



New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Act 2018 No 46

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New South Wales

Children (Education and Care Services) Supplementary Provisions Amendment Act 2018 No 46

Act No 46, 2018

An Act to amend the *Children (Education and Care Services) Supplementary Provisions Act 2011* to further provide for the regulation of certain children's education and care services and to further align the regulation of those services with the *Children (Education and Care Services) National Law (NSW)*; and for other purposes. [Assented to 27 September 2018]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 1 [34]–[37] commence on the date of assent to this Act.

Schedule 1 Amendment of Children (Education and Care Services) Supplementary Provisions Act 2011 No 70

[1] Section 3 Definitions

Omit the definitions of *centre based education and care service*, *certified supervisor*, *family day care service*, *home based education and care service* and *supervisor certificate* from section 3 (1).

[2] Section 3 (1), definition of “occasional education and care service”

Insert in alphabetical order:

occasional education and care service—see section 4.

[3] Section 4 Meaning of “State regulated education and care service”

Omit section 4 (1). Insert instead:

- (1) For the purposes of this Act, each of the following is a *State regulated education and care service*:
 - (a) 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,
 - (b) an *occasional 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) primarily on an ad hoc or casual basis and that does not usually offer full-time or all day education and care to children on an ongoing basis.

[4] Section 4 (3) (g)

Omit the paragraph. Insert instead:

- (g) a service principally conducted to provide instruction in a particular activity,
Note. Instruction in sport, dance, music, culture, language or religion are examples.

[5] Section 6

Insert after section 5:

6 Objectives and principles underlying the provision of State regulated education and care services

- (1) The National Law Alignment Provisions provide for the objectives and guiding principles that apply to the provision of State regulated education and care services.
- (2) A reference in sections 3 and 4 of the National Law to the national education and care services quality framework is to be read, for the purposes of the National Law Alignment Provisions, as a reference to the framework for the provision of State regulated education and care services established by this Act.

[6] Part 2 Guiding principles

Omit the Part.

[7] Section 8 Unauthorised provision of education and care service

Omit “certified” from section 8 (2). Insert instead “nominated”.

[8] Section 8 (2)

Omit “the supervisor certificate”. Insert instead “this Act”.

[9] Section 8 (3)

Omit “(other than a certified supervisor of the service)” and “or a certified supervisor of the service”.

[10] Section 9 Advertising of unauthorised education and care service

Omit “this section” from section 9 (3). Insert instead “subsection (1) or (2)”.

[11] Section 9 (4)

Insert after section 9 (3):

- (4) A person must not advertise or hold out that the person is willing to provide a State regulated education and care service for which an application for any provider approval or service approval required to authorise the person to provide the proposed service is pending unless it is made clear that the service will be provided only after any such approval has been granted.

Maximum penalty: \$550.

[12] Section 10 Nomination of supervisor

Omit the section.

[13] Section 14A

Insert after section 14:

14A Service waivers and temporary waivers

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

Note. Under Divisions 5 and 6 of Part 3 of the National Law, an approved provider of an education and care service may apply for a service (ie permanent) or temporary waiver from a requirement that the service comply with certain elements of the National Quality Standard (set out in the national regulations) or certain specified provisions of the national regulations.

[14] Part 3, Division 4

Omit the Division. Insert instead:

Division 4 Assessment and rating

15 Assessment and rating of State regulated education and care services

- (1) The National Law Alignment Provisions provide for the assessment by the Regulatory Authority of State regulated education and care services and the determination of rating levels (other than the highest rating level) for the services.
- (2) The regulations may make provision for the award of the highest rating level to State regulated education and care services.

- (3) Subsection (2) does not prevent the Regulatory Authority from entering into arrangements with the National Authority for the assessment of State regulated education and care services and the award of the highest rating level to those services by the National Authority.

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

Omit “, service approval or supervisor certificate” wherever occurring.

Insert instead “or service approval”.

[16] Section 21 Excluded provisions

Omit section 21 (1) (a). Insert instead:

- (a) sections 1, 2 and 3 (1) and (2) (d) (preliminary matters),

[17] Section 21 (1) (g)

Omit the paragraph. Insert instead:

- (g) section 51 (8) (offence of contravening conditions of service approval),

[18] Section 21 (1) (h) and (i)

Omit the paragraphs.

[19] Section 21 (1) (n)–(s)

Omit the paragraphs.

[20] Section 21 (1) (t) and (u)

Omit section 21 (1) (t)–(v). Insert instead:

- (t) section 134 (2) and Divisions 4–6 of Part 5 (which relate to certain assessment and rating functions of the National Authority),
(u) section 169 (7) and (8) (which relate to determinations of equivalent qualifications by the National Authority),

[21] Section 21 (1) (x)

Omit the paragraph.

[22] Section 21 (1) (aa)

Omit section 21 (1) (aa)–(ac). Insert instead:

- (aa) Part 13 (Information, records and privacy), except sections 267 (1)–(4), 270, 271, 272 (1) and 273,

[23] Section 21 (2)

Omit “exceptions”. Insert instead “modifications”.

[24] Section 24 References to Regulatory Authority

Omit “Director-General of the Department of Education and Communities” from the note to section 24 (1).

Insert instead “Secretary of the Department of Education”.

[25] Section 24 (2)

Omit “, service approvals and supervisor certificates”.

Insert instead “and service approvals”.

[26] Section 24 (3)

Omit “, service approvals or supervisor certificates”.

Insert instead “or service approvals”.

[27] Section 26 References to matters that relate to national scheme only

Insert “(except in relation to the National Quality Standard)” after “Council” in section 26 (b).

[28] Section 26 (c)

Omit section 26 (c) and (d). Insert instead:

(c) references to the highest rating level for an education and care service,

[29] Section 26 (f)

Omit the paragraph.

