health service or recreational or commercial facility, and
 - (iii) that is provided to care for children only:
 - (A) while a sibling of the child being cared for is being treated at the hospital or health service, or
 - (B) while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial facility,
 - (g) a service that is concerned primarily with the provision of:
 - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
 - (ii) private tutoring,
 - (h) a service under which formal education in accordance with the school curriculum set out in Part 3 of the *Education Act 1990* is provided by a government school or a registered non-government school within the meaning of that Act,
 - (i) a service provided at exempt premises, but only if the service is established, registered or licensed as part of the institution operating on those premises,
 - (j) a service excluded from the operation of this Act by the regulations.
- (4) In this section:
hospital means:
- (a) a private health facility licensed under the *Private Health Facilities Act 2007*, or
 - (b) a declared mental health facility or a private mental health facility within the meaning of the *Mental Health Act 2007*, or
 - (c) a public hospital within the meaning of the *Health Services Act 1997*.

5 Exempt premises

- (1) The regulations may prescribe any class of premises as exempt premises for the purposes of this Act.

- (2) The Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of specified provisions of this Act.
- (3) A reference in this Act to *exempt premises* is a reference to:
 - (a) any premises belonging to a class of premises prescribed by the regulations as exempt premises, and
 - (b) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order of the Minister under this section, being an order that is in force.

Part 2 Guiding principles

6 Principles underlying the provision of State regulated education and care services

The provision of State regulated education and care services should be based on the following principles:

- (a) the paramount consideration in the provision of State regulated education and care services is the best interests of children,
- (b) children should receive services that meet their individual needs (including the needs of children with a disability) and enhance their physical, emotional, cognitive, social and cultural development,
- (c) State regulated education and care services should assist the development and education of the children who attend them,
- (d) State regulated education and care services should be planned and operated in a manner that recognises the diversity of the children who attend them and of the communities that they serve,
- (e) parents have a right to information about the State regulated education and care services which their children attend,
- (f) parents have both a right and a responsibility to be involved in the making of decisions by a State regulated education and care service in so far as those decisions affect their children.

Note. State regulated education and care services must also be operated in accordance with any relevant provisions of the *Anti-Discrimination Act 1977*.

7 Role of principles

- (1) The principles set out in this Part are intended to give guidance and direction in the administration of this Act. They do not create, or confer on any person, any right or entitlement enforceable at law.
- (2) However, this section does not prevent any disciplinary proceedings against a member of the Government Service.

Part 3 State regulated education and care services

Division 1 Operation of State regulated education and care services

8 Unauthorised provision of education and care service

- (1) A person must not provide a State regulated education and care service unless:
 - (a) the person is an approved provider in respect of that service, and
 - (b) the service is an approved education and care service.Maximum penalty: \$22,000.
- (2) A certified supervisor of a State regulated education and care service who is not the approved provider of the service does not commit an offence against this section in respect of anything done in the course of supervising that service in accordance with the supervisor certificate.
- (3) An employee or other person who provides or assists in providing a State regulated education and care service (other than a certified supervisor of the service) does not commit an offence against this section if the employee or other person is acting in accordance with directions given by the approved provider of the service or a certified supervisor of the service.

9 Advertising of unauthorised education and care service

- (1) A person must not advertise or hold out that the person is willing to provide a State regulated education and care service unless:
 - (a) the person is an approved provider in respect of the service concerned, and
 - (b) the particular service being advertised is an approved education and care service.Maximum penalty: \$550.
- (2) A person must not knowingly publish any advertisement inviting the attendance of children at a State regulated education and care service that is not an approved education and care service.
Maximum penalty: \$550.
- (3) A person is not guilty of an offence under this section if:
 - (a) the State regulated education and care service is a service that is proposed to be provided in the future, and

- (b) the person has duly applied for any provider approval or service approval required to authorise the person to provide the proposed State regulated education and care service, and
- (c) the application has not been finally determined.

10 Nomination of supervisor

- (1) An approved provider of an approved education and care service must ensure that there is at least one nominated supervisor of the approved education and care service.
- (2) The person nominated must be a person authorised by his or her supervisor certificate to supervise the operation of the approved education and care service or type of approved education and care service concerned.
- (3) A contravention of this section is a contravention of a provision of this Act.
- (4) A nominated supervisor is not required in respect of a home based education and care service.
- (5) In this section:
nominated supervisor has the same meaning as it has in the National Law Alignment Provisions.

