

Children (Education and Care Services) National Law (NSW) No 104a of 2010

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New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Note**

The Education and Care Services National Law is applied as a law of NSW by the NSW [Children \(Education and Care Services National Law Application\) Act 2010](#). This version is the Law as it currently applies in NSW.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

Editorial note—

The Education and Care Services National Law is applied as a law of NSW by the NSW *Children (Education and Care Services National Law Application) Act 2010*. This version is the Law as it currently applies in NSW.

Part 1 Preliminary

1 Short title

This Law may be cited as the *Children (Education and Care Services) National Law (NSW)*.

2 Commencement

This Law commences in a participating jurisdiction as provided under the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3 Objectives and guiding principles

- (1) The objective of this Law is to establish a national education and care services quality framework for the delivery of education and care services to children.
- (2) The objectives of the national education and care services quality framework are—
 - (a) to ensure the safety, health and wellbeing of children attending education and care services;
 - (b) to improve the educational and developmental outcomes for children attending education and care services;
 - (c) to promote continuous improvement in the provision of quality education and care services;
 - (d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;
 - (e) to improve public knowledge, and access to information, about the quality of

education and care services;

(f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

(3) The guiding principles of the national education and care services quality framework are as follows—

(a) that the rights and best interests of the child are paramount;

(b) that children are successful, competent and capable learners;

(c) that the principles of equity, inclusion and diversity underlie this Law;

(d) that Australia's Aboriginal and Torres Strait Islander cultures are valued;

(e) that the role of parents and families is respected and supported;

(f) that best practice is expected in the provision of education and care services.

4 How functions to be exercised

An entity that has functions under this Law is to exercise its functions having regard to the objectives and guiding principles of the national education and care services quality framework set out in section 3.

5 Definitions

(1) In this Law—

approved education and care service means an education and care service for which a service approval exists;

approved family day care service means an approved education and care service that is a family day care service;

approved family day care venue means a place other than a residence where an approved family day care service is provided;

approved learning framework means a learning framework approved by the Ministerial Council;

approved provider means a person who holds a provider approval;

associated children's service means a children's service that is operated or intended to be operated by an approved provider at the same place as an approved education and care service;

Australian Accounting Standards means the standards issued or pronounced by

the Australian Accounting Standards Board;

authorised officer means a person authorised to be an authorised officer under Part 9;

Authority Fund means the Australian Children’s Education and Care Quality Authority Fund established under section 274;

Board means the Australian Children’s Education and Care Quality Authority Board established under this Law;

certified supervisor means a person who holds a supervisor certificate;

chief executive officer means the chief executive officer of the National Authority appointed under this Law;

children’s service means a service providing or intended to provide education and care on a regular basis to children under 13 years of age that is primarily regulated under a children’s services law of a participating jurisdiction and is not an education and care service;

children’s services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a children’s services law for the purposes of this Law;

children’s services regulator, in relation to a participating jurisdiction, means a person declared by a law of that jurisdiction to be the children’s services regulator for the purposes of this Law;

Commonwealth Minister means the Minister of the Commonwealth who is responsible for policies and programs relating to education and care services;

compliance direction means a compliance direction under section 176;

compliance notice means a compliance notice under section 177;

education and care service means any service providing or intended to provide education and care on a regular basis to children under 13 years of age other than—

- (a) a school providing full-time education to children, including children attending in the year before grade 1 but not including a preschool program delivered in a school or a preschool that is registered as a school; or
- (b) a preschool program delivered in a school if—
 - (i) the program is delivered in a class or classes where a full-time education program is also being delivered to school children; and
 - (ii) the program is being delivered to fewer than 6 children in the school; or

(c) a personal arrangement; or

(d) a service principally conducted to provide instruction in a particular activity; or

Example—

Instruction in a particular activity could be instruction in sport, dance, music, culture or language or religious instruction.

(e) a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; or

(f) care provided under a child protection law of a participating jurisdiction; or

(g) a prescribed class of disability service; or

(h) a service of a prescribed class;

Example—

Education and care services to which this Law applies include long day care services, family day care services, outside school hours services and preschool programs including those delivered in schools, unless expressly excluded.

education and care service premises means—

(a) in relation to an education and care service other than a family day care service, each place at which an education and care service operates or is to operate; or

(b) in relation to a family day care service—

(i) an office of the family day care service; or

(ii) an approved family day care venue; or

(iii) each part of a residence used to provide education and care to children as part of a family day care service or used to provide access to the part of the residence used to provide that education and care;

education law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an education law for the purposes of this Law;

educator means an individual who provides education and care for children as part of an education and care service;

eligible association means an association of a prescribed class;

family day care co-ordinator means a person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service;

family day care educator means an educator engaged by or registered with a

family day care service to provide education and care for children in a residence or at an approved family day care venue;

family day care residence means a residence at which a family day care educator educates and cares for children as part of a family day care service;

family day care service means an education and care service that is delivered through the use of 2 or more educators to provide education and care for children in residences whether or not the service also provides education and care to children at a place other than a residence;

family member, in relation to a child, means—

- (a) a parent, grandparent, brother, sister, uncle, aunt, or cousin of the child, whether of the whole blood or half-blood and whether that relationship arises by marriage (including a de facto relationship) or by adoption or otherwise; or
- (b) a relative of the child according to Aboriginal or Torres Strait Islander tradition; or
- (c) a person with whom the child resides in a family-like relationship; or
- (d) a person who is recognised in the child's community as having a familial role in respect of the child;

former education and care services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a former education and care services law for the purposes of this Law;

grade 1, in relation to a school, means the first year of compulsory full-time schooling;

guardian, in relation to a child, means the legal guardian of the child;

infringements law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an infringements law for the purposes of this Law;

Ministerial Council means the Ministerial Council consisting of the persons who from time to time hold office as Ministers of the Crown responsible for early childhood education or care in the governments of the States and Territories and the Commonwealth;

National Authority means the Australian Children's Education and Care Quality Authority established under this Law;

national education and care services quality framework means—

- (a) this Law; and
- (b) the national regulations; and

(c) the National Quality Standard; and

(d) the prescribed rating system;

National Partnership Agreement means the National Partnership Agreement on the National Quality Agenda for Early Childhood and Care entered into by the States and Territories and the Commonwealth on 7 December 2009, as amended from time to time;

National Quality Framework means the national education and care services quality framework;

National Quality Standard means the National Quality Standard prescribed by the national regulations;

national regulations means the regulations made under this Law;

nominated supervisor, in relation to an education and care service, means a person—

(a) who is a certified supervisor; and

(b) who is nominated by the approved provider of the service under Part 3 to be the nominated supervisor of that service; and

(c) who has consented to that nomination;

