

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

[2011-70]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Note**

The *Children (Education and Care Services) National Law (NSW)* applies, with modifications, to State regulated education and care services under this Act. This Act includes, as an Editorial note at the end of the Act, the provisions of that Law that apply to those services (the National Law Alignment Provisions), but further modifications to the interpretation of those provisions are made by Part 4 of this Act and the regulations under this Act.

### 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*.

File last modified 27 May 2019

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



New South Wales

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



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

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

**approved provider** means:

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

**education and care service**—see section 4.

**exempt premises**—see section 5.

**mobile education and care service**—see section 4.

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

**National Law Alignment Provisions**—see section 17.

**occasional education and care service**—see section 4.

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

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

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

**State regulated education and care service**—see section 4.

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

#### 4 Meaning of “State regulated education and care service”

- (1) For the purposes of this Act, each of the following is a **State regulated education and care service**:
  - (a) a **mobile education and care service**, being an education and care service that visits specific premises, areas or places at specified times for the purpose of providing the care,
  - (b) an **occasional education and care service**, being an education and care service that is provided at fixed premises (other than the home of the approved provider of the service) primarily on an ad hoc or casual basis and that does not usually offer full-time or all day education and care to children on an ongoing basis.
- (2) An **education and care service** is a service that provides education or care (other than residential care), or both education and care, whether directly or indirectly, for one or more children under the age of 6 years and who do not ordinarily attend school (disregarding any children who are related to the person providing the care).
- (3) However, a **State regulated education and care service** does not include any of the following:
  - (a) a service that is an education and care service within the meaning of the National Law (disregarding this Act),
  - (b) a service provided by a designated agency within the meaning of the [Children and Young Persons \(Care and Protection\) Act 1998](#),
  - (c) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned,
  - (d) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one

of the children resides, being a service that is not advertised,

(e) a service involving medical or clinical care provided by a hospital,

(f) a regular child-minding service:

(i) that is provided in connection with a hospital, health service or a recreational or commercial facility, and

(ii) that is provided by or on behalf of the person conducting the hospital, health service or recreational or commercial facility, and

(iii) that is provided to care for children only:

(A) while a sibling of the child being cared for is being treated at the hospital or health service, or

(B) while the children's parents or authorised carers are visiting or being treated at the hospital or health service or are using the recreational or commercial facility,

(g) a service principally conducted to provide instruction in a particular activity,

**Note—**

Instruction in sport, dance, music, culture, language or religion are examples.

(h) a service under which formal education in accordance with the school curriculum set out in Part 3 of the *Education Act 1990* is provided by a government school or a registered non-government school within the meaning of that Act,

(i) a service provided at exempt premises, but only if the service is established, registered or licensed as part of the institution operating on those premises,

(j) a service excluded from the operation of this Act by the regulations.

(4) In this section:

**hospital** means:

(a) a private health facility licensed under the *Private Health Facilities Act 2007*, or

(b) a declared mental health facility or a private mental health facility within the meaning of the *Mental Health Act 2007*, or

(c) a public hospital within the meaning of the *Health Services Act 1997*.

## 5 Exempt premises

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



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

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

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

## **Part 2**

### **7 (Repealed)**

## **Part 3 State regulated education and care services**

### **Division 1 Operation of State regulated education and care services**

#### **8 Unauthorised provision of education and care service**

- (1) A person must not provide a State regulated education and care service unless:
  - (a) the person is an approved provider in respect of that service, and
  - (b) the service is an approved education and care service.

Maximum penalty: \$22,000.

- (2) A nominated supervisor of a State regulated education and care service who is not the approved provider of the service does not commit an offence against this section in respect of anything done in the course of supervising that service in accordance with this Act.
- (3) An employee or other person who provides or assists in providing a State regulated education and care service does not commit an offence against this section if the employee or other person is acting in accordance with directions given by the

approved provider of the service.

## **9 Advertising of unauthorised education and care service**

- (1) A person must not advertise or hold out that the person is willing to provide a State regulated education and care service unless:
- (a) the person is an approved provider in respect of the service concerned, and
  - (b) the particular service being advertised is an approved education and care service.

Maximum penalty: \$550.

- (2) A person must not knowingly publish any advertisement inviting the attendance of children at a State regulated education and care service that is not an approved education and care service.

Maximum penalty: \$550.

- (3) A person is not guilty of an offence under subsection (1) or (2) if:
- (a) the State regulated education and care service is a service that is proposed to be provided in the future, and
  - (b) the person has duly applied for any provider approval or service approval required to authorise the person to provide the proposed State regulated education and care service, and
  - (c) the application has not been finally determined.

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

Maximum penalty: \$550.

## **10 (Repealed)**

## **Division 2 Provider approvals**

### **11 Provider approvals**

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

#### **Note—**

See also Division 3 of Part 4, which provides for the recognition, for the purposes of this Act, of provider

approvals granted under the National Law.

## **12 Contravention of provider approval**

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

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

## **Division 3 Service approvals**

### **13 Service approvals**

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

### **14 Contravention of service approval**

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

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

### **14A Service waivers and temporary waivers**

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

#### **Note—**

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

## **Division 4 Assessment and rating**

### **15 Assessment and rating of State regulated education and care services**

- (1) The National Law Alignment Provisions provide for the assessment by the Regulatory Authority of State regulated education and care services and the determination of rating levels (other than the highest rating level) for the services.
- (2) The regulations may make provision for the award of the highest rating level to State regulated education and care services.
- (3) Subsection (2) does not prevent the Regulatory Authority from entering into arrangements with the National Authority for the assessment of State regulated education and care services and the award of the highest rating level to those services by the National Authority.

**16 (Repealed)**

**Part 4 National Law alignment**

**Division 1 Alignment with National Law**

**17 Alignment with National Law**

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

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

**18 Application of [Children \(Education and Care Services National Law Application\) Act 2010](#)**

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

**19 Application of [Interpretation Act 1987](#)**

The [Interpretation Act 1987](#) does not apply in respect of the National Law Alignment Provisions.

**Note—**

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

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

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

## **Division 2 Modification of National Law**

### **21 Excluded provisions**

- (1) For the purposes of the National Law Alignment Provisions, the following provisions of the National Law are to be disregarded:
  - (a) sections 1, 2 and 3 (1) and (2) (d) (preliminary matters),
  - (b) section 7 (Single national entity),
  - (c) section 11 (a) (which dictates the jurisdiction in which an application for a provider approval must be made),
  - (d) section 19 (4) (offence of contravening conditions of provider approval),
  - (e) section 42 (Exercise of powers by another Regulatory Authority),
  - (f) section 44 (1) (a) (which dictates the jurisdiction in which an application for a service approval must be made),
  - (g) section 51 (8) (offence of contravening conditions of service approval),
  - (h), (i) (Repealed)
  - (j) section 101 (Exercise of powers by another Regulatory Authority—family day care services),
  - (k) section 102 (Application of Law to associated children’s services),
  - (l) section 103 (Offence to provide an education and care service without service approval),
  - (m) section 104 (Offence to advertise education and care service without service approval),
  - (n)–(s) (Repealed)
  - (t) section 134 (2) and Divisions 4–6 of Part 5 (which relate to certain assessment and rating functions of the National Authority),
  - (u) section 169 (7) and (8) (which relate to determinations of equivalent qualifications by the National Authority),
  - (v) (Repealed)
  - (w) section 198 (National Authority representative may enter service premises in company with Regulatory Authority),
  - (x) (Repealed)

- (y) Part 10 (Ministerial Council),
- (z) Part 11 (Australian Children’s Education and Care Quality Authority),
- (aa) Part 13 (Information, records and privacy), except sections 267 (1)-(4), 270, 271, 272 (1) and 273,
- (ab), (ac) (Repealed)
- (ad) Divisions 1 to 3 and 8 of Part 14 (Miscellaneous),
- (ae) Part 15 (Transitional provisions).

(2) This section is subject to any modifications provided for by the regulations.

## **22 References to education and care services**

For the purposes of the National Law Alignment Provisions:

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

## **23 References to National Law**

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

## **24 References to Regulatory Authority**

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

### **Note—**

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

- (2) The National Law Alignment Provisions do not confer a power to grant provider approvals and service approvals in respect of State regulated education and care services, or confer any other functions with respect to those services, on the

Regulatory Authority for another jurisdiction under the National Law.

- (3) For the purpose of the National Law Alignment Provisions, references in the National Law to provider approvals or service approvals granted under the law of another jurisdiction are to be disregarded.
- (4) This section does not affect the operation of Division 3.

**Note—**

Division 3 provides for the recognition, for the purposes of this Act, of provider approvals granted under the National Law (including provider approvals granted by the Regulatory Authority for another jurisdiction).

## **25 References to regulations**

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

## **26 References to matters that relate to national scheme only**

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

- (a) references to the National Authority,
- (b) references to the Ministerial Council (except in relation to the National Quality Standard),
- (c) references to the highest rating level for an education and care service,
- (d) (Repealed)
- (e) references to associated children's services,
- (f) (Repealed)
- (g) references to family day care services.