Division 2 Provider approvals

11 Provider approvals

The National Law Alignment Provisions provide for the grant of provider approvals for State regulated education and care services and other matters relating to provider approvals.

Note. See also Division 3 of Part 4, which provides for the recognition, for the purposes of this Act, of provider approvals granted under the National Law.

12 Contravention of provider approval

An approved provider must not contravene a condition of a provider approval granted under the National Law Alignment Provisions.

Maximum penalty: \$10,000 in the case of an individual or \$50,000 in any other case.

Division 3 Service approvals

13 Service approvals

The National Law Alignment Provisions provide for the grant of service approvals for State regulated education and care services and other matters relating to service approvals.

14 Contravention of service approval

An approved provider must not contravene a condition of a service approval for a State regulated education and care service.

Maximum penalty: \$10,000 in the case of an individual or \$50,000 in any other case.

Division 4 Supervisor certificates

15 Supervisor certificates

The National Law Alignment Provisions provide for the grant of supervisor certificates in respect of State regulated education and care services and other matters relating to supervisor certificates.

16 Contravention of supervisor certificate

A person who is a certified supervisor must not contravene a condition of a supervisor certificate.

Maximum penalty: \$4,000.

Part 4 National Law alignment

Division 1 Alignment with National Law

17 Alignment with National Law

The National Law, as in force from time to time:

- (a) applies to State regulated education and care services as if those services were education and care services within the meaning of the National Law, and
- (b) so applies with the modifications provided for by or under this Act, and
- (c) as so applying may be referred to as the ***National Law Alignment Provisions***, and
- (d) so applies as if it were part of this Act.

18 Application of Children (Education and Care Services National Law Application) Act 2010

- (1) Sections 7 to 16 of the *Children (Education and Care Services National Law Application) Act 2010* apply to the National Law Alignment Provisions in the same way as they apply to the National Law, subject to any modifications provided for by this Act or the regulations under this Act.
- (2) Section 5 of the *Children (Education and Care Services National Law Application) Act 2010* does not apply in respect of the National Law Alignment Provisions.

19 Application of Interpretation Act 1987

The *Interpretation Act 1987* does not apply in respect of the National Law Alignment Provisions.

Note. Schedule 1 to the National Law provides for interpretation of the provisions of the National Law. Those provisions also apply to the National Law Alignment Provisions.

20 Extension does not affect operation of National Law in respect of nationally regulated education and care services

To avoid doubt, a provider approval, service approval or supervisor certificate granted under the National Law Alignment Provisions in respect of a State regulated education and care service is not a provider approval, service approval or supervisor certificate (as the case requires) for the purposes of the National Law.

Division 2 Modification of National Law

21 Excluded provisions

- (1) For the purposes of the National Law Alignment Provisions, the following provisions of the National Law are to be disregarded:
- (a) sections 1 to 4 (preliminary matters),
 - (b) section 7 (Single national entity),
 - (c) section 11 (a) (which dictates the jurisdiction in which an application for a provider approval must be made),
 - (d) section 19 (4) (offence of contravening conditions of provider approval),
 - (e) section 42 (Exercise of powers by another Regulatory Authority),
 - (f) section 44 (1) (a) (which dictates the jurisdiction in which an application for a service approval must be made),
 - (g) section 51 (except section 51 (4) and (5) which relate to conditions of service approvals),
 - (h) Division 5 of Part 3 (Application for service waiver),
 - (i) Division 6 of Part 3 (Temporary waiver),
 - (j) section 101 (Exercise of powers by another Regulatory Authority—family day care services),
 - (k) section 102 (Application of Law to associated children’s services),
 - (l) section 103 (Offence to provide an education and care service without service approval),
 - (m) section 104 (Offence to advertise education and care service without service approval),
 - (n) section 105 (Purpose of supervisor certificate),
 - (o) section 106 (3) (which dictates the jurisdiction in which an application for a supervisor certificate must be made),
 - (p) section 115 (4) (offence of contravening conditions of supervisor certificate),
 - (q) section 117 (b) (which relates to the effect of a supervisor certificate),
 - (r) section 131 (Exercise of powers by another Regulatory Authority),
 - (s) section 132 (Offence to act as supervisor without supervisor certificate),
 - (t) Part 5 (Assessments and ratings),