Note—

A person may be both the nominated supervisor of a family day care service and the family day care co-ordinator for that service if the person meets the criteria for each role.

office, in relation to a family day care service, means—

(a) the principal office or any other business office of the approved provider of the service; or

(b) any premises of the service from which its family day care educators are co-ordinated;

parent, in relation to a child, includes—

(a) a guardian of the child; and

(b) a person who has parental responsibility for the child under a decision or order of a court;

participating jurisdiction means a State or Territory in which—

(a) this Law applies as a Law of the State or Territory; or

- (b) a law that substantially corresponds to the provisions of this Law has been enacted;

payment, in relation to a prescribed fee, includes payment by electronic or other means;

person means—

- (a) an individual; or
- (b) a body corporate; or
- (c) an eligible association; or
- (d) a partnership; or
- (e) a prescribed entity;

person with management or control, in relation to an education and care service, means—

- (a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth who is responsible for managing the delivery of the education and care service; or
- (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- (c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- (d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service;

personal arrangement means education and care provided to a child—

- (a) by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age; or
- (b) by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised;

preschool program means an early childhood educational program delivered by a qualified early childhood teacher to children in the year that is 2 years before grade 1 of school;

prescribed ineligible person means a person in a class of persons prescribed by the national regulations to be prescribed ineligible persons;

protected disclosure—see section 296;

provider approval means a provider approval—

(a) granted under Part 2 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a provider approval that has been cancelled;

public sector law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a public sector law for the purposes of this Law;

rating assessment means an assessment or reassessment of an approved education and care service under Part 5;

Ratings Review Panel means a Ratings Review Panel established under section 146;

receiving approved provider has the meaning set out in section 58;

Regulatory Authority means a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction;

relevant Commonwealth Department means the government department administered by the Commonwealth Minister;

relevant tribunal or court, in relation to a participating jurisdiction, means the tribunal or court declared by a law of that jurisdiction to be the relevant tribunal or court for the purposes of this Law or a provision of this Law;

residence means the habitable areas of a dwelling;

school children includes children attending school in the year before grade 1;

school means—

(a) a government school; or

(b) a non-government school that is registered or accredited under an education law of a participating jurisdiction;

serious detrimental action—see section 296;

service approval means a service approval—

(a) granted under Part 3 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a service approval that has been cancelled;

staff member, in relation to an education and care service, means any individual (other than the nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as family day care co-ordinator, educator or otherwise;

supervisor certificate means a supervisor certificate—

(a) issued under Part 4 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction—

but does not include a supervisor certificate that has been cancelled;

transferring approved provider has the meaning set out in section 58;

working with children card means a card issued to a person under a working with children law of a participating jurisdiction that permits that person to work with children;

working with children check means a notice, certificate or other document granted to, or with respect to, a person under a working with children law to the effect that—

(a) the person has been assessed as suitable to work with children; or

(b) there has been no information that if the person worked with children the person would pose a risk to the children; or

(c) the person is not prohibited from attempting to obtain, undertake or remain in child-related employment;

working with children law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with children law for the purposes of this Law;

working with vulnerable people law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with vulnerable people law for the purposes of this Law.

(2) In this Law, a reference (either generally or specifically) to a law or a provision of a

law (including this Law) includes a reference to the statutory instruments made or in force under the law or provision.

- (3) In this Law a reference to education and care includes a reference to education or care.
- (4) In this Law, an education and care service as defined in subsection (1) is an education and care service even if the service also provides education and care to children of or over the age of 13 years.
- (5) In this Law, a children's service as defined in subsection (1) is a children's service even if the service also provides education and care to children of or over the age of 13 years.

6 Interpretation generally

- (1) Schedule 1 applies in relation to this Law.
- (2) The National Partnership Agreement is declared to be a relevant document for the purposes of paragraph (h) of the definition of extrinsic material in clause 8(1) of Schedule 1.

7 Single national entity

- (1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.
- (2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.
- (3) An entity established by this Law may exercise its functions in relation to—
 - (a) one participating jurisdiction; or
 - (b) 2 or more or all participating jurisdictions collectively.
- (4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

8 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following—

- (a) things situated in or outside the territorial limits of this jurisdiction;

- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

9 Law binds the State

- (1) This Law binds the State.
- (2) In this section—

State means the Crown in right of this jurisdiction, and includes—

- (a) the Government of this jurisdiction; and
- (b) a Minister of the Crown in right of this jurisdiction; and
- (c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 10 Ministerial Council

220 Functions of Ministerial Council

- (1) The Ministerial Council has the following functions under this Law—
 - (a) to oversee the implementation and administration of the National Quality Framework;
 - (b) to promote uniformity in the application and enforcement of the National Quality Framework;
 - (c) to review and approve the National Quality Standard and set specific standards for education and care services and classes of education and care services;
 - (d) to review and approve the rating level system to be used in rating education and care services;
 - (e) to review and approve the fee structure under this Law;
 - (f) to review and approve new learning frameworks for the purposes of this Law;
 - (g) to monitor the implementation and operation of, and recommend or approve amendments to, this Law;
 - (h) to monitor the implementation and operation of the national regulations;
 - (i) to review the education and care services to which this Law applies and

recommend, or amend the national regulations to provide for, the inclusion of new classes of education and care services under this Law;

(j) to appoint the members of the Board;

(k) to monitor and review the performance of the National Authority;

(l) any other functions given to the Ministerial Council by or under this Law.

(2) The Ministerial Council must have regard to the objectives and guiding principles of the National Quality Framework in carrying out its functions.

221 Powers of Ministerial Council

The Ministerial Council may—

(a) make recommendations to the Board in relation to the exercise of the National Authority's functions under this Law; and

(b) refer any matter to the Board for consideration and advice; and

(c) make regulations in accordance with this Law; and

(d) do anything necessary or convenient to be done in carrying out its functions.

222 Directions

(1) The Ministerial Council may give directions to the Board in relation to the carrying out of the National Authority's functions under this Law, including the following—

(a) reporting and accountability to the Ministerial Council and Regulatory Authorities;

(b) the application of the National Quality Framework;

(c) the rating level system to be used in rating education and care services;

(d) the collection and use of information.

(2) The Ministerial Council may give directions to a Regulatory Authority with respect to the administration of the National Quality Framework.

(3) A direction under this section cannot be about—

(a) a particular person or education and care service; or

(b) a particular application, approval, notification, assessment or proceeding; or

(c) the determination of a rating for a particular education and care service.

(4) A direction must be in writing.

- (5) A direction must not be inconsistent with this Law.
- (6) A direction is not a legislative instrument or an instrument of a legislative character.
- (7) A direction to the Board under this section must be given to the Chairperson of the Board.
- (8) The Board or a Regulatory Authority must comply with a direction given to the Board or the Authority by the Ministerial Council under this section.