## **27 References to National Quality Framework and National Quality Standard**

- (1) A reference in the National Law to the National Quality Framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the following:
  - (a) this Act (including the National Law Alignment Provisions),
  - (b) the regulations under this Act,
  - (c) the National Quality Standard,
  - (d) the rating system provided for by the regulations under this Act.

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

### **27A Specific variations**

- (1) A reference in section 168 of the National Law to an approved learning framework is to be read, for the purpose of the National Law Alignment Provisions, as a reference to the learning framework approved by the Ministerial Council under the National Law as in force from time to time.
- (2) A reference in the National Law to qualifications required or approved under that Law includes, for the purpose of the National Law Alignment Provisions, a reference to any qualifications that have been determined by the National Authority to be equivalent to the qualifications required by the regulations under the National Law.
- (3) A reference in section 201 of the National Law to section 103 of the National Law is to be read, for the purpose of the National Law Alignment Provisions, as a reference to section 8 of this Act.

**Note—**

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

### **27B Fees**

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

### **28 Reviewable decisions**

- (1) For the purposes of the National Law Alignment Provisions, a reference in section 192 of the National Law to a reviewable decision for external review includes, in addition to the decisions listed in that section, any decision of the Regulatory Authority of a kind specified by the regulations to be a reviewable decision for external review.
- (2) The Minister is not to recommend the making of a regulation containing provisions for



the purposes of this section unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

- (3) For the purposes of the National Law Alignment Provisions, the note at the end of section 192 of the National Law is to be disregarded.

## **29 Further modifications**

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

## **Division 3 Recognition of matters provided for by National Law**

### **30 Approved providers**

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

### **31 Authorised officers**

- (1) A person who is authorised to be an authorised officer by the Regulatory Authority of this jurisdiction under Part 9 of the National Law is taken to be an authorised officer for the purposes of Part 9 of the National Law Alignment Provisions.
- (2) An identity card issued to the authorised officer under the National Law is taken to be an identity card identifying the authorised officer as an authorised officer authorised by the Regulatory Authority under this Act.
- (3) This section does not prevent the issue of a separate identity card by the Regulatory Authority for the purposes of this Act.

## **Part 5**

### **32-35 (Repealed)**

## **Part 6 Miscellaneous**

### **36 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters:

- (a) any matter for which national regulations can be made by the Ministerial Council under the National Law,

**Note—**

See, in particular, section 301 of the National Law.

- (b) (Repealed)

- (c) exempting specified occasional or mobile education and care services, or occasional or mobile education and care services of a specified class, from the requirement that they be provided by an approved provider or the subject of a service approval (or both) and regulating the services so exempted (including, without limitation, establishing standards to be met by those services).

- (3) A regulation may create an offence punishable by a penalty not exceeding \$2,000.

### **37 Adoption of other publications**

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

### **38 Application of [State Records Act 1998](#) to certain services**

- (1) The [State Records Act 1998](#) does not apply to a private children's service and such a service is not a public office for the purposes of that Act.
- (2) In this section:

***private children's service*** means a State regulated education and care service provided to the community by any person or body other than:

- (a) a department, office, commission, board, corporation, agency, service or instrumentality exercising any function of any branch of the Government of the State, or
- (b) a council or county council under the [Local Government Act 1993](#).

### **39 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date and has effect despite anything to the contrary in this Schedule.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Continuation of [Children's Services Regulation 2004](#)**

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

### **Part 3 Provision consequent on enactment of [Children \(Education and](#)**

## Care Services) Supplementary Provisions Amendment Act 2018

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

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

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

### Schedule 2 (Repealed)

Editorial note National Law Alignment Provisions

#### **Editorial note.**

The *Children (Education and Care Services) National Law (NSW)* applies, with modifications, to State regulated education and care services under this Act. This Editorial note includes the provisions of that Law that apply to those services (the National Law Alignment Provisions), but further modifications to the interpretation of those provisions are made by Part 4 of this Act and the regulations under this Act.

## Part 1 Preliminary

### 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.

## **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 2 Provider approval**

### **Division 1 Application for provider approval**

#### **10 Application for provider approval**

- (1) A person, other than a prescribed ineligible person, may apply to the Regulatory Authority for a provider approval.
- (2) An application may be made by more than one person.
- (3) If an application is made by more than one person—
  - (a) the prescribed information must be provided in respect of each person; and
  - (b) the requirements of this Division must be complied with by and in respect of each person.

#### **11 Form of application**

An application under section 10 must—

- (b) be in writing; and
- (c) include the prescribed information; and
- (d) include payment of the prescribed fee.

#### **12 Applicant must be fit and proper person**

- (1) An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of an education and care service.
- (2) If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that—
  - (a) each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service; and
  - (b) the applicant is a fit and proper person to be involved in the provision of an education and care service.
- (3) The head of a government department administering an education law of a

participating jurisdiction is taken to be a fit and proper person for the purposes of this Part.

### **13 Matters to be taken into account in assessing whether fit and proper person**

(1) In determining whether a person is a fit and proper person under this Division, the Regulatory Authority must have regard to—

(a) the person's history of compliance with—

(i) this Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction; and

#### **Note—**

If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

(b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and

(c) either—

(i) any prescribed matters relating to the criminal history of the person to the extent that history may affect the person's suitability for the role of provider of an education and care service; or

(ii) any check of the person under a working with vulnerable people law of a participating jurisdiction; and

(d) whether the person is bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors or, in the case of a body corporate, is insolvent under administration or an externally-administered body corporate.

(2) Without limiting subsection (1), the Regulatory Authority may have regard to—

(a) whether the person has a medical condition that may cause the person to be incapable of being responsible for providing an education and care service in accordance with this Law; and

(b) whether the financial circumstances of the person may significantly limit the person's capacity to meet the person's obligations in providing an education and

care service in accordance with this Law.

- (3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person to be involved in the provision of an education and care service.

#### **14 Regulatory Authority may seek further information**

- (1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person, the Regulatory Authority may—
  - (a) ask the person to provide further information; and
  - (b) undertake inquiries in relation to the person.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the provision of the further information is not included in the period referred to in section 15 for the Regulatory Authority to make a decision on the application.

#### **15 Grant or refusal of provider approval**

- (1) On an application under section 10, the Regulatory Authority may—
  - (a) grant the provider approval; or
  - (b) refuse to grant the provider approval.

##### **Note—**

A provider approval is granted subject to conditions in accordance with section 19.

- (2) The Regulatory Authority must not grant a provider approval unless the Authority is satisfied as to the matters in section 12.
- (3) Subject to subsection (4), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

##### **Note—**

If further information is requested under section 14(3), the period between the making of the request and the provision of the information is not included in the 60 day period.

- (4) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.
- (5) The Regulatory Authority is taken to have refused to grant a provider approval if the Regulatory Authority has not made a decision under subsection (1)—
  - (a) within the relevant period required under subsection (3); or
  - (b) within the period extended under subsection (4)—

as the case requires.

#### **16 Notice of decision on application**

The Regulatory Authority must give written notice to the applicant of a decision under section 15 and the reasons for that decision within 7 days after the decision is made.

#### **17 Duration of provider approval**

A provider approval granted under section 15 continues in force until it is cancelled or surrendered under this Law, or this Law as applying in a participating jurisdiction.

#### **18 Effect of provider approval**

A provider approval authorises the approved provider to operate an approved education and care service and an associated children's service if the approved provider is the holder of the service approval for those services.

#### **19 Conditions on provider approval**

- (1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.
- (2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.
- (3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.

#### **20 Copy of provider approval**

If the Regulatory Authority grants a provider approval under this Part, the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—

- (a) the name of the approved provider; and
- (b) if the approved provider is not an individual, the address of the principal office of the provider; and
- (c) any conditions to which the approval is subject; and
- (d) the date that the provider approval was granted; and
- (e) the provider approval number; and
- (f) any other prescribed matters.



## **Division 2 Reassessment**

### **21 Reassessment of fitness and propriety**

- (1) The Regulatory Authority may at any time assess—
  - (a) whether an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or
  - (b) whether a person with management or control of an education and care service operated by an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or
  - (c) whether a person who becomes a person with management or control of an education and care service operated by the approved provider after the grant of the provider approval is a fit and proper person to be involved in the provision of an education and care service.
- (2) Sections 13 and 14 apply to the reassessment.

## **Division 3 Amendment of provider approvals**

### **22 Amendment of provider approval on application**

- (1) An approved provider may apply to the Regulatory Authority for an amendment of the provider approval.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority must decide the application by—
  - (a) amending the provider approval in the way applied for; or
  - (b) with the applicant's written agreement, amending the provider approval in another way; or
  - (c) refusing to amend the provider approval.
- (4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.
- (5) Without limiting subsection (3), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

### **23 Amendment of provider approval by Regulatory Authority**

- (1) The Regulatory Authority may amend a provider approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.
- (3) The Regulatory Authority must give written notice to the approved provider of the amendment.
- (4) An amendment under this section has effect—
  - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (2); or
  - (b) if another period is specified by the Regulatory Authority, at the end of that period.