- (u) Part 6 (Operating an education and care service), except section 171 (Offence relating to direction to exclude inappropriate persons from education and care service premises),
 - (v) section 178 (Notice to suspend education and care by a family day care educator),
 - (w) section 198 (National Authority representative may enter service premises in company with Regulatory Authority),
 - (x) section 214 (Powers of Regulatory Authority to obtain information for rating purposes),
 - (y) Part 10 (Ministerial Council),
 - (z) Part 11 (Australian Children’s Education and Care Quality Authority),
 - (aa) sections 260 and 261 (which relate to the functions of the Regulatory Authority),
 - (ab) Part 13 (Information, records and privacy), except section 267 (Register of education and care services), section 270 (Publication of information) and Division 6 (Disclosure of information),
 - (ac) section 271 (3) and (6) (which relates to disclosures under the National Law scheme),
 - (ad) Divisions 1 to 3 and 8 of Part 14 (Miscellaneous),
 - (ae) Part 15 (Transitional provisions).
- (2) This section is subject to any exceptions provided for by the regulations.

22 References to education and care services

For the purposes of the National Law Alignment Provisions:

- (a) a reference in the National Law to an education and care service is to be read as a reference to a State regulated education and care service, and
- (b) a reference in the National Law to an approved education and care service is to be read as a reference to a State regulated education and care service that is an approved education and care service within the meaning of this Act.

23 References to National Law

- (1) For the purposes of the National Law Alignment Provisions, a reference in the National Law to the National Law itself (such as a reference to “this Law”) is to be read as a reference to this Act (including the National Law Alignment Provisions) and the regulations under this Act.

- (2) A reference in the National Law to a specific provision of the National Law is to be read as a reference to the corresponding provision of the National Law Alignment Provisions.

24 References to Regulatory Authority

- (1) For the purposes of the National Law Alignment Provisions, a reference in the National Law to the Regulatory Authority is a reference to the Regulatory Authority for this jurisdiction.

Note. Under section 9 of the *Children (Education and Care Services National Law Application) Act 2010*, the Regulatory Authority for this jurisdiction is the Director-General of the Department of Education and Communities.

- (2) The National Law Alignment Provisions do not confer a power to grant provider approvals, service approvals and supervisor certificates in respect of State regulated education and care services, or confer any other functions with respect to those services, on the Regulatory Authority for another jurisdiction under the National Law.
- (3) For the purpose of the National Law Alignment Provisions, references in the National Law to provider approvals, service approvals or supervisor certificates granted under the law of another jurisdiction are to be disregarded.
- (4) This section does not affect the operation of Division 3.
- Note.** Division 3 provides for the recognition, for the purposes of this Act, of provider approvals granted under the National Law (including provider approvals granted by the Regulatory Authority for another jurisdiction).

25 References to regulations

For the purposes of the National Law Alignment Provisions, a reference in the National Law to the regulations made under that Law or to a matter prescribed under that Law is to be read as a reference to the regulations made under this Act or to a matter prescribed by the regulations under this Act, as the case requires.

26 References to matters that relate to national scheme only

For the purposes of the National Law Alignment Provisions, any of the following references in the National Law are to be disregarded:

- (a) references to the National Authority,
- (b) references to the Ministerial Council,
- (c) references to the National Quality Framework and to the National Quality Standard,
- (d) references to a rating level or a rating assessment for an education and care service,
- (e) references to associated children's services,

- (f) references to management capability in relation to supervisor certificates in Part 4,
- (g) references to family day care services.

27 Specific variations—home based education and care services

- (1) For the purposes of the National Law Alignment Provisions, section 44 (1) (d) of the National Law does not apply in relation to home based education and care service.
- (2) For the purposes of the National Law Alignment Provisions, Division 3 of Part 3 of the National Law does not apply in relation to service approvals for home based education and care services.

28 Reviewable decisions

- (1) For the purposes of the National Law Alignment Provisions, a reference in section 192 of the National Law to a reviewable decision for external review includes, in addition to the decisions listed in that section, any decision of the Regulatory Authority of a kind specified by the regulations to be a reviewable decision for external review.
- (2) A regulation may not be made for the purposes of this section except with the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.
- (3) For the purposes of the National Law Alignment Provisions, the note at the end of section 192 of the National Law is to be disregarded.

29 Further modifications

The regulations may make further provision for the application of the National Law to and in respect of State regulated education and care services, including by making further modifications to the National Law for the purposes of the National Law Alignment Provisions.

Division 3 Recognition of matters provided for by National Law

30 Approved providers

A person who holds a provider approval in relation to an education and care service within the meaning of the National Law is taken to be an approved provider in relation to State regulated education and care services under this Act.