223 How Ministerial Council exercises powers

- (1) The Ministerial Council is to give a direction for the purposes of this Law by resolution of the Council passed in accordance with procedures determined by the Council.
- (2) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

Part 11 Australian Children's Education and Care Quality Authority

Division 1 The National Authority

224 National Authority

- (1) The Australian Children's Education and Care Quality Authority is established.
- (2) The National Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name.
- (3) The National Authority represents the State.

225 Functions of National Authority

- (1) The functions of the National Authority are as follows—
 - (a) to guide the implementation and administration of the National Quality Framework and to monitor and promote consistency in its implementation and administration;
 - (b) to report to and advise the Ministerial Council on the National Quality Framework;
 - (c) to report to the Regulatory Authorities and the relevant Commonwealth Department in relation to the following—
 - (i) the collection of information under this Law;

- (ii) the evaluation of the National Quality Framework;
 - (d) to establish consistent, effective and efficient procedures for the operation of the National Quality Framework;
 - (e) to determine the arrangements for national auditing for the purposes of this Law;
 - (f) to keep national information on the assessment, rating and regulation of education and care services;
 - (g) to establish and maintain national registers of approved providers, approved education and care services and certified supervisors and to publish those registers;
 - (h) to promote and foster continuous quality improvement by approved education and care services;
 - (i) to publish, monitor and review ratings of approved education and care services;
 - (j) to make determinations with respect to the highest level of rating for approved education and care services;
 - (k) in conjunction with the Regulatory Authorities, to educate and inform education and care services and the community about the National Quality Framework;
 - (l) to publish guides and resources—
 - (i) to support parents and the community in understanding quality in relation to education and care services; and
 - (ii) to support the education and care services sector in understanding the National Quality Framework;
 - (m) to publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children;
 - (n) to publish practice notes and guidelines for the application of this Law;
 - (o) to determine the qualifications for authorised officers and to provide support and training for staff of Regulatory Authorities;
 - (p) to determine the qualifications required to be held by educators, including the assessment of equivalent qualifications;
 - (q) any other function given to the National Authority by or under this Law.
- (2) In carrying out its functions, the National Authority must ensure that the regulatory burden on education and care services is minimised as far as possible.

- (3) In carrying out its functions, the National Authority must have regard to the objectives and guiding principles of the National Quality Framework.

226 National Authority may advise and seek guidance of Ministerial Council

The National Authority may provide advice to and seek the guidance of the Ministerial Council if the National Authority considers it necessary in carrying out its functions under this Law.

227 Powers of National Authority

- (1) The National Authority has all the powers of an individual and, in particular, may—
- (a) enter into contracts; and
 - (b) acquire, hold, dispose of, and deal with, real and personal property; and
 - (c) borrow and invest money; and
 - (d) develop and supply resources and consultancy services to the education and care sector on a commercial basis; and
 - (e) do anything necessary or convenient to be done in carrying out its functions.
- (2) Without limiting subsection (1), the National Authority may—
- (a) collect, hold and use information obtained under this Law by the National Authority or a Regulatory Authority about the provision of education and care to children including information about outcomes for children and about providers of education and care services in each participating jurisdiction; and

Note—

See section 270, which provides for the National Authority to publish information about approved providers.

- (b) develop protocols for communication and dispute resolution among the National Authority, the Regulatory Authorities and the relevant Commonwealth Department to provide for consistency in the implementation and administration of the National Quality Framework; and
- (c) collect, waive, reduce, defer and refund fees and enter into agreements in relation to fees in accordance with the national regulations; and
- (d) enter into agreements in relation to fees and funding with the Regulatory Authorities; and
- (e) undertake research and evaluation activities for the purpose of its functions under this Law.

228 Co-operation with participating jurisdictions and Commonwealth

- (1) The National Authority may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation with or with the assistance of any of the following—
 - (a) a government agency of a participating jurisdiction or of the Commonwealth; or
 - (b) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth; or
 - (c) a prescribed body or body in a prescribed class of bodies.
- (2) In particular, the National Authority may—
 - (a) ask a person or body referred to in subsection (1) for information that the Authority requires to carry out its functions under this Law; and
 - (b) use the information to carry out its functions under this Law.
- (3) A person or body referred to in subsection (1) that receives a request for information from the National Authority is authorised to give the information to the National Authority.

Division 2 The Board of the National Authority

Subdivision 1 Establishment and responsibilities

230 National Authority Board

The National Authority has a governing body known as the Australian Children's Education and Care Quality Authority Board.

231 Responsibilities of Board

- (1) The affairs of the National Authority are to be controlled by the Board.
- (2) The Board has all the powers and duties and all the functions of the National Authority.
- (3) All acts and things done in the name of, or on behalf of, the National Authority by or with the authority of the Board are taken to have been done by the National Authority.
- (4) The Board must ensure that the National Authority carries out its functions and duties and exercises its powers in a proper, effective and efficient way.
- (5) The Board has any other functions given to it under this Law.
- (6) Any report to the Ministerial Council under this Law is to be made by or through the Board.

- (7) The Board must act in accordance with any directions given to the National Authority by the Ministerial Council under section 222.
- (8) The Board must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

232 Membership of Board

- (1) The Board consists of up to 13 members appointed by consensus of the Ministerial Council.
- (2) The Ministerial Council must appoint by consensus one person to be the Chairperson of the Board.
- (3) One member is to be appointed for each State and Territory from 2 persons nominated by each State or Territory Minister on the Ministerial Council.
- (4) The Commonwealth Minister may nominate up to 8 persons for appointment to the Board.
- (5) Four of the persons nominated under subsection (4) must be appointed to the Board.
- (6) The Ministerial Council must appoint by consensus one of the members referred to in subsection (3) or (5) to be the Deputy Chairperson of the Board.
- (7) The members appointed to the Board must have professional skills and expertise in one or more of the following areas—
 - (a) assessment of quality in education and care services or other relevant services;
 - (b) early childhood development;
 - (c) labour market and workforce participation and development;
 - (d) best practice regulation;
 - (e) financial management and corporate governance;
 - (f) research, evaluation and performance;
 - (g) any other areas of skill determined by the Ministerial Council.
- (8) In appointing members of the Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

Subdivision 2 Members

233 Terms of office of members

- (1) Subject to this Subdivision, members of the Board hold office on the terms and conditions determined by the Ministerial Council.
- (2) Subject to this Subdivision, a member of the Board holds office for a period, being not more than 3 years, specified in the member's appointment.
- (3) A member may be reappointed for a further period of not more than 3 years.
- (4) The maximum consecutive period of appointment of a member is 2 terms.