### **24 Copy of amended provider approval to be provided**

If the Regulatory Authority amends a provider approval under this Division, the Regulatory Authority must—

- (a) provide an amended copy of the provider approval to the approved provider; and
- (b) make any necessary amendments to any service approval held by the provider and provide an amended copy of the service approval to the approved provider.

## **Division 4 Suspension or cancellation of provider approval**

### **25 Grounds for suspension of provider approval**

The Regulatory Authority may suspend a provider approval if—

- (a) the approved provider has been charged with an indictable offence, or with an offence that if committed in this jurisdiction would be an indictable offence, or any other circumstance indicates that the approved provider may not be a fit and proper person to be involved in the provision of an education and care service; or
- (b) the approved provider has failed to comply with a condition of the provider approval; or
- (c) the approved provider has failed to comply with this Law as applying in any participating jurisdiction; or
- (d) action is being taken under Part 7 (other than a compliance direction) in respect of more than one education and care service operated by the approved provider; or
- (e) the approved provider has not operated any education and care service for a period of

more than 12 months (including any period of suspension); or

- (f) the approved provider purported to transfer or receive a transfer of an approved education and care service without the consent of the Regulatory Authority; or
- (g) the approved provider has not paid any outstanding prescribed fees.

## **26 Show cause notice before suspension**

- (1) This section applies if the Regulatory Authority is considering the suspension of a provider approval under section 25.
- (2) The Regulatory Authority must first give the approved provider a notice (**show cause notice**) stating—
  - (a) that the Regulatory Authority intends to suspend the provider approval; and
  - (b) the proposed period of suspension; and
  - (c) the reasons for the proposed suspension; and
  - (d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

## **27 Decision to suspend after show cause process**

After considering any written response from the approved provider received within the time allowed by section 26(2)(d), the Regulatory Authority may—

- (a) suspend the provider approval for a period not more than the prescribed period; or
- (b) decide not to suspend the provider approval.

## **28 Suspension without show cause notice**

- (1) The Regulatory Authority may suspend the provider approval on a ground referred to in section 25 without giving the approved provider a show cause notice under section 26 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the provider.
- (2) The suspension may not be for a period of more than 6 months.

## **29 Notice and taking effect of suspension**

- (1) The Regulatory Authority must give the approved provider written notice of the decision to suspend the provider approval.
- (2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.

(3) The decision under section 27 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(4) The decision under section 28 to suspend takes effect on the giving of the notice.

### **30 Effect of suspension**

(1) Subject to this section, if a provider approval is suspended under section 27 or 28 of this Law as applying in any participating jurisdiction, all service approvals held by the provider are also suspended for the same period.

(2) A suspension under subsection (1) applies to both education and care services and any associated children's services.

(3) A person whose provider approval is suspended is taken not to be an approved provider for the period of the suspension.

(4) A service approval is not suspended under subsection (1) during any period that a person is approved under section 41 to manage or control the education and care service.

(5) The Regulatory Authority may consent under Part 3 to the transfer of a service approval that is suspended under section 27 or 28.

(6) The suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date.

### **31 Grounds for cancellation of provider approval**

The Regulatory Authority may cancel a provider approval if—

(a) the Regulatory Authority is satisfied that the approved provider or a person with management or control of an education and care service operated by the approved provider is not a fit and proper person to be involved in the provision of an education and care service; or

(b) the Regulatory Authority is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider; or

(c) the approved provider has been found guilty of an indictable offence or an offence that if committed in this jurisdiction would be an indictable offence; or

(d) the approved provider has been found guilty of an offence under this Law as applying in any participating jurisdiction; or

- (e) the approved provider has breached a condition of the provider approval; or
- (f) the approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension).

### **32 Show cause notice before cancellation**

- (1) This section applies if the Regulatory Authority is considering the cancellation of a provider approval under section 31.
- (2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—
  - (a) that the Regulatory Authority intends to cancel the provider approval; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

### **33 Decision in relation to cancellation**

- (1) After considering any written response from the approved provider received within the time allowed under section 32(2)(c), the Regulatory Authority—
  - (a) may—
    - (i) cancel the provider approval; or
    - (ii) suspend the provider approval for a period not more than the prescribed period;
    - (iii) decide not to cancel the provider approval; and
  - (b) must give the approved provider written notice of the decision.
- (2) The decision to cancel the provider approval takes effect at the end of 14 days after the date of the decision or, if another period is specified by the Regulatory Authority, at the end of that period.
- (3) The notice of a decision to cancel the provider approval must set out the date on which it takes effect.
- (4) This Law applies to a suspension of a provider approval under this section as if it were a suspension under section 27.

### **34 Effect of cancellation**

- (1) Subject to this section, if a provider approval is cancelled under section 33 of this Law as applying in any participating jurisdiction, all service approvals held by the person

who was the approved provider are also cancelled.

- (2) A cancellation under subsection (1) applies to both education and care services and any associated children's services.
- (3) A service approval is not cancelled under subsection (1) if before that cancellation a person is approved under section 41 to manage or control the education and care service.
- (4) A service approval is cancelled if a person referred to in subsection (3) ceases to manage or control the service.
- (5) A provider whose provider approval is to be cancelled under section 33 may apply to the Regulatory Authority under Part 3 for consent to transfer a service approval held by the provider.
- (6) The application for consent to transfer must be made within 14 days after the date of the decision to cancel the provider approval is made.
- (7) If an application for consent to transfer is made, the service approval is suspended until the Regulatory Authority determines the application.
- (8) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the transfer specify a later date.
- (9) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse consent.

### **35 Approved provider to provide information to Regulatory Authority**

- (1) This section applies if a show cause notice has been given to an approved provider under section 26 or 32.
- (2) The approved provider, at the request of the Regulatory Authority, must, within 7 days of the request, provide the Regulatory Authority with the contact details of the parents of all children enrolled at each education and care service operated by the approved provider.
- (3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an education and care service about the suspension or cancellation.

### **36 Notice to parents of suspension or cancellation**

- (1) This section applies if a provider approval has been suspended or cancelled under section 27, 28, 33 or 34.
- (2) The Regulatory Authority may require the person who is or was the approved provider

to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at all or any of the education and care services operated by that person.

- (3) A person must comply with a requirement made of that person under subsection (2).

Penalty:

\$3000 in the case of an individual.

\$15 000 in any other case.

### **37 Voluntary suspension of provider approval**

- (1) An approved provider may apply to the Regulatory Authority for a suspension of the provider approval for a period of not more than 12 months.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to make the application.
- (4) The Regulatory Authority must within 30 days after the application is made decide whether or not to grant the application.
- (5) The Regulatory Authority must give written notice of its decision (including the period of suspension) to the approved provider.
- (6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.
- (7) A suspension under this section remains in force for the period of time specified in the notice.
- (8) The approved provider may apply to the Regulatory Authority to revoke the suspension before the end of the suspension period.
- (9) If the Regulatory Authority grants the application to revoke the suspension, the suspension ceases on the date determined by agreement with the approved provider.
- (10) If a provider approval is suspended under this section, each service approval held by the provider is also suspended for the same period unless—

- (a) a person is approved under section 41 to manage or control the education and care service to which the approval relates; or
- (b) the service approval is transferred under Division 3 of Part 3.

### **38 Surrender of provider approval by approved provider**

- (1) An approved provider may surrender the provider approval by written notice to the Regulatory Authority.
- (2) The notice must specify a date on which the surrender is intended to take effect which must be—
  - (a) after the notice is given; and
  - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to surrender the provider approval, at least 14 days before the surrender is intended to take effect.
- (4) If a provider approval is surrendered, the approval is cancelled on the date specified in the notice.
- (5) If a provider approval is surrendered, any service approval held by the provider is also taken to be surrendered.

#### **Note—**

If a service approval is surrendered, it is cancelled—see section 86. A cancelled service approval cannot be transferred—see definition of **service approval** and also Division 3 of Part 3.

## **Division 5 Approval of executor, representative or guardian as approved provider**

### **39 Death of approved provider**

- (1) This section applies if an approved provider dies.
- (2) The nominated supervisor or any other person having day to day control of an education and care service of the approved provider must notify the Regulatory Authority of the approved provider's death within 7 days after that death.
- (3) The executor of the estate of the approved provider may continue to operate any approved education and care service of the approved provider for the relevant period provided the nominated supervisor or any certified supervisor continues to manage the day to day operation of the service.
- (4) The executor of the estate of the approved provider may transfer, surrender or apply



for suspension of a service approval of the approved provider under this Law during the relevant period as if the executor were the approved provider.

- (5) The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval.
- (6) The application must be made within 30 days of the death of the approved provider and must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (7) In this section ***relevant period*** means—
  - (a) the period of 30 days after the death of the approved provider; or
  - (b) if the approved provider makes an application under subsection (5) within that period, until the application is finally determined under this Law.