31 Authorised officers

- (1) A person who is authorised to be an authorised officer by the Regulatory Authority of this jurisdiction under Part 9 of the National Law is taken

to be an authorised officer for the purposes of Part 9 of the National Law Alignment Provisions.

- (2) An identity card issued to the authorised officer under the National Law is taken to be an identity card identifying the authorised officer as an authorised officer authorised by the Regulatory Authority under this Act.
- (3) This section does not prevent the issue of a separate identity card by the Regulatory Authority for the purposes of this Act.

Part 5 Other operational requirements

32 Information to be provided to parents

- (1) An approved provider of a State regulated education and care service must provide parents of children enrolled in the service with ready access to the following information (*service information*):
 - (a) all written policies required to be provided by the regulations and other policies and procedures relating to the conduct of the service developed by the approved provider,
 - (b) details of procedures for dealing with parents' concerns and complaints about the service,
 - (c) such other information relating to the service, or to the safety, welfare or well-being of children who attend the service, as the Regulatory Authority, by notice in writing to the approved provider, requires the approved provider to provide.
- (2) Service information is to be provided in a language and manner that can be understood by the parents of the children enrolled in the service.
- (3) An approved provider of a State regulated education and care service must inform parents of the availability of service information.
Maximum penalty: \$220.

33 Parental contact with children

- (1) The service approval of an approved provider for a State regulated education and care service is granted subject to a condition that the approved provider must afford any parent contact with his or her child at any time that the service is being provided to the child.
- (2) However, an approved provider of a State regulated education and care service may deny a parent contact with his or her child (until the parent's right to contact has been established):
 - (a) if the approved provider has reason to believe that a court has denied the parent that contact, or
 - (b) if the approved provider is requested to do so by the Director-General, an officer of the Ministry of Health, a police officer, or any other appropriate authority.
- (3) This section applies to a supervisor certificate granted under the National Law Alignment Provisions in the same way as it applies to a service approval. For that purpose, a reference to an approved provider for a State regulated education and care service includes a reference to a nominated supervisor for a State regulated education and care service within the meaning of the National Law Alignment Provisions.

34 Home based education and care services—adult residents

- (1) A service approval for a home based education and care service is granted subject to a condition that the approved provider of the service must notify the Regulatory Authority if any person (other than the approved provider) who is of or above the age of 18 years is residing at the approved provider's home on a regular basis and has been doing so for a period of at least 3 months.

Note. See section 45 of the *Commission for Children and Young People Act 1998* which provides for background checks to be carried out in relation to adult household members of approved providers.

- (2) Without limiting the above, any such requirement to notify the Regulatory Authority applies even though the adult person who is residing at the approved provider's home was at any time residing at that home as a minor.

35 Records

- (1) A service approval for a State regulated education and care service is granted subject to a condition that the approved provider of the service must keep such records as the regulations require in relation to the service.
- (2) The approved provider must keep the records in such a manner that they are readily accessible if the approved provider is required to produce them to the Regulatory Authority, or to any other person who is authorised to inspect them, under this Act.

Part 6 Miscellaneous

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters:
 - (a) any matter for which national regulations can be made by the Ministerial Council under the National Law,
Note. See, in particular, section 301 of the National Law.
 - (b) the records that are to be kept by approved providers, including (but not limited to) the following:
 - (i) the information that the records are to contain,
 - (ii) the form in which they are to be made,
 - (iii) the person responsible for making and maintaining them,
 - (iv) the persons who may inspect them,
 - (v) the period for which they are to be retained,
 - (c) exempting specified centre based education and care services, or centre based education and care services of a specified class, from the requirement that they be provided by an approved provider or the subject of a service approval (or both) and regulating the services so exempted (including, without limitation, establishing standards to be met by those services).
- (3) A regulation may create an offence punishable by a penalty not exceeding \$2,000.

37 Adoption of other publications

- (1) The regulations may apply, adopt or incorporate, wholly or in part and with or without modifications, any standard, rule, code, specification or other document prescribed or published by any person or body (whether of New South Wales or elsewhere) and as in force at a particular time or from time to time.
- (2) In particular, the regulations may apply, adopt or incorporate, wholly or in part and with or without modification, any of the national regulations made by the Ministerial Council under the National Law, as in force at a particular time or as in force from time to time.