234 Remuneration

The remuneration and allowances (if any) to be paid to members of the Board are to be determined from time to time by the Ministerial Council.

235 Vacancy in the office of member

- (1) The office of a member of the Board becomes vacant if the member—
 - (a) completes a term of office; or
 - (b) resigns the office by instrument addressed to the Chairperson of the Board; or
 - (c) is removed from office by the Ministerial Council under this section; or
 - (d) in the case of the Chairperson of the Board, is absent, without leave first being granted by the Chairperson of the Ministerial Council, from 3 or more consecutive meetings of the Board; or
 - (e) in the case of any other member, is absent, without leave first being granted by the Chairperson of the Board, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or
 - (f) dies.
- (2) The Chairperson of the Ministerial Council may remove a member of the Board from office if—
 - (a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or
 - (b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or

- (c) the Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed, or is unable, to properly carry out the member's functions as a member.
- (3) The Chairperson of the Board may resign by written notice addressed to the Chairperson of the Ministerial Council.
- (4) A resignation takes effect on the day that it is received by the Chairperson of the Board or the Chairperson of the Ministerial Council (as the case requires) or a later day specified in the notice of resignation.
- (5) If the office of a member of the Board becomes vacant, the Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.
- (6) If the office of the Chairperson of the Board becomes vacant, the Deputy Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.

236 Acting positions

- (1) The Deputy Chairperson of the Board is to act as the Chairperson of the Board—
 - (a) during a vacancy in the office of Chairperson; or
 - (b) during any period that the Chairperson—
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to carry out the duties of that office.
- (2) While the Deputy Chairperson of the Board is acting in the office of Chairperson—
 - (a) he or she has all the powers and functions of the Chairperson; and
 - (b) this Law and other laws apply to the Deputy Chairperson as if he or she were Chairperson.
- (3) Anything done by or in relation to the Deputy Chairperson when purporting to act in the office of Chairperson is not invalid merely because the occasion for the Deputy Chairperson to act had not arisen or had ceased.
- (4) The Ministerial Council may, by consensus, appoint a member of the Board to be the Deputy Chairperson of the Board—
 - (a) during a vacancy in the office of Deputy Chairperson; or
 - (b) during any period that the Deputy Chairperson—
 - (i) is acting as the Chairperson; or
 - (ii) is absent from duty; or

(iii) is, for any reason, unable to carry out the duties of that office.

- (5) A person nominated by a Minister on the Ministerial Council may, with the approval of the Chairperson of the Board, act as a member of the Board in the place of the member appointed on the nomination of that Minister if that member is unable to attend a meeting of the Board.

237 Leave of absence

- (1) The Chairperson of the Ministerial Council may grant the Chairperson of the Board a leave of absence on the terms and conditions determined by the Chairperson of the Ministerial Council.
- (2) The Chairperson of the Board may grant leave of absence to any other member of the Board on the terms and conditions determined by the Chairperson of the Board.
- (3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council if the Chairperson of the Board grants to a member a leave of absence of more than 6 months.
- (4) If a member of the Board has been granted a leave of absence of 3 months or more, the Ministerial Council may appoint a person nominated by the Minister who nominated the member to act as a member of the Board in the place of the member during that leave of absence.

238 Disclosure of conflict of interest

- (1) If—
- (a) a member of the Board has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter—

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) Particulars of any disclosure made under subsection (1) must be recorded by the Board.
- (3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Board otherwise determines—
- (a) be present during any deliberation of the Board with respect to the matter; or
 - (b) take part in any decision of the Board with respect to the matter; or
 - (c) be provided with any written material in relation to the matter.

- (4) For the purposes of the making of a determination by the Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in the making of the determination by the Board.
- (5) A contravention of this section does not invalidate any decision of the Board.

Subdivision 3 Procedure of Board

239 General procedure

- (1) The Board must hold such meetings as are necessary for it to perform its functions.
- (2) Subject to this Law, the procedure for the calling of meetings of the Board and for the conduct of business at those meetings is to be as determined by the Board.
- (3) The Chairperson of the Board may convene any meetings of the Board that are, in his or her opinion, necessary for the efficient performance of the functions of the Board.
- (4) The Chairperson of the Board must convene a meeting of the Board at the written request of the Ministerial Council.
- (5) The Board must keep minutes of its meetings.

240 Quorum

The quorum for a meeting of the Board is 9 members of whom—

- (a) one must be the Chairperson or Deputy Chairperson; and
- (b) five must be members appointed on the nomination of State and Territory Ministers; and
- (c) one may be a member appointed on the nomination of the Commonwealth Minister.

241 Chief executive officer may attend meetings of the Board

- (1) The chief executive officer of the National Authority, subject to the policies and procedures of the Board, may attend meetings of the Board and participate in its deliberations but—
 - (a) is not a member of the Board; and
 - (b) is not entitled to vote at a meeting of the Board.
- (2) Section 238 applies to the chief executive officer in relation to attendance at meetings

of the Board as if the chief executive officer were a member of the Board.

242 Presiding member

The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.

243 Voting

- (1) At a meeting of the Board each member will have a deliberative vote.
- (2) A decision supported by a majority of the votes cast at the meeting of the Board at which a quorum is present is the decision of the Board.
- (3) In the event of an equality of votes the Chairperson (or the Deputy Chairperson if the Chairperson is not present), will have a second or casting vote.
- (4) The Board must keep a record of all decisions made at a meeting.
- (5) If a decision of the Board to recommend a matter to the Ministerial Council is not arrived at unanimously, the Chairperson of the Board must advise the Ministerial Council of the reasons for and extent of the minority opinions.

244 Defects in appointment of members

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the Board.

245 Transaction of business by alternative means

- (1) The Board may, if it thinks fit, transact any of its business by the provision of papers to all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of the members constituting a quorum of the Board is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
 - (a) the approval of a resolution under subsection (1); or
 - (b) a meeting held in accordance with subsection (2)—the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) Papers may be circulated among the members for the purposes of subsection (1) by

facsimile, email or other transmission of the information in the papers concerned.

246 Delegation by Board

- (1) The Board may, in writing, delegate any of its functions, powers or duties to—
 - (a) a Regulatory Authority; or
 - (b) the chief executive of an entity or the head of a government department of a participating jurisdiction nominated by the member of the Ministerial Council who represents that jurisdiction; or
 - (c) the chief executive officer of the National Authority; or
 - (d) a committee established by the Board; or
 - (e) any other entity with the approval of the Ministerial Council.
- (2) Subject to the delegation under subsection (1), a chief executive of an entity or head of a government department may subdelegate a delegated function, power or duty to a member of staff of the entity or department.
- (3) The chief executive officer of the National Authority may subdelegate a delegated power, function or duty to a member of the staff of the National Authority.