#### **40 Incapacity of approved provider**

- (1) This section applies if an approved provider has become incapacitated.
- (2) The legal personal representative or guardian of an approved provider may apply to the Regulatory Authority for a provider approval.
- (3) The application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.

#### **41 Decision on application**

- (1) The Regulatory Authority must not grant a provider approval to a person who has made an application under section 39 or 40 unless the Regulatory Authority is satisfied that the person is a fit and proper person to be involved in the provision of an education and care service.
- (2) Sections 12, 13 and 14 apply to the assessment of a person under subsection (1).
- (3) Subject to this section, the Regulatory Authority may—
  - (a) grant the provider approval; or
  - (b) grant the provider approval subject to conditions; or

- (c) refuse to grant the provider approval.
- (4) An approval under this section—
  - (a) may be granted for a period of not more than 6 months; and
  - (b) may be extended for a further period of not more than 6 months—  
at the discretion of the Regulatory Authority.
- (5) The provider approval is granted only in relation to the operation of the approved education and care services of the approved provider for whom the applicant is the executor, legal personal representative or guardian, as the case requires.

## **Division 6 Exercise of powers by another Regulatory Authority**

### **Part 3 Service approval**

#### **Division 1 Application for service approval**

##### **43 Application for service approval**

- (1) An approved provider may apply to the Regulatory Authority for a service approval for an education and care service.
- (2) An approved provider may only apply for a service approval for an education and care service if the approved provider is or will be the operator of the education and care service and is or will be responsible for the management of the staff members and nominated supervisor of that service.
- (3) A person who has applied for a provider approval may apply to the Regulatory Authority for a service approval, however the Regulatory Authority must not grant the service approval unless the provider approval is granted.

##### **44 Form of application**

- (1) An application for a service approval must—
  - (b) be in writing; and
  - (c) include the prescribed information; and
  - (d) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and
  - (e) include payment of the prescribed fee.
- (2) An application for service approval may include an associated children's service.
- (3) The approved provider can be the nominated supervisor if he or she—

- (a) is a certified supervisor; or
- (b) has applied for a supervisor certificate—

however the Regulatory Authority must not grant the service approval unless the supervisor certificate has been granted.

#### **45 Regulatory Authority may seek further information**

- (1) The Regulatory Authority may ask an applicant for a service approval to provide any further information that is reasonably required for the purpose of assessing the application.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 48 for the Regulatory Authority to make a decision on the application.

#### **46 Investigation of application for service approval**

- (1) For the purposes of determining an application for a service approval, the Regulatory Authority may—
  - (a) undertake inquiries and investigations, including inquiries relating to the previous licensing, accreditation or registration of the education and care service under a former education and care services law, a children's services law or an education law of any participating jurisdiction; and
  - (b) inspect the education and care service premises; and
  - (c) inspect the policies and procedures of the service.
- (2) For the purposes of an inspection under subsection (1)(b) or (c), the Regulatory Authority may enter the education and care service premises at any reasonable time.

#### **47 Determination of application**

- (1) Subject to subsection (3), in determining an application under section 43, the Regulatory Authority must have regard to—
  - (a) the National Quality Framework; and
  - (b) except in the case of a family day care residence, the suitability of the education and care service premises and the site and location of those premises for the operation of an education and care service; and
  - (c) the adequacy of the policies and procedures of the service; and
  - (d) whether the applicant has a provider approval; and

- (e) whether the nominated supervisor for the service is a certified supervisor and whether that person has consented in writing to the nomination; and
  - (f) any other matter the Regulatory Authority thinks fit; and
  - (g) any other prescribed matter.
- (2) In addition, the Regulatory Authority may have regard to—
- (a) whether the applicant is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
  - (b) the applicant's history of compliance with this Law or this Law as applying in any participating jurisdiction, including in relation to any other education and care service it operates.
- (3) Subject to subsection (4), in assessing an associated children's service for the purposes of determining whether to grant a service approval, the Regulatory Authority must have regard to the criteria under the children's services law of this jurisdiction for the grant of a children's services licence.
- (4) The criteria referred to in subsection (3) do not include criteria relating to whether the applicant is a fit and proper person.

#### **48 Grant or refusal of service approval**

- (1) On an application under section 43, the Regulatory Authority may—
- (a) grant the service approval; or
  - (b) refuse to grant the service approval.

**Note—**

A service approval is granted subject to conditions in accordance with section 51.

- (2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 90 days after the Regulatory Authority received the application.

**Note—**

If further information is requested under section 45(2), the period between the making of the request and the provision of the information is not included in the 90 day period.

- (3) The period referred to in subsection (2) may be extended with the agreement of the applicant.
- (4) The Regulatory Authority may grant a service approval solely for an education and care service if—
- (a) the application includes an application for an associated children's service; and

(b) that associated children's service does not comply with the criteria referred to in section 47(2).

(5) The Regulatory Authority is taken to have refused to grant a service approval if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant time required under subsection (2); or

(b) within the period extended under subsection (3)—

as the case requires.

(6) A service approval cannot be granted solely for an associated children's service.

#### **49 Grounds for refusal**

(1) The Regulatory Authority must refuse to grant a service approval if—

(a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service; or

(b) the applicant does not have a provider approval.

(2) The Regulatory Authority may refuse to grant a service approval on any other grounds prescribed in the national regulations.

#### **50 Notice of decision on application**

The Regulatory Authority must give written notice to the applicant of a decision under section 48 and the reasons for the decision within 7 days after the decision is made.

#### **51 Conditions on service approval**

(4) A service approval is granted subject to a condition that the approved provider must hold the prescribed insurance in respect of the education and care service.

(5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by—

(a) this Law; or

(b) the Regulatory Authority.

#### **52 Copy of service approval to be provided**

If the Regulatory Authority grants a service approval under this Part, the Regulatory Authority must provide a copy of the service approval to the approved provider stating—

(a) the name of the education and care service; and

- (b) the location of the education and care service or, if the education and care service is a family day care service, the location of the principal office and any approved family day care venue for the service; and
- (c) any conditions to which the service approval is subject; and
- (d) the date the service approval was granted; and
- (e) the service approval number; and
- (f) the name of the approved provider; and
- (g) for a service other than a family day care service, the maximum number of children who can be educated and cared for by the service at any one time; and
- (h) the details of any service waiver under Division 5 or temporary waiver under Division 6 applying to the service; and
- (i) any other prescribed matters.

### **53 Annual fee**

An approved provider must, in accordance with the national regulations, pay the prescribed annual fee in respect of each service approval held by the approved provider.

## **Division 2 Amendment of service approval**

### **54 Amendment of service approval on application**

- (1) An approved provider may apply to the Regulatory Authority for an amendment of a service approval.
- (2) An application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority may ask the approved provider to provide any further information that is reasonably required for the purpose of assessing the application.
- (4) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the provision of the further information is not included in the period referred to in subsection (5).
- (5) The Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

- (6) The Regulatory Authority must decide the application by—
  - (a) amending the service approval in the way applied for; or
  - (b) with the applicant's written agreement, amending the service approval in another way; or
  - (c) refusing to amend the service approval.
- (7) Without limiting subsection (6), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (8) An amendment cannot change a location of an education and care service.
- (9) The Regulatory Authority must give written notice of its decision to the approved provider.

#### **55 Amendment of service approval by Regulatory Authority**

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.
- (3) The Regulatory Authority must give written notice of the amendment to the approved provider.
- (4) An amendment under this section has effect—
  - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
  - (b) if another period is specified by the Regulatory Authority, at the end of that period.
- (5) The Regulatory Authority must amend a service approval to the extent that it relates to an associated children's service in accordance with any direction by the children's services regulator if that direction is given in accordance with the children's services law of this jurisdiction.

#### **56 Notice of change to nominated supervisor**

- (1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to change the person nominated as the nominated supervisor of the education and care service.
- (2) The notice must—

- (a) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and
- (b) include the prescribed information; and
- (c) be given—
  - (i) at least 7 days before the new certified supervisor is to commence work as the nominated supervisor; or
  - (ii) if that period of notice is not possible in the circumstances, as soon as practicable and not more than 14 days after the certified supervisor commences work as the nominated supervisor.

### **57 Copy of amended service approval to be provided**

If the Regulatory Authority amends a service approval under this Division, the Authority must provide an amended copy of the service approval to the approved provider.

## **Division 3 Transfer of service approval**

### **58 Service approval may be transferred**

- (1) Subject to this Division, an approved provider who holds a service approval (***transferring approved provider***) may transfer the service approval to another approved provider (***receiving approved provider***).
- (2) If a service approval is transferred to a receiving approved provider the transfer includes the transfer of the service approval for any associated children's service.
- (3) A person who holds a provider approval may transfer a service approval held by the provider even if the provider approval or service approval is suspended.