[30] Sections 27–27B

Omit section 27. Insert instead:

27 References to National Quality Framework and National Quality Standard

- (1) A reference in the National Law to the National Quality Framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the following:
 - (a) this Act (including the National Law Alignment Provisions),
 - (b) the regulations under this Act,
 - (c) the National Quality Standard,
 - (d) the rating system provided for by the regulations under this Act.
- (2) A reference in the National Law to the National Quality Standard is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the National Quality Standard approved by the Ministerial Council under the National Law as in force from time to time.
- (3) The regulations may make further provision for the application of the National Quality Standard to State regulated education and care services, including by modifying the National Quality Standard as it applies to those services.

27A Specific variations

- (1) A reference in section 168 of the National Law to an approved learning framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the learning framework approved by the Ministerial Council under the National Law as in force from time to time.
- (2) A reference in the National Law to qualifications required or approved under that Law includes, for the purpose of the National Law Alignment Provisions, a reference to any qualifications that have been determined by the National Authority to be equivalent to the qualifications required by the regulations under the National Law.

- (3) A reference in section 201 of the National Law to section 103 of the National Law is to be read, for the purpose of the National Law Alignment Provisions, as a reference to section 8 of this Act.

Note. Accordingly the power to enter premises under section 201 of the National Law where a contravention of section 103 of the National Law is suspected is, for the purposes of the National Law Alignment Provisions, a power to enter premises where a contravention of section 8 of this Act is suspected.

27B Fees

- (1) The amount of a fee payable under the National Law Alignment Provisions in respect of a State regulated education and care service is the fee payable under the National Law in respect of an education and care service other than a family day care service.
- (2) The Regulatory Authority may waive, reduce, defer or refund any fee payable or paid to it under the National Law Alignment Provisions if there are exceptional circumstances.

[31] Part 5 Other operational requirements

Omit the Part.

[32] Section 36 Regulations

Omit section 36 (2) (b).

[33] Section 36 (2) (c)

Omit “centre based” wherever occurring. Insert instead “occasional or mobile”.

[34] Schedule 1 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

[35] Schedule 1, clause 1 (2)

Insert “and has effect despite anything to the contrary in this Schedule” after “later date”.

[36] Schedule 1, clause 1 (4)

Insert after clause 1 (3):

- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

[37] Schedule 1, Part 3

Insert after Part 2:

**Part 3 Provision consequent on enactment of Children
(Education and Care Services) Supplementary
Provisions Amendment Act 2018**

**3 Transitional provision for home based education and care services and retail
shopping centre child-minding services**

On and from the date of assent to the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018*, a person may not apply to the Regulatory Authority:

- (a) for a provider approval or service approval for a home based education and care service under the National Law Alignment Provisions, or
- (b) for an approval to provide a centre based education and care service that is a child-minding service at a retail shopping centre under Part 8 of the *Children (Education and Care Services) Supplementary Provisions Regulation 2012*.

Schedule 2 Consequential amendments

2.1 Child Protection (Working with Children) Act 2012 No 51

[1] Section 5 Definitions

Omit the definitions of *certified supervisor* and *home based education and care service* from section 5 (1).

[2] Section 5 (1), definition of “notifiable person”

Omit “home based education and care service or” from paragraph (c).

[3] Section 6 Child-related work

Omit “certified supervisor” from section 6 (3) (b).

Insert instead “nominated supervisor (within the meaning of the *Children (Education and Care Services) National Law (NSW)*”.

[4] Section 10 Adult persons residing with authorised carers or persons providing family day care services

Omit “home based education and care service or” wherever occurring in section 10 (1) and (2).

[5] Section 11B Responsible agency must verify person has clearance or current application

Omit “a home based education and care service or” from section 11B (1) (c).

[6] Section 17 Interim bars

Omit “home based education and care service or” from section 17 (1) (c).

2.2 Child Protection (Working with Children) Regulation 2013

[1] Clause 18 Proof of identity

Omit “home based education and care service or” from clause 18 (3) (a).

[2] Schedule 1 Savings and transitional provisions

Omit “certified” wherever occurring in clause 2 (7) (f). Insert instead “nominated”.

2.3 Standard Instrument (Local Environmental Plans) Order 2006

Standard instrument, Dictionary

Omit the definition of *home-based child care*. Insert instead:

home-based child care means a family day care residence (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the *Children (Education and Care Services) National Law (NSW)*.

2.4 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

Clause 5 Interpretation

Omit the definition of *home-based child care* from the note to clause 5 (1). Insert instead:

home-based child care means a family day care residence (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the *Children (Education and Care Services) National Law (NSW)*.

2.5 Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011

Dictionary

Omit the definition of *home-based child care*. Insert instead:

home-based child care means a family day care residence (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the *Children (Education and Care Services) National Law (NSW)*.

2.6 Sydney Local Environmental Plan (Green Square Town Centre) 2013

Dictionary

Omit the definition of *home-based child care*. Insert instead:

home-based child care means a family day care residence (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the *Children (Education and Care Services) National Law (NSW)*.

2.7 Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013

Dictionary

Omit the definition of *home-based child care*. Insert instead:

home-based child care means a family day care residence (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) at which the education and care service is provided at any one time to no more than 7 children (including any child of the person providing the service) all of

whom are under the age of 13 years and no more than 4 of whom are children who do not ordinarily attend school.

Note. A family day care residence is a residence at which a family day care educator educates and cares for children as part of a family day care service—see the *Children (Education and Care Services) National Law (NSW)*.

[Second reading speech made in—
Legislative Council on 15 August 2018
Legislative Assembly on 19 September 2018]