38 Application of State Records Act 1998 to certain services

- (1) The *State Records Act 1998* does not apply to a private children's service and such a service is not a public office for the purposes of that Act.
- (2) In this section:
private children's service means a State regulated education and care service provided to the community by any person or body other than:
 - (a) a department, office, commission, board, corporation, agency, service or instrumentality exercising any function of any branch of the Government of the State, or
 - (b) a council or county council under the *Local Government Act 1993*.

39 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Continuation of Children's Services Regulation 2004

- (1) The *Children's Services Regulation 2004* (***the Regulation***) has effect, on the repeal of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*, as if it were a regulation made under this Act.
- (2) To avoid doubt, the *Subordinate Legislation Act 1989* applies in respect of the Regulation as a statutory rule published on 30 September 2004.

Schedule 2 Amendment of Acts and Regulations

2.1 Administrative Decisions Tribunal Act 1997 No 76

Schedule 2 Composition and functions of Divisions

Insert in alphabetical order in clause 2 of Part 1:

Children (Education and Care Services) National Law (NSW)
*Children (Education and Care Services) Supplementary
Provisions Act 2011*

2.2 Children and Young Persons (Care and Protection) Act 1998 No 157

[1] Section 3 Definitions

Omit the definitions of *children’s service*, *children’s service approval*,
service provider licence and *supervisor approval*.

[2] Section 135 Definition and types of “out-of-home care”

Omit “a licensed provider of children’s services” from section 135 (3) (a).

Insert instead “an approved provider of education and care services under the
Children (Education and Care Services) National Law (NSW) or the *Children
(Education and Care Services) Supplementary Provisions Act 2011*”.

[3] Chapters 12 and 12A

Omit the Chapters.

[4] Section 245 Decisions that are reviewable by Administrative Decisions Tribunal

Omit section 245 (1) (l), (m) and (n).

[5] Section 258 Offences by corporations

Omit “(other than section 219J or 219ZB)” from section 258 (1).

[6] Section 258 (1A)

Omit the subsection.

[7] Section 258 (2)

Omit “or (1A)”.

[8] Section 264 Regulations

Omit section 264 (1A) (j).

[9] Section 264 (1B)

Omit “or (j)”.

**2.3 Children and Young Persons (Care and Protection)
Regulation 2000**

Clause 7 Prescribed bodies: sec 248

Omit clause 7 (a). Insert instead:

- (a) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (b) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*,

**2.4 Children and Young Persons Legislation (Repeal and
Amendment) Act 1998 No 158**

Schedule 2.24

Omit the Subschedule.

**2.5 Children (Education and Care Services National Law
Application) Act 2010 No 104**

[1] Section 5 Exclusion of legislation of this jurisdiction

Insert after section 5 (2):

- (3) However, Part 3A of the *Ombudsman Act 1974* does apply in respect of approved education and care services under the *Children (Education and Care Services) National Law (NSW)*.

[2] Section 9

Omit the section. Insert instead:

9 Regulatory Authority

For the purposes of the definition of **Regulatory Authority** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the Director-General of the Department of Education and Communities is declared to be the Regulatory Authority for this jurisdiction for the purposes of that Law.

[3] Section 10

Omit the section. Insert instead:

10 Children's services law

- (1) For the purposes of the definition of *children's services law* in section 5 of the *Children (Education and Care Services) National Law (NSW)*, each of the following is declared to be a children's services law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*:
 - (a) the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
 - (b) the regulations made under that Act.
- (2) For the purposes of the definition of *children's services regulator* in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the Director-General of the Department of Education and Communities is declared to be a children's services regulator for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

[4] Section 11 Education law

Insert after section 11 (c):

- (d) the *Technical and Further Education Commission Act 1990*,
- (e) the *Education (School Administrative and Support Staff) Act 1987*.

[5] Section 12 Former education and care services law

Omit "Chapter 17" from section 12 (b).

Insert instead "Chapters 1, 2, 15, 16 and 17".

[6] Section 17A

Insert after section 17:

17A Modification of transitional provisions

Section 316 of the *Children (Education and Care Services) National Law (NSW)* is taken to include the following provision, inserted as section 316 (3):

- (3) Subsection (1) also ceases to apply if—
- (a) the approved provider for the service does not nominate a declared nominated supervisor as the sole nominated supervisor for the education and care service within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority, or
 - (b) the approved provider for the service nominates another declared nominated supervisor as the sole nominated supervisor for the education and care service within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority.

2.6 Children’s Services Regulation 2004

Clause 1 Name of Regulation

Omit “*Children’s Services Regulation 2004*”.

Insert instead “*Children (Education and Care Services) Supplementary Provisions Regulation 2004*”.