### **59 Regulatory Authority to be notified of transfer**

- (1) The transferring approved provider and the receiving approved provider must jointly notify the Regulatory Authority of the transfer—
  - (a) at least 42 days before the transfer is intended to take effect; or
  - (b) if the Regulatory Authority considers that the circumstances are exceptional, a lesser period agreed to by the Regulatory Authority.
- (2) The notice must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.



**60 Consent of Regulatory Authority required for transfer**

A service approval cannot be transferred without the consent of the Regulatory Authority.

**61 Consent taken to be given unless Regulatory Authority intervenes**

The Regulatory Authority is taken to have consented to the transfer of a service approval if—

- (a) the parties have given a notification under section 59; and
- (b) 28 days before the transfer is intended to take effect, the Regulatory Authority has not notified the parties that it intends to intervene under section 62.

**62 Transfer may be subject to intervention by Regulatory Authority**

- (1) The Regulatory Authority may intervene in a transfer of a service approval if the Regulatory Authority is concerned as to any of the following matters—
  - (a) whether the receiving approved provider is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;
  - (b) the receiving approved provider's history of compliance with this Law as applying in a participating jurisdiction, including in relation to any other education and care service it operates;
  - (c) any other matter relevant to the transfer of the service approval.
- (2) The Regulatory Authority must notify the transferring approved provider and the receiving approved provider of the decision to intervene.
- (3) The notice must be given at least 28 days before the date on which the transfer is intended to take effect.
- (4) A notification under subsection (2) must—
  - (a) be in writing; and
  - (b) include the prescribed information.

**63 Effect of intervention**

If the Regulatory Authority intervenes under section 62, the transfer must not proceed unless and until the Regulatory Authority gives written consent to the transfer.

**64 Regulatory Authority may request further information**

If the Regulatory Authority has intervened under section 62, the Regulatory Authority may—

- (a) request further information from the transferring approved provider or receiving approved provider for the purposes of deciding whether to consent to the transfer; and
- (b) undertake inquiries in relation to the receiving approved provider for that purpose.

#### **65 Decision after intervention**

- (1) If the Regulatory Authority has intervened under section 62, it may decide—
  - (a) to consent to the proposed transfer; or
  - (b) to refuse to consent to the proposed transfer.
- (2) If the Regulatory Authority consents to the proposed transfer the Regulatory Authority may impose conditions on the consent, including specifying the date on which the proposed transfer is to take effect.
- (3) The service approval must be transferred in accordance with the conditions imposed on the consent.

#### **66 Regulatory Authority to notify outcome 7 days before transfer**

- (1) If the Regulatory Authority has intervened in the transfer of a service approval, the Authority must, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party specifying that the Authority—
  - (a) consents to the transfer; or
  - (b) refuses to consent to the transfer; or
  - (c) has suspended further consideration of the transfer until further information is received and that the transfer may not proceed until a further notice is given under this section consenting to the transfer; or
  - (d) has not yet made a decision on the transfer and that the Regulatory Authority will make a decision on the transfer within 28 days and that the transfer may not proceed until a further notice is given under this section consenting to the transfer.
- (2) If the Regulatory Authority consents to the transfer, the notice—
  - (a) must specify—
    - (i) the date on which the transfer is to take effect; and
    - (ii) any conditions on the consent to the transfer; and
  - (b) may include notice of any condition that the Regulatory Authority has imposed on the provider approval or a service approval of the receiving approved provider

because of the transfer.

- (3) If the Regulatory Authority refuses to consent to the transfer, the notice must include the reasons for the refusal.

#### **67 Transfer of service approval without consent is void**

A transfer of a service approval is void if—

- (a) it is made without the consent of the Regulatory Authority; or
- (b) it is made in contravention of the conditions imposed by the Regulatory Authority on the consent to the transfer; or
- (c) it is made to a person who is not the approved provider who gave the notification under section 59 as the receiving approved provider.

#### **68 Confirmation of transfer**

- (1) The transferring approved provider and the receiving approved provider must give written notice to the Regulatory Authority within 2 days after the transfer takes effect specifying the date of the transfer.

Penalty:

\$4000, in the case of an individual.

\$20 000, in any other case.

- (2) On receipt of a notice under this section, the Regulatory Authority must amend the service approval and provide an amended copy of the service approval to the receiving approved provider.
- (3) The amendment to the service approval is taken to take effect on the date of the transfer.
- (4) An approved provider who gives notice under this section is not guilty of an offence for a failure of any other person to give that notice.

#### **69 Notice to parents**

- (1) The receiving approved provider must give written notice to the parents of children enrolled at an education and care service of the transfer of the service approval for that service to that provider.

Penalty:

\$3000, in the case of an individual.

\$15 000, in any other case.

- (2) The notice must be given at least 2 days before the date on which the transfer of the service approval takes effect.

## **Division 4 Suspension or cancellation of service approval**

### **70 Grounds for suspension of service approval**

A Regulatory Authority may suspend a service approval if—

- (a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or
- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this Law; or
- (d) the service has operated at a rating level as not meeting the National Quality Standard and—
  - (i) a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and
  - (ii) there has been no improvement in the rating level; or
- (e) the approved provider has contravened this Law as applying in any participating jurisdiction; or
- (f) the approved provider has failed to comply with a direction, compliance notice or emergency order under this Law as applying in any participating jurisdiction in relation to the service; or
- (g) the approved provider has—
  - (i) ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and
  - (ii) within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or
- (h) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or
- (i) the approved provider has not paid the prescribed annual fee for the service approval.

### **71 Show cause notice before suspension**

- (1) This section applies if the Regulatory Authority is considering the suspension of a service approval under section 70.
- (2) The Regulatory Authority must first give the approved provider a notice (***show cause***

**notice**) stating—

- (a) that the Regulatory Authority intends to suspend the service approval; and
- (b) the proposed period of suspension; and
- (c) the reasons for the proposed suspension; and
- (d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

## **72 Decision in relation to suspension**

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

- (a) suspend the service approval for a period not more than the prescribed period; or
- (b) decide not to suspend the service approval.

## **73 Suspension of service approval without show cause**

The Regulatory Authority may suspend the service approval without giving the approved provider a show cause notice under section 71 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the education and care service.

## **74 Notice and effect of decision**

- (1) The Regulatory Authority must give the approved provider written notice of the decision to suspend.
- (2) Subject to section 76, the decision under section 72 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.
- (3) Subject to section 76, the decision under section 73 to suspend takes effect on the giving of the notice.
- (4) The notice of a decision to suspend must set out—
  - (a) the period of suspension; and
  - (b) the date on which it takes effect.
- (5) A suspension of a service approval also suspends the service approval to the extent that it relates to an associated children's service.

## **75 Suspension of service approval to the extent that it relates to associated children's**

**service**

- (1) If the Regulatory Authority considers that a service approval should be suspended to the extent only that it applies to an associated children's service, the Regulatory Authority must refer the matter to the children's services regulator of this jurisdiction for determination under the children's services law.
- (2) The children's services regulator must notify the Regulatory Authority if it proposes to conduct any investigation or inquiry into an associated children's service under the children's services law.
- (3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be suspended to the extent that it relates to an associated children's service—
  - (a) the children's services regulator must advise the Regulatory Authority of that determination; and
  - (b) the service approval is suspended to the extent that it relates to the associated children's service in accordance with that determination.

**76 Transfer of suspended service**

- (1) The Regulatory Authority may consent under this Part to the transfer of a service approval that is suspended under section 72 or 73.
- (2) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the Regulatory Authority's consent to the transfer otherwise provide.

**77 Grounds for cancellation of service approval**

A Regulatory Authority may cancel a service approval if—

- (a) the Regulatory Authority reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service; or
- (b) the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension; or
- (c) the service approval was obtained improperly; or
- (d) a condition of the service approval has not been complied with.

**78 Show cause notice before cancellation**

- (1) This section applies if the Regulatory Authority is considering the cancellation of a service approval under section 77.

- (2) The Regulatory Authority must first give the approved provider a notice (***show cause notice***) stating—
- (a) that the Regulatory Authority intends to cancel the service approval; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

#### **79 Decision in relation to cancellation**

- (1) After considering any written response from the approved provider received within the time allowed by section 78(2)(c), the Regulatory Authority—
- (a) may—
    - (i) cancel the service approval; or
    - (ii) suspend the service approval for a period not more than the prescribed period; or
    - (iii) decide not to cancel the service approval; and
  - (b) must give the approved provider written notice of the decision.
- (2) Subject to section 81, the decision to cancel the service approval takes effect—
- (a) at the end of 14 days after the date of the decision; or
  - (b) if another period is specified by the Regulatory Authority, at the end of that period.
- (3) The notice of a decision to cancel must set out the date on which it takes effect.
- (4) A cancellation of a service approval includes the cancellation of the service approval to the extent that it relates to an associated children’s service.
- (5) This Law applies to a suspension of a service approval under this section as if it were a suspension under section 72.