247 Committees

- (1) The Board may establish committees to assist it in carrying out its functions.
- (2) The Board must determine—
 - (a) the membership and functions of a committee;
 - (b) the procedure at or in relation to meetings of the committee including—
 - (i) the convening of meetings; and
 - (ii) the quorum for meetings; and
 - (iii) the selection of a committee member to be the chairperson of the committee; and
 - (iv) the manner in which questions arising at meetings of the committee are to be decided;
 - (c) the procedures for reporting to the Board.
- (3) A committee must give the Board any reports, documents and information relating to the committee's functions and activities that the Board requests.
- (4) The Board must report to the Ministerial Council on any committees it establishes.

Subdivision 4 Chief executive officer of the National Authority

248 Chief executive officer

- (1) Subject to this section, the Chairperson of the Board is to appoint a person as chief executive officer of the National Authority.
- (2) The appointment may only be made after the Ministerial Council has first endorsed the appointment on the recommendation of the Board.

249 Functions of chief executive officer

- (1) The chief executive officer is responsible for the day to day management of the affairs of the National Authority.
- (2) The chief executive officer has any other functions given to him or her or delegated to him or her under this Law.
- (3) Subject to this Law, the chief executive officer must comply with the directions and policies of the Board in carrying out his or her functions.
- (4) The chief executive officer is to report to the Board.
- (5) The chief executive officer must manage the affairs of the National Authority in a way that—
 - (a) promotes the effective use of the resources of the National Authority; and
 - (b) is consistent with this Law.
- (6) The chief executive officer must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

250 Terms and conditions of appointment

- (1) The chief executive officer of the National Authority is to be appointed for a period, not more than 3 years, specified in the officer's appointment, but is eligible for reappointment.
- (2) A member of the Board cannot be appointed as chief executive officer.
- (3) Subject to this Law, the chief executive officer holds office subject to any terms and conditions that are decided by the Board.
- (4) The chief executive officer must not engage in paid employment outside the duties of his or her office without the approval of the Chairperson of the Board.
- (5) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of

any approval given under subsection (4).

- (6) The chief executive officer of the National Authority is taken, while holding that office, to be a member of the staff of the National Authority.

251 Remuneration

The chief executive officer is to be paid the remuneration and allowances decided by the Board.

252 Vacancy in office

The office of the chief executive officer of the National Authority becomes vacant if—

- (a) the chief executive officer resigns from office by written notice addressed to the Chairperson of the Board; or
- (b) the appointment of the chief executive officer is terminated by the Board under this Law; or
- (c) the chief executive officer dies.

253 Resignation

- (1) The chief executive officer may resign the office by written notice addressed to the Chairperson of the Board.
- (2) The resignation takes effect on the day that it is received by the Chairperson of the Board or a later day specified in the notice of resignation.
- (3) The Chairperson of the Board must notify the Ministerial Council of that resignation.

254 Termination of appointment

- (1) The Board may terminate the appointment of the chief executive officer—
 - (a) for misconduct or for physical or mental incapacity that significantly impacts on the ability of the chief executive officer to perform the role; or
 - (b) if the Board is satisfied that the performance of the chief executive officer has been unsatisfactory; or
 - (c) if the chief executive officer engages in paid employment outside the duties of his or office without the approval of the Chairperson of the Board; or
 - (d) if the chief executive officer has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Board, makes the chief executive officer unfit to continue to be appointed.
- (2) The Board must terminate the appointment of the chief executive officer if the chief

executive officer—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the chief executive officer's creditors or makes an assignment of the chief executive officer's remuneration for their benefit; or
 - (b) is absent, except on a leave of absence approved by the Chairperson of the Board, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (c) fails, without reasonable excuse, to comply with section 256.
- (3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of the termination of the appointment of the chief executive officer.

255 Acting chief executive officer

- (1) The Board may appoint a person to act as the chief executive officer—
- (a) during any vacancy in the office of chief executive officer; or
 - (b) during any period that the chief executive officer—
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of that office.
- (2) The period of the acting appointment must not exceed 6 months.

256 Disclosure of interests

The chief executive officer must give written notice to the Chairperson of the Board as soon as possible of any direct or indirect personal or pecuniary interest that the chief executive officer has, or acquires, or may acquire, that conflicts or could conflict with the proper carrying out of the chief executive officer's functions.

Subdivision 5 Staff, consultants and contractors

257 Staff of National Authority

- (1) The National Authority may, for the purpose of carrying out its functions, employ staff.
- (2) The staff of the National Authority are to be employed on the terms and conditions determined by the National Authority from time to time.
- (3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

258 Staff seconded to National Authority

The National Authority may, in consultation with the relevant Regulatory Authority or the relevant Commonwealth Department, make arrangements for the secondment of staff.

259 Consultants and contractors

- (1) The National Authority may engage persons with suitable qualifications and experience as consultants or contractors.
- (2) The terms and conditions of engagement of consultants or contractors are as decided by the National Authority from time to time.

Part 13 Information, records and privacy

Division 6 Disclosure of information

273 Duty of confidentiality

- (1) An individual who is, or who has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty: \$5000.

- (2) However, subsection (1) does not apply if—
 - (a) the information is disclosed in the exercise of a function under, or for the purposes of, or in accordance with, this Law; or
 - (b) the disclosure is authorised or required by any law of a participating jurisdiction, or is otherwise required or permitted by law; or
 - (c) the disclosure is with the agreement of the person to whom the information relates; or
 - (d) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or
 - (e) the information is, or has been accessible to the public, including because it was published for the purposes of, or in accordance with, this Law; or
 - (f) the disclosure is otherwise authorised by the Ministerial Council.

- (3) In this section—

protected information means information—

- (a) that is personal to a particular individual and that identifies or could lead to the identification of the individual; and

- (b) that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law.

Part 14 Miscellaneous

Division 1 Finance

274 Australian Children's Education and Care Quality Authority Fund

- (1) The Australian Children's Education and Care Quality Authority Fund is established.
- (2) The Authority Fund is a fund to be administered by the National Authority.
- (3) The National Authority may establish accounts with any financial institution for money in the Authority Fund.
- (4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

275 Payments into Authority Fund

There is payable into the Authority Fund—

- (a) all money provided by a participating jurisdiction or the Commonwealth for the purposes of the Fund; and
- (b) the proceeds of the investment of money in the Fund; and
- (c) all grants, gifts and donations made to the National Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and
- (d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and
- (e) any other money and property prescribed by the national regulations; and
- (f) any other money or property received by the National Authority in connection with the exercise of its functions.