2.7 Commission for Children and Young People Act 1998 No 146

[1] Section 33 Definitions

Omit paragraph (a1) (i), (ii) and (iii) of the definition of *child-related employment* in section 33 (1).

Insert instead:

- (i) employment comprising the provision of an education and care service,
- (ii) employment as a person involved in the control or management of an education and care service,
- (iii) employment as a certified supervisor (within the meaning of the *Children (Education and Care*

Services) National Law (NSW) in relation to an education and care service under that Law,

- (iiia) employment as a certified supervisor (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*) in relation to a State regulated education and care service under that Act,

[2] Section 33 (1), definition of “employer”

Omit paragraph (c). Insert instead:

- (c) in the case of employment comprising the provision of an education and care service or the performance of work as a person involved in the control or management of an education and care service—the Director-General of the Department of Education and Communities.

[3] Section 33 (1), definition of “employment”

Omit paragraphs (g) and (h). Insert instead:

- (g) providing an education and care service, or
(h) performance of work as a person involved in the control or management of an education and care service.

[4] Section 33 (1)

Insert in alphabetical order:

education and care service means an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

[5] Section 33 (1), definition of “prescribed children’s service”

Omit the definition.

[6] Section 45 Application of background checking provisions to adult persons residing with authorised carers or children’s service providers

Insert in alphabetical order in section 45 (1).

approved provider of a children’s service means the approved provider of the service under the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*, as the case requires.

children's service means a family day care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or a home based education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*.

[7] Section 45 (1)

Omit the definition of *children's service provider*. Insert instead:

children's service provider means:

- (a) in the case of a family day care service approved under the *Children (Education and Care Services) National Law (NSW)*—the person who is the family day care educator under that Law for that service, or
- (b) in the case of a home based education and care service approved under the *Children (Education and Care Services) Supplementary Provisions Act 2011*—the person who is the approved provider under that Act for that service.

[8] Section 45 (4) (a) and (c)

Omit “licensee of the children’s service” wherever occurring.

Insert instead “approved provider of the children’s service”.

**2.8 Community Services (Complaints, Reviews and Monitoring)
Act 1993 No 2**

[1] Section 4 Definitions

Insert after paragraph (c) of the definition of *community welfare legislation* in section 4 (1):

- (c1) the *Children (Education and Care Services) Supplementary Provisions Act 2011*,

[2] Section 28 Applications to Administrative Decisions Tribunal for reviews of decisions

Insert after section 28 (1) (a):

- (a1) a decision that is a reviewable decision for external review under section 192 of the National Law Alignment Provisions (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*),

[3] Section 29 Who may apply to the Tribunal?

Insert after section 29 (6):

- (7) An application may not be made under this Part for a review of a reviewable decision under the *Children (Education and Care Services) Supplementary Provisions Act 2011* by the person who is the subject of the reviewable decision. Any such application must be made as provided for by that Act.
- (8) In this section:
reviewable decision under the *Children (Education and Care Services) Supplementary Provisions Act 2011* means a decision that is a reviewable decision for external review under section 192 of the National Law Alignment Provisions (within the meaning of that Act).

2.9 Companion Animals Act 1998 No 87

Section 14 Dogs prohibited in some public places

Omit section 14 (1) (f). Insert instead:

- (f) *Child care centres* (meaning any property occupied or used for a purpose connected with the conduct of an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*, other than any property used for a residence or the curtilage of a residence).

2.10 Food Regulation 2010

Clause 160 Exemptions from Division 3 of Part 8 of the Act

Omit clause 160 (3) (c). Insert instead

- (c) premises where an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*, or the *Children (Education and Care Services) Supplementary Provisions Act 2011*, is provided,

2.11 Ombudsman Act 1974 No 68

Section 25A Definitions

Omit paragraph (b) of the definition of *designated non-government agency* in section 25A (1).

Insert instead:

- (b) a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998* (not being a department referred to in paragraph (a) of the definition of *designated government agency* in this subsection),
- (b1) an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*,

2.12 Public Health Act 2010 No 127

Section 85 Definitions

Omit the definition of *child care facility* from section 85 (1). Insert instead:

child care facility means:

- (a) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*, or
- (b) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*, or
- (c) a service or facility of a class declared by the regulations to be a child care facility for the purposes of this Division.

[Second reading speech made in Legislative Council on 20 October 2011

Agreement in principle speech made in Legislative Assembly on 24 November 2011]

BY AUTHORITY