#### **80 Cancellation of service approval to the extent that it relates to associated children’s service**

- (1) If the Regulatory Authority considers that a service approval should be cancelled to the extent only that it applies to an associated children’s service, the Regulatory Authority must refer the matter to the children’s services regulator of this jurisdiction for determination under the children’s services law.
- (2) The children’s services regulator must notify the Regulatory Authority if it proposes to

conduct any investigation or inquiry into an associated children's service under the children's services law.

- (3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be cancelled to the extent that it relates to an associated children's service—
  - (a) the children's services regulator must advise the Regulatory Authority of that determination; and
  - (b) the service approval is cancelled to the extent that it relates to the associated children's service in accordance with that determination.

### **81 Application for transfer of cancelled service**

- (1) An approved provider may apply to the Regulatory Authority under this Part for consent to transfer a service approval that is to be cancelled under this Part.
- (2) The application for consent to transfer must be made within 14 days after the decision to cancel the service approval is made.
- (3) If an application for consent to transfer is made, the cancellation of the service approval does not take effect, and the service approval is suspended, until the Regulatory Authority determines the application.

### **82 Decision on application to transfer cancelled service**

- (1) If the Regulatory Authority consents to the transfer—
  - (a) the decision to cancel the service approval is revoked; and
  - (b) the suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date for the suspension to cease.
- (2) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse to consent.

### **83 Approved provider to provide information to Regulatory Authority**

- (1) This section applies if a show cause notice has been given to an approved provider under section 71 or 78.
- (2) The approved provider, at the request of the Regulatory Authority, must provide the Authority with the contact details of the parents of all children enrolled at the education and care service.
- (3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an approved education and care



service of a suspension or cancellation of the service approval for the service.

#### **84 Notice to parents of suspension or cancellation**

- (1) This section applies if a service approval has been suspended or cancelled under section 72, 73, 79 or 81.
- (2) The Regulatory Authority may require the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at the education and care service to which the approval relates and any associated children's service.
- (3) The approved provider must comply with a requirement made under subsection (2).

Penalty:

\$3000 in the case of an individual.

\$15 000 in any other case.

#### **85 Voluntary suspension of service approval**

- (1) An approved provider may apply to the Regulatory Authority for the suspension of a service approval for a period of not more than 12 months.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority may agree to the suspension, having regard to whether the suspension is reasonable in the circumstances.
- (4) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care service and any associated children's service of the intention to make the application.
- (5) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.
- (6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

#### **86 Surrender of service approval**

- (1) An approved provider may surrender a service approval by written notice to the Regulatory Authority.

- (2) The notice must specify a date on which the surrender is intended to take effect which must be—
  - (a) after the notice is given; and
  - (b) after the end of the period of notice required under subsection (3).
- (3) The approved provider must notify the parents of children enrolled at the education and care service to which the approval relates and any associated children's service of the intention to surrender the service approval, at least 14 days before the surrender is intended to take effect.
- (4) If a service approval is surrendered, the approval is cancelled on the date specified in the notice.

## **Division 7 Exercise of powers by another Regulatory Authority**

## **Division 8 Associated children's services**

## **Division 9 Offences**

## **Part 4 Supervisor certificates**

### **Division 1 Application for supervisor certificate**

#### **106 Application for supervisor certificate**

- (1) A person may apply to the Regulatory Authority for a supervisor certificate.
- (2) An applicant must be an individual of or above the age of 18 years.

#### **107 Form of application**

An application under section 106 must—

- (a) be in writing signed by the applicant; and
- (b) include the prescribed information; and
- (c) include payment of the prescribed fee.

#### **108 Applicant must satisfy Regulatory Authority of specified matters**

- (1) An applicant must satisfy the Regulatory Authority that the applicant—
  - (a) is a fit and proper person to be a supervisor of an education and care service; and
  - (b) meets the prescribed minimum requirements for qualifications, experience and management capability.

- (2) The following persons are taken, in the absence of evidence to the contrary, to satisfy the requirements of subsection (1)(a)—
- (a) a person who is a registered teacher under an education law of a participating jurisdiction;
  - (b) a person who holds a current working with children card under the working with children law of a participating jurisdiction.

**109 Matters to be taken into account in assessing whether fit and proper person**

- (1) The Regulatory Authority, in determining whether it is satisfied that a person is a fit and proper person under this Division, must have regard to—
- (a) the history of the person's compliance with—
    - (i) this Law as applying in any participating jurisdiction; and
    - (ii) a former education and care services law of a participating jurisdiction; and
    - (iii) a children's services law of a participating jurisdiction; and
    - (iv) an education law of a participating jurisdiction; and

**Note—**

If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

- (b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and
  - (c) the working with children check for that person, or if there is no working with children check for that person, any prescribed matters relating to the criminal history of the person to the extent that that history may affect the person's suitability for the role of supervisor of an education and care service.
- (2) Without limiting subsection (1), the Regulatory Authority may have regard to whether the person has a medical condition that may affect the person's capacity to be the supervisor of an education and care service.
- (3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to satisfy the Regulatory Authority that he or she is a fit and proper person to be a supervisor of an education and care service.

### **110 Regulatory Authority may seek further information**

- (1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person to hold a supervisor certificate, the Regulatory Authority may—
  - (a) ask the person in respect of whom the assessment is being carried out to provide further information; and
  - (b) undertake inquiries or investigations in relation to the person in respect of whom the assessment is being carried out.
- (2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 111 for the Regulatory Authority to make a decision on the application.

### **111 Grant or refusal of supervisor certificate**

- (1) The Regulatory Authority may grant or refuse to grant a supervisor certificate on an application under section 106.

**Note—**

A supervisor certificate is granted subject to conditions in accordance with section 115.

- (2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority received the application.

**Note—**

If further information is requested under section 110(3), the period between the making of the request and the provision of the information is not included in the 60 day period.

- (3) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.
- (4) The Regulatory Authority is taken to have refused to grant a supervisor certificate if the Regulatory Authority has not made a decision under subsection (1)—
  - (a) within the relevant time required under subsection (3); or
  - (b) within the period extended under subsection (4)—as the case requires.

### **112 Grounds for refusal**

The Regulatory Authority must refuse to grant a supervisor certificate if—

- (a) the Regulatory Authority is not satisfied that the applicant is a fit and proper person to be the supervisor of an education and care service; or
- (b) the applicant is under the age of 18 years; or

- (c) the Regulatory Authority is not satisfied that the applicant meets the prescribed minimum requirements for qualifications, experience and management capability.

### **113 Notice of decision on application**

The Regulatory Authority must give written notice to the applicant of a decision under section 111 and the reasons for the decision within 7 days after the decision is made.

### **114 Grant of supervisor certificate to specified classes of persons**

- (1) The Regulatory Authority may grant a supervisor certificate to a person in a prescribed class of persons.

**Note—**

A supervisor certificate is granted subject to conditions in accordance with section 115.

- (2) Sections 106 to 113 do not apply to the grant of a supervisor certificate under this section.

### **115 Conditions on certificate**

- (1) A supervisor certificate is subject to any conditions imposed by—
  - (a) this Law; or
  - (b) the Regulatory Authority.
- (2) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must, to the extent that a matter is within the supervisor's control, comply with this Law in relation to that matter.
- (3) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must notify the Regulatory Authority of a change in his or her name or mailing address.

### **116 Issue of certificate**

If the Regulatory Authority grants a supervisor certificate under section 111 or 114, the Authority must issue a certificate containing the following information to the applicant—

- (a) the name of the certified supervisor or the prescribed class of person to which the certified supervisor belongs;
- (b) any conditions imposed on the supervisor certificate;
- (c) the date the supervisor certificate was granted;
- (d) the certified supervisor number;
- (e) any other prescribed information.

### **117 Effect of supervisor certificate**

A person who is the holder of a supervisor certificate may—

- (a) be nominated as the nominated supervisor of an education and care service; and

## **Division 2 Reassessment**

### **118 Reassessment of suitability**

- (1) The Regulatory Authority may at any time reassess whether a certified supervisor is a fit and proper person to be a supervisor of an education and care service.
- (2) Sections 108, 109 and 110 apply to the reassessment.

## **Division 3 Amendment of supervisor certificate**

### **119 Amendment of supervisor certificate on application**

- (1) A certified supervisor may apply to the Regulatory Authority for an amendment of the supervisor certificate.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority must decide the application by—
  - (a) amending the supervisor certificate in the way applied for; or
  - (b) with the applicant's written agreement, amending the supervisor certificate in another way; or
  - (c) refusing to amend the supervisor certificate.
- (4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.
- (5) Without limiting subsection (3), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

### **120 Amendment of supervisor certificate by Regulatory Authority**

- (1) The Regulatory Authority may amend a supervisor certificate at any time.
- (2) Without limiting subsection (1), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

- (3) The Regulatory Authority must give written notice to the certified supervisor of the amendment.
- (4) An amendment under this section has effect—
  - (a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or
  - (b) if another period is specified by the Regulatory Authority, at the end of that period.