276 Payments out of Authority Fund

Payments may be made from the Authority Fund for the purpose of—

- (a) paying any costs or expenses, or discharging any liabilities, incurred by the National Authority in the administration or enforcement of this Law or in the performance of its functions or duties or the exercise of its powers; and
- (b) paying any remuneration or allowances payable under this Law by the National Authority; and

- (c) allocating, transferring or reimbursing money to a participating jurisdiction in accordance with the national regulations; and
- (d) any other payments recommended by the National Authority and approved by the Ministerial Council.

277 Investment of money in Authority Fund

The National Authority may invest money in the Authority Fund in accordance with the national regulations.

278 Financial management duties of National Authority

The National Authority must—

- (a) ensure that its operations are carried out efficiently, effectively and economically; and
- (b) keep proper books and records in relation to the Authority Fund; and
- (c) ensure that expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, reasonable value is obtained for money expended from the Fund; and
- (d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to—
 - (i) the correctness, regularity and propriety of payments made from the Authority Fund; and
 - (ii) receiving and accounting for payments made to the Authority Fund; and
 - (iii) prevention of fraud or mistake; and
- (e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and
- (f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and
- (g) arrange for any further audit by a qualified person of the books and records kept by the National Authority in relation to the Authority Fund, if directed to do so by the Ministerial Council.

Division 2 Reporting

281 Other reporting

- (1) The National Authority may make any reports to the Ministerial Council that it considers necessary in the performance of its functions.

- (2) The Chairperson of the Board must provide to the Ministerial Council any other reports and documents and information relating to the operations of the National Authority that the Ministerial Council requires.
- (3) The Chairperson of the Board may provide to the responsible Minister of a participating jurisdiction and the Commonwealth Minister any reports and documents and information relating to the operations of the National Authority that the responsible Minister requires.
- (4) The reports, documents and information referred to in subsection (2) must be provided within the time set by the Ministerial Council.

Division 3 Application of Commonwealth Ombudsman Act

Division 4 Legal proceedings

283 Who may bring proceedings for an offence?

- (1) The following persons may bring proceedings for an offence under this Law—
 - (a) the Regulatory Authority;
 - (b) a person authorised by the Regulatory Authority;
 - (c) a police officer.
- (2) In a proceeding for an offence against this Law or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

284 When proceedings may be brought

Proceedings for an offence under this Law must be commenced within 2 years of the date of the alleged offence.

289 Immunity

- (1) A member of the Board of the National Authority, a committee of the Board or a Ratings Review Panel is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the performance of a function under this Law; or
 - (b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the function under this Law.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to an individual referred to in that subsection attaches instead to the National Authority.

Division 8 National regulations

301 National regulations

- (1) The Ministerial Council may make regulations for the purposes of this Law.
- (2) The national regulations may provide for any matter that is required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Law.
- (3) Without limiting subsection (1), the national regulations may provide for the following—
 - (a) fees (including application fees and annual fees) for approvals and certificates and other things done under this Law;
 - (b) the indexation of fees;
 - (c) standards for education and care services;
 - (d) requirements for educational programs, including the quality of those programs and their development, documentation and delivery;
 - (e) requirements and standards to be complied with for the safety, health and wellbeing of children being educated and cared for by an education and care service;
 - (f) requirements and standards to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing education and care services;
 - (g) requirements and standards about the premises to be used to provide an education and care service including siting, design, layout, space, security and entitlement to occupy;
 - (h) requirements and standards for the staffing of education and care services including the recruitment (and conduct of criminal history or other security checks) and the appointment of staff, performance improvement, professional standards, professional development, numbers and qualifications of educators (including minimum age and requirements concerning groups of children of different ages and composition) and staffing rosters and arrangements;
 - (i) requirements and standards about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for education and care services;
 - (j) requirements and standards for partnerships between education and care services and the community in which they are located and the families of children being

- educated and cared for by education and care services, including requirements for services to link to other support services for children and families;
- (k) requirements and standards as to the leadership and management of education and care services including governance and fitness and propriety of all staff members and volunteers, management of grievances and complaints and the provision of information to families;
 - (l) the records, policies and procedures to be kept by approved providers and family day care educators including enrolment and attendance information;
 - (m) requirements and standards about first aid and management of children's medical conditions including—
 - (i) the training of educators and staff members; and
 - (ii) plans, policies and procedures used to manage medical conditions and first aid; and
 - (iii) the keeping and storage of first aid kits and medications;
 - (n) information required to be submitted for applications made under this Law;
 - (o) requirements and standards for the provision and display of information by approved providers;
 - (p) the publication of information about enforcement actions taken under this Law, including notice and review of proposals to publish information;
 - (q) matters relating to the application of this Law to partnerships, eligible associations or prescribed entities;
 - (r) requirements relating to the receipt and payment and distribution of fees and monetary penalties payable under this Law.
- (4) The national regulations—
- (a) may be of a general or limited application;
 - (b) may differ according to differences in time, place (including jurisdiction) or circumstances;
 - (c) may differ according to the type or class of education and care service and the ages of children being educated and cared for by a service;
 - (d) may exempt any education and care service or any type or class of education and care service from complying with all or any of the regulations;
 - (e) may leave any matter or thing to be from time to time determined, applied,

dispensed with or regulated by a Regulatory Authority;

- (f) may apply, adopt or incorporate by reference any document either—
 - (i) as in force at the date the national regulations come into operation or at any date before then; or
 - (ii) wholly or in part or as amended by the national regulations;
- (g) may impose penalties not exceeding \$2000 for offences against the national regulations.

302 Publication of national regulations

- (1) The national regulations are to be published on the NSW Legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

303 Parliamentary scrutiny of national regulations

- (1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.
- (2) A committee of the Parliament of a participating jurisdiction may consider, and report to the Parliament about, the regulation in the same way the committee may consider and report to the Parliament about regulations made under Acts of that jurisdiction.
- (3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the 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.
- (4) A regulation disallowed under subsection (3) does not cease to have effect in the participating jurisdiction, or any other participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions.
- (5) If a regulation is disallowed in a majority of the participating jurisdictions, it ceases to have effect in all participating jurisdictions on the day of its disallowance in the last of the jurisdictions forming the majority.
- (6) In this section—
regulation includes a provision of a regulation.

304 Effect of disallowance of national regulation

- (1) The disallowance of a regulation in a majority of jurisdictions has the same effect as a

repeal of the regulation.

- (2) If a regulation ceases to have effect under section 303 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation had not been made.
- (3) The restoration or revival of a law under subsection (2) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.
- (4) In this section—

regulation includes a provision of a regulation.

Part 15 Transitional provisions

Division 3 National Authority

319 First meeting of National Authority

Despite section 239, the Ministerial Council is to convene the first meeting of the Board of the National Authority.