#### **121 Notice of change of circumstances**

- (1) A certified supervisor must notify the Regulatory Authority of—
  - (a) any change in the circumstances of the supervisor that affects—
    - (i) a requirement under section 108 or 109; or
    - (ii) the information specified in the supervisor certificate under section 116; or
  - (b) the suspension or cancellation of a working with children check, working with children card or teacher registration held by the certified supervisor; or
  - (c) any disciplinary proceedings in relation to the certified supervisor under an education law of a participating jurisdiction.

Penalty: \$4000.

- (2) The notice must be given within 7 days after the change occurs.

#### **122 Notice of change of information**

If the certified supervisor notifies the Regulatory Authority of a change in any of the information stated on the supervisor certificate, the Regulatory Authority may amend the supervisor certificate to show the correct information.

### **Division 4 Suspension or cancellation of supervisor certificate**

#### **123 Grounds for suspension or cancellation of supervisor certificate**

The Regulatory Authority may suspend or cancel a supervisor certificate—

- (a) if the Regulatory Authority is of the opinion that the certified supervisor is no longer a fit and proper person to be a supervisor of an education and care service; or
- (b) if the certified supervisor fails to comply with a condition of the supervisor certificate; or
- (c) if the certified supervisor fails to comply with a requirement of this Law as applying in

any participating jurisdiction in relation to a matter within the certified supervisor's control.

#### **124 Show cause notice before suspension or cancellation**

- (1) This section applies if the Regulatory Authority is considering the suspension or cancellation of a supervisor certificate under section 123.
- (2) The Regulatory Authority must first give the certified supervisor a notice (**show cause notice**) stating—
  - (a) that the Regulatory Authority intends to suspend or cancel the supervisor certificate; and
  - (b) the reasons for the proposed suspension or cancellation; and
  - (c) that the certified supervisor may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension or cancellation.

#### **125 Decision in relation to suspension or cancellation**

After considering any written response from the certified supervisor received within the time allowed by section 124(2)(c) (if applicable), the Regulatory Authority—

- (a) may—
  - (i) suspend the supervisor certificate for a period not exceeding the prescribed period; or
  - (ii) cancel the supervisor certificate; or
  - (iii) decide not to suspend or cancel the supervisor certificate; and
- (b) must give the certified supervisor notice of the decision.

#### **126 Suspension of supervisor certificate without show cause notice**

The Regulatory Authority may suspend the supervisor certificate on a ground referred to in section 123 without giving the supervisor a show cause notice under section 124 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children.

#### **127 Notice and taking effect of suspension or cancellation**

- (1) The Regulatory Authority must give the certified supervisor written notice of the decision to suspend or cancel the supervisor certificate under section 125 or 126.
- (2) The notice of a decision to suspend must set out—



- (a) the period of suspension; and
  - (b) the date on which it takes effect.
- (3) The decision under section 125 to suspend or cancel takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.
- (4) The decision to suspend under section 126 takes effect on the giving of the notice.

### **128 Suspension or cancellation of certain supervisor certificates**

- (1) If the teacher registration of a person is suspended, the supervisor certificate of that person is suspended at the end of 14 days after that suspension unless and until the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.
- (2) If the teacher registration of a person is cancelled, the supervisor certificate of that person is cancelled at the end of 14 days after that cancellation unless the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.
- (3) The supervisor certificate of a person is suspended immediately if the working with children card of that person is suspended.
- (4) The supervisor certificate of a person is cancelled immediately if the working with children card of that person is cancelled.

### **129 Voluntary suspension of supervisor certificate**

- (1) A certified supervisor may apply to the Regulatory Authority for a suspension of the supervisor certificate for a period of not more than 12 months.
- (2) An application must—
- (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) include payment of the prescribed fee.
- (3) The Regulatory Authority may, by written notice, agree to the suspension if the Authority is satisfied that it is reasonable in the circumstances.
- (4) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.
- (5) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the certified supervisor.

### **130 Surrender of a supervisor certificate by certified supervisor**

- (1) A certified supervisor may surrender the supervisor certificate by written notice to the Regulatory Authority.
- (2) On the surrender of the supervisor certificate, the certificate is cancelled.

## **Division 5 Exercise of powers by another Regulatory Authority**

## **Division 6 Offence**

### **Part 6 Operating an education and care service**

#### **171 Offence relating to direction to exclude inappropriate persons from education and care service premises**

- (1) The Regulatory Authority may direct an approved provider, a nominated supervisor or a family day care educator to exclude a person whom the Authority is satisfied is an inappropriate person from the education and care service premises while children are being educated and cared for at the premises for such time as the Authority considers appropriate.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.

Penalty:

\$10 000, in the case of an individual.

\$50 000, in any other case.

- (3) In this section—

***inappropriate person*** means a person—

- (a) who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the education and care service; or
- (b) whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for him or her to be on the education and care service premises while children are being educated and cared for by the education and care service.

**Example—**

A person who is under the influence of drugs or alcohol.

## **Part 7 Compliance with this Law**

### **Division 1 Notices**

#### **176 Compliance directions**

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service has not complied with a provision of this Law that is prescribed by the national regulations.
- (2) The Regulatory Authority may give the approved provider a written direction (a **compliance direction**) requiring the approved provider to take the steps specified in the direction to comply with that provision.
- (3) An approved provider must comply with a direction under subsection (2) within the period (being not less than 14 days) specified in the direction.

Penalty:

\$2000, in the case of an individual.

\$10 000, in any other case.

#### **177 Compliance notices**

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty:

\$6000, in the case of an individual.

\$30 000, in any other case.

#### **179 Emergency action notices**

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.
- (2) The Regulatory Authority may, by written notice, direct the approved provider of the education and care service to take the steps specified in the notice to remove or

reduce the risk within the time (not more than 14 days) specified in the notice.

- (3) An approved provider must comply with a direction given under subsection (2).

Penalty:

\$6000, in the case of an individual.

\$30 000, in any other case.

## **Division 2 Enforceable undertakings**

### **180 Enforceable undertakings**

- (1) This section applies if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law.
- (2) The Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) A person may with the consent of the Regulatory Authority withdraw or amend an undertaking.
- (4) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (5) While an undertaking is in force, proceedings may not be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking is given.
- (6) If a person complies with the requirements of an undertaking, no further proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

### **181 Failure to comply with enforceable undertakings**

- (1) If the Regulatory Authority considers that the person who gave an undertaking under section 180 has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order under subsection (2) to enforce the undertaking.
- (2) If the relevant tribunal or court is satisfied that the person has failed to comply with a term of the undertaking, the relevant tribunal or court may make any of the following orders—

- (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order that the person take any specified action for the purpose of complying with the undertaking;
  - (c) any other order that the relevant tribunal or court considers appropriate in the circumstances.
- (3) If the relevant tribunal or court determines that the person has failed to comply with a term of the undertaking, proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

### **Division 3 Prohibition notices**

#### **182 Grounds for issuing prohibition notice**

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed—
- (a) to remain on the education and care service premises; or
  - (b) to provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following—
- (a) an approved provider;
  - (b) a certified supervisor;
  - (c) an educator;
  - (d) a family day care educator;
  - (e) an employee;
  - (f) a contractor;
  - (g) a volunteer—
- or in any other capacity.

#### **183 Show cause notice to be given before prohibition notice**

- (1) Before giving a person a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***)—

- (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
  - (b) stating the reasons for the proposed prohibition; and
  - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.
- (2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

#### **184 Deciding whether to issue prohibition notice**

- (1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.
- (2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.

#### **185 Content of prohibition notice**

A prohibition notice given to a person must state—

- (a) that the person is prohibited from doing any of the following—
  - (i) providing education and care to children for an education and care service;
  - (ii) being engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;
  - (iii) carrying out any other activity relating to education and care services; and
- (b) that the person may apply for cancellation of the notice; and
- (c) how an application for cancellation must be made.

#### **186 Cancellation of prohibition notice**

- (1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the Regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.
- (2) A person for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.
- (3) The application must—

- (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) be signed by the person.
- (4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were—
- (a) to remain at the education and care service premises; or
  - (b) to provide education and care to children.
- (5) The application may include a statement setting out any change in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.
- (6) The Regulatory Authority must decide the application as soon as practicable after its receipt.

#### **187 Person must not contravene prohibition notice**

While a prohibition notice is in force under this Law as applying in any participating jurisdiction for a person, the person must not—

- (a) provide education and care to children for an education and care service; or
- (b) be engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
- (c) carry out any other activity relating to education and care services.

Penalty: \$20 000.

#### **188 Offence to engage person to whom prohibition notice applies**

An approved provider must not engage a person as a supervisor, educator, family day care educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, an education and care service if the provider knows, or ought reasonably to know, a prohibition notice is in force under this Law as applying in any participating jurisdiction in respect of the person.

Penalty:

\$20 000, in the case of an individual.

\$100 000, in any other case.