320 First chief executive officer of National Authority

- (1) Despite section 248, the first chief executive officer of the National Authority is to be appointed by the Chairperson of the Ministerial Council on the basis of a consensus recommendation of the Ministerial Council.
- (2) The appointment is to be on the remuneration and other terms and conditions set out in the appointment.
- (3) Any amount payable to the first chief executive officer under the appointment is payable from the Authority Fund.

321 First annual report of National Authority

Despite section 279, the first annual report of the National Authority—

- (a) is to be made within 4 months after the end of the financial year ending 30 June 2012; and
- (b) is to cover the period from the first meeting of the National Authority until 30 June 2012.

Division 4 General

324 Savings and transitional regulations

- (1) The national regulations may contain provisions (**savings and transitional**

provisions) of a savings or transitional nature—

- (a) consequential on the enactment of this Law in a participating jurisdiction; or
- (b) to otherwise allow or facilitate the change from the operation of a former education and care services law of a participating jurisdiction to the operation of this Law.

(2) Savings and transitional regulations may have retrospective operation to a day not earlier than the day on which section 1 of this Law commences.

Schedule 1 Miscellaneous provision relating to interpretation

(Section 6)

Part 1 Preliminary

1 Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2 General

2 Law to be construed not to exceed legislative power of Legislature

- (1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.
- (2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—
 - (a) it is a valid provision to the extent to which it is not in excess of the power; and
 - (b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.
- (3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3 Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4 Material that is, and is not, part of this Law

- (1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

- (2) A Schedule to this Law is part of this Law.
- (3) Punctuation in this Law is part of this Law.
- (4) A heading to a section or subsection of this Law does not form part of this Law.
- (5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5 References to particular Acts and to enactments

In this Law—

- (a) an Act of this jurisdiction may be cited—
 - (i) by its short title; or
 - (ii) by reference to the year in which it was passed and its number; and
- (b) a Commonwealth Act may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in a Commonwealth Act for the citation of such an Act; together with a reference to the Commonwealth; and
- (c) an Act of another jurisdiction may be cited—
 - (i) by its short title; or
 - (ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act; together with a reference to the jurisdiction.

6 References taken to be included in Act or Law citation etc

- (1) A reference in this Law to an Act includes a reference to—
 - (a) the Act as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.
- (2) A reference in this Law to a provision of this Law or of an Act includes a reference to—
 - (a) the provision as originally enacted, and as amended from time to time since its original enactment; and
 - (b) if the provision has been omitted and re-enacted (with or without modification)

since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

- (3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7 Interpretation best achieving Law's purpose

- (1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.
- (2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8 Use of extrinsic material in interpretation

- (1) In this clause—

extrinsic material means relevant material not forming part of this Law, including, for example—

- (a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and
- (b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and
- (c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and
- (d) a treaty or other international agreement that is mentioned in this Law; and
- (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and
- (f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and
- (g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and
- (h) a document that is declared by this Law to be a relevant document for the purposes of this clause.

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

- (2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—
 - (a) if the provision is ambiguous or obscure—to provide an interpretation of it; or
 - (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or
 - (c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.
- (3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—
 - (a) the desirability of a provision being interpreted as having its ordinary meaning; and
 - (b) the undesirability of prolonging proceedings without compensating advantage; and
 - (c) other relevant matters.

9 Effect of change of drafting practice and use of examples

If—

- (a) a provision of this Law expresses an idea in particular words; and
- (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—
 - (i) the use of a clearer or simpler style; or
 - (ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10 Use of examples

If this Law includes an example of the operation of a provision—

- (a) the example is not exhaustive; and
- (b) the example does not limit, but may extend, the meaning of the provision; and
- (c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11 Compliance with forms

- (1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.
- (2) If a form prescribed or approved by or for the purpose of this Law requires—
 - (a) the form to be completed in a specified way; or
 - (b) specified information or documents to be included in, attached to or given with the form; or
 - (c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,the form is not properly completed unless the requirement is complied with.

Part 3 Terms and references

12 Definitions

- (1) In this Law—

Act means an Act of the Legislature of this jurisdiction.

adult means an individual who is 18 or more.

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.

amend includes—

- (a) omit or omit and substitute; or
- (b) alter or vary; or
- (c) amend by implication.

appoint includes reappoint.

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

calendar month means a period starting at the beginning of any day of one of the 12

named months and ending—

- (a) immediately before the beginning of the corresponding day of the next named month; or
- (b) if there is no such corresponding day—at the end of the next named month.

calendar year means a period of 12 months beginning on 1 January.

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation.

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.

confer, in relation to a function, includes impose.

contravene includes fail to comply with.

country includes—

- (a) a federation; or
- (b) a state, province or other part of a federation.

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent.

definition means a provision of this Law (however expressed) that—

- (a) gives a meaning to a word or expression; or
- (b) limits or extends the meaning of a word or expression.

document includes—

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device).

electronic communication means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or
- (b) a communication of information in the form of sound by means of guided or

unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity.

expire includes lapse or otherwise cease to have effect.

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act.

fail includes refuse.

financial year means a period of 12 months beginning on 1 July.

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories.

function includes a power, authority or duty.

Gazette means the Government Gazette of this jurisdiction.

gazetted means published in the Gazette.

Gazette notice means notice published in the Gazette.

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument.

individual means a natural person.

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

insert, in relation to a provision of this Law, includes substitute.

instrument includes a statutory instrument.

interest, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

Jervis Bay Territory means the Territory mentioned in the [Jervis Bay Territory Acceptance Act 1915](#) (Cwlth).

make includes issue or grant.

minor means an individual who is under 18.

modification includes addition, omission or substitution.

month means a calendar month.

named month means 1 of the 12 months of the year.

Northern Territory means the Northern Territory of Australia.

number means—

- (a) a number expressed in figures or words; or
- (b) a letter; or
- (c) a combination of a number so expressed and a letter.

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise.

office includes position.

omit, in relation to a provision of this Law or an Act, includes repeal.

party includes an individual or a body politic or corporate.

penalty includes forfeiture or punishment.

power includes authority.

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law.

printed includes typewritten, lithographed or reproduced by any mechanical means.

proceeding means a legal or other action or proceeding.

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

- (a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or Schedule of or to this Law or the Act; or
- (b) a section, clause, subclause, item, column, table or form of or in a Schedule to this

Law or the Act; or

(c) the long title and any preamble to the Act.

record includes information stored or recorded by means of a computer.

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance.

sign includes the affixing of a seal or the making of a mark.

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding.

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise.

word includes any symbol, figure or drawing.

writing includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

the Law means this Law.

13 Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14 Meaning of “may” and “must” etc

- (1) In this Law, the word **may**, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.
- (2) In this Law, the word **must**, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.
- (3) This clause has effect despite any rule of construction to the contrary.