## **Division 4 Emergency removal of children**

### **189 Emergency removal of children**

- (1) This section applies if the Regulatory Authority considers, on reasonable grounds, that there is an immediate danger to the safety or health of a child or children being educated and cared for by an education and care service.
- (2) The Regulatory Authority may remove, or cause the removal of, the child or children from the education and care service premises.
- (3) In exercising a power under subsection (2)—
  - (a) the Regulatory Authority may be given such assistance by other persons (including police officers) as is reasonably required; and
  - (b) the Regulatory Authority and any person assisting the Regulatory Authority may—
    - (i) enter the education and care service premises, without warrant; and
    - (ii) use reasonable force as necessary.
- (4) If a child is removed from the education and care service premises under subsection (2), the Regulatory Authority must ensure that the child's parents are immediately notified of the situation and the child's current location.

## **Part 8 Review**

### **Division 1 Internal review**

#### **190 Reviewable decision—internal review**

A reviewable decision for internal review is a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—

- (a) to refuse to grant a provider approval, a service approval or a supervisor certificate; or
- (b) to amend or refuse to amend a provider approval, a service approval or a supervisor certificate; or
- (c) to impose a condition on a provider approval, a service approval or a supervisor certificate; or
- (d) to suspend—
  - (i) a provider approval under section 28;
  - (ii) a service approval under section 73;



- (iii) a supervisor certificate under section 126; or
- (e) to refuse to consent to the transfer of a service approval; or
- (g) to issue a compliance direction; or
- (h) to issue a compliance notice.

### **191 Internal review of reviewable decisions**

- (1) A person who is the subject of a reviewable decision for internal review may apply to the Regulatory Authority in writing for review of the decision.
- (2) An application under subsection (1) must be made—
  - (a) within 14 days after the day on which the person is notified of the decision; or
  - (b) if the person is not notified of the decision, within 14 days after the person becomes aware of the decision.
- (3) The person who conducts the review for the Regulatory Authority must not be a person who was involved in the assessment or investigation of the person or service to whom or which the decision relates.
- (4) The person conducting the review may ask the person who applied for the review for further information.
- (5) A review under this section must be conducted within 30 days after the application is made.
- (6) The period specified in subsection (5) may be extended by up to 30 days—
  - (a) if a request for further information is made under subsection (4); or
  - (b) by agreement between the person who applied for the review and the Regulatory Authority.
- (7) The Regulatory Authority may, in relation to an application under subsection (1)—
  - (a) confirm the decision; or
  - (b) make any other decision that the Regulatory Authority thinks appropriate.

## **Division 2 External review**

### **192 Reviewable decision—external review**

A reviewable decision for external review is—

- (a) a decision of the Regulatory Authority made under section 191 (other than a decision in relation to the issue of a compliance direction or a compliance notice); or

- (b) a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—
  - (i) to suspend a provider approval under section 27; or
  - (ii) to cancel a provider approval under section 33; or
  - (iii) to suspend a service approval under section 72; or
  - (iv) to cancel a service approval under section 79 or 307; or
  - (v) to suspend or cancel a supervisor certificate under section 125; or
  - (vi) to direct the approved provider of a family day care service to suspend the care and education of children by a family day care educator; or
  - (vii) to give a prohibition notice or to refuse to cancel a prohibition notice.

**Note—**

A person is not entitled to a review under this section in respect of a suspension or cancellation of a service approval if that suspension or cancellation relates only to an associated children's service. Any right of review would be under the children's services law.

**193 Application for review of decision of the Regulatory Authority**

- (1) A person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision.
- (2) An application must be made within 30 days after the day on which the applicant is notified of the decision that is to be reviewed.
- (3) After hearing the matter, the relevant tribunal or court may—
  - (a) confirm the decision of the Regulatory Authority; or
  - (b) amend the decision of the Regulatory Authority; or
  - (c) substitute another decision for the decision of the Regulatory Authority.
- (4) In determining any application under this section, the relevant tribunal or court may have regard to any decision under this Law as applying in another participating jurisdiction of a relevant tribunal or court of that jurisdiction.

**Division 3 General**

**194 Relationship with Act establishing administrative body**

This Part applies despite any provision to the contrary in the Act that establishes the relevant tribunal or court but does not otherwise limit that Act.

## **Part 9 Monitoring and enforcement**

### **Division 1 Authorised officers**

#### **195 Authorisation of authorised officers**

- (1) The Regulatory Authority may authorise any person who the Regulatory Authority is satisfied is an appropriate person to be an authorised officer for the purposes of this Law.
- (2) In considering whether a person is an appropriate person to be an authorised officer, the Regulatory Authority must take into account the requirements for the authorisation of authorised officers determined by the National Authority under subsection (5).
- (3) An authorised officer holds office on any terms and conditions stated in the authorisation.
- (4) A defect in the authorisation of an authorised officer does not affect the validity of any action taken or decision made by the authorised officer under this Law.
- (5) The National Authority may determine the requirements for the authorisation of authorised officers under this section.
- (6) A determination under subsection (5) must be published on the website of the National Authority.

#### **196 Identity card**

- (1) The Regulatory Authority must issue to each authorised officer an identity card in the form prescribed by the national regulations.
- (2) The identity card must identify the authorised officer as an authorised officer authorised by the Regulatory Authority under this Law.
- (3) An authorised officer must—
  - (a) carry the identity card whenever the officer is exercising his or her functions under this Law; and
  - (b) show the identity card—
    - (i) before exercising a power of entry under this Law; and
    - (ii) at any time during the exercise of a power under this Law when asked to do so.

Penalty: \$1000.

- (4) An authorised officer who fails to comply with subsection (3)(b) in relation to the exercise of a power ceases to be authorised to exercise the power in relation to the matter.
- (5) An authorised officer must return his or her identity card to the Regulatory Authority on ceasing to be authorised as an authorised officer for the purposes of this Law.

Penalty: \$1000.

## **Division 2 Powers of entry**

### **197 Powers of entry for assessing and monitoring approved education and care service**

- (1) An authorised officer may exercise a power under this section for any of the following purposes—
  - (a) monitoring compliance with this Law;
  - (b) a rating assessment of an approved education and care service under Part 5;
  - (c) obtaining information requested under section 35 or 83.
- (2) An authorised officer may, at any reasonable time and with such assistants as may reasonably be required, enter any education and care service premises and do any of the following—
  - (a) inspect the premises and any plant, equipment, vehicle or other thing;
  - (b) photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises;
  - (c) inspect and make copies of, or take extracts from, any document kept at the premises;
  - (d) take any document or any other thing at the premises;
  - (e) ask a person at the premises—
    - (i) to answer a question to the best of that person's knowledge, information and belief;
    - (ii) to take reasonable steps to provide information or produce a document.
- (3) A power under subsection (1)(a) to (d) is limited to a document or thing that is used or likely to being used in the provision of the education and care service.
- (4) If the authorised officer takes any document or thing under subsection (2), he or she must—
  - (a) give notice of the taking of the document or thing to the person apparently in

charge of it or to an occupier of the premises; and

(b) return the document or thing to that person or the premises within 7 days after taking it.

(5) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

(b) the occupier of the residence has consented in writing to the entry and the inspection.

### **199 Powers of entry for investigating approved education and care service**

(1) An authorised officer may exercise the powers under this section to investigate an approved education and care service if the authorised officer reasonably suspects that an offence may have been or may be being committed against this Law.

(2) The authorised officer, with any necessary assistants, may with or without the consent of the occupier of the premises, enter the education and care service premises at any reasonable time and do any of the following—

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

(3) A power under subsection (1)(b) to (d) is limited to a document or thing that is used or likely to be used in the provision of the education and care service.

(4) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

- (b) the occupier of the residence has consented in writing to the entry and the inspection.

## **200 Powers of entry to business premises**

- (1) An authorised officer may exercise powers under this section if the authorised officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against this Law are present at the principal office or any other business premises of an approved provider.
- (2) The authorised officer, with the consent of the occupier of the premises, may enter the premises and do any of the following—
  - (a) search any part of the premises;
  - (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
  - (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document, at the premises;
  - (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;
  - (f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.
- (3) An authorised officer must not enter and search the premises with the consent of the occupier unless, before the occupier consents to that entry, the authorised officer has—
  - (a) produced his or her identity card for inspection; and
  - (b) informed the occupier—
    - (i) of the purpose of the search and the powers that may be exercised; and
    - (ii) that the occupier may refuse to give consent to the entry and search or to the taking of anything found during the search; and
    - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.

## **201 Entry to premises with search warrant**

- (1) An authorised officer under the authority of a search warrant may enter premises if the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103 at or from the premises.
- (2) An authorised officer under the authority of a search warrant may enter any education and care service premises or any premises where the authorised officer reasonably believes that an approved education and care service is operating if the authorised officer reasonably believes that the education and care service is operating in contravention of this Law.
- (3) An authorised officer under the authority of a search warrant may enter the principal office or any other business premises of an approved provider