15 Words and expressions used in statutory instruments

- (1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.
- (2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16 Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another” or “whoever” or another expression is used)—

- (a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and
- (b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17 Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

- (a) to produce the information or a document containing the information to a court, tribunal or person; or
- (b) to make a document containing the information available for inspection by a court, tribunal or person;

then, unless the court, tribunal or person otherwise directs—

- (c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being

understood by the court, tribunal or person; and

- (d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18 References to this jurisdiction to be implied

In this Law—

- (a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and
- (b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19 References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20 Reference to certain provisions of Law

If a provision of this Law refers—

- (a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or
- (b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or
- (c) to a Division, Subdivision, subsection, paragraph, subparagraph, sub-subparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to—
- (i) the Division, designated by the number, of the Part in which the reference occurs; and
 - (ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and
 - (iii) the subsection, designated by the number, of the section in which the reference occurs; and
 - (iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and
 - (v) the paragraph, designated by the number, of the clause, subclause, item, column,

table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the sub-subparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs;

as the case requires.

21 Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

- (a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and
- (b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example—

A reference to “sections 5 to 9” includes both section 5 and section 9.

It is not necessary to refer to “sections 5 to 9 (both inclusive)” to ensure that the reference is given an inclusive interpretation.

Part 4 Functions and powers

22 Performance of statutory functions

- (1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.
- (2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.
- (3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23 Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

- (a) the power includes power to amend or repeal the instrument or decision; and

- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24 Matters for which statutory instruments may make provision

- (1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—
 - (a) an Act or statutory instrument; or
 - (b) another document (whether of the same or a different kind);as in force at a particular time or as in force from time to time.
- (2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.
- (3) A statutory instrument may
 - (a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or
 - (b) apply generally to all persons, matters or things or be limited in its application to—
 - (i) particular persons, matters or things; or
 - (ii) particular classes of persons, matters or things; or
 - (c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.
- (4) A statutory instrument may—
 - (a) apply differently according to different specified factors; or
 - (b) otherwise make different provision in relation to—
 - (i) different persons, matters or things; or
 - (ii) different classes of persons, matters or things.
- (5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.
- (6) If this Law authorises or requires a matter to be regulated by statutory instrument,

the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

- (7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.
- (8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.
- (9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25 Presumption of validity and power to make

- (1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.
- (2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26 Appointments may be made by name or office

- (1) If this Law authorises or requires a person or body—
 - (a) to appoint a person to an office; or
 - (b) to appoint a person or body to exercise a power; or
 - (c) to appoint a person or body to do another thing;the person or body may make the appointment by—
 - (d) appointing a person or body by name; or
 - (e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.
- (2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27 Acting appointments

- (1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—
 - (a) a person by name; or
 - (b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned;to act in the office.
- (2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The appointer may—
 - (a) determine the terms and conditions of the appointment, including remuneration and allowances; and
 - (b) terminate the appointment at any time.
- (4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.
- (5) The appointee must not act for more than 1 year during a vacancy in the office.
- (6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—
 - (a) the appointer otherwise directs; or
 - (b) the vacancy is filled; or
 - (c) the end of a year from the day of the vacancy;whichever happens first.
- (7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.
- (8) While the appointee is acting in the office—
 - (a) the appointee has all the powers and functions of the holder of the office; and
 - (b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.
- (9) Anything done by or in relation to a person purporting to act in the office is not invalid

merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28 Powers of appointment imply certain incidental powers

- (1) If this Law authorises or requires a person or body to appoint a person to an office—
 - (a) the power may be exercised from time to time as occasion requires; and
 - (b) the power includes—
 - (i) power to remove or suspend, at any time, a person appointed to the office; and
 - (ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and
 - (iii) power to reinstate or reappoint a person removed or suspended; and
 - (iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and
 - (v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).
- (2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.
- (3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.
- (4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29 Delegation of functions

- (1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

- (a) a person or body by name; or
 - (b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.
- (2) The delegation may be—
- (a) general or limited; and
 - (b) made from time to time; and
 - (c) revoked, wholly or partly, by the delegator.
- (3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.
- (4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.
- (5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.
- (6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.
- (7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.
- (8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.
- (9) If—
- (a) the delegator is a specified officer or the holder of a specified office; and
 - (b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office;
- then—
- (c) the delegation continues in force; and
 - (d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.
- (10) If—
- (a) the delegator is a body; and

(b) there is a change in the membership of the body;

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be the delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30 Exercise of powers between enactment and commencement

(1) If a provision of this Law (the **empowering provision**) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing;

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

- (2) If a provision of a Victorian Act (the **empowering provision**) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—
- (a) to make an appointment; or
 - (b) to make a statutory instrument of a legislative or administrative character; or
 - (c) to do another thing;
- then—
- (d) the power may be exercised; and
 - (e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;
- before the empowering provision commences.
- (3) If—
- (a) this Law has commenced and confers a power to make a statutory instrument (the **basic instrument-making power**); and
 - (b) a provision of a Victorian Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the **additional instrument-making power**);
- then—
- (c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and
 - (d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).
- (4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—
- (a) enabling the exercise of a power mentioned in the subclause; or
 - (b) bringing an appointment, instrument or other thing made or done under such a power into effect;
- the instrument or provision takes effect—
- (c) on the making of the instrument; or
 - (d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

- (5) If—
- (a) an appointment is made under subclause (1) or (2); or
 - (b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4);
- the appointment, instrument or provision takes effect—
- (c) on the commencement of the relevant empowering provision; or
 - (d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.
- (6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.
- (7) After the enactment of a provision mentioned in subclause (2) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.
- (8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5 Distance, time and age

31 Matters relating to distance, time and age

- (1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.
- (2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—
- (a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and
 - (b) in any other case—by including the day on which the purpose is to be fulfilled.
- (3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.
- (4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is

to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

- (5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.
- (6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.
- (7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6 Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect

If a provision of this Law is expressed—

- (a) to expire on a specified day; or
- (b) to remain or continue in force, or otherwise have effect, until a specified day;

this provision has effect until the last moment of the specified day.

33 Repealed Law provisions not revived

If a provision of this Law is repealed or amended by a Victorian Act, or a provision of a Victorian Act, the provision is not revived merely because the Victorian Act or the provision of the Victorian Act—

- (a) is later repealed or amended; or
- (b) later expires.

34 Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

- (a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or
- (b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or
- (d) affect a penalty incurred in relation to an offence arising under the provision; or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege,

liability or penalty.

- (2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35 Continuance of repealed provisions

If a Victorian Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36 Law and amending Acts to be read as one

This Law and all Victorian Acts amending this Law are to be read as one.

Part 7 Instruments under Law

37 Schedule applies to statutory instruments

- (1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.
- (2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8 Application to coastal sea

38 Application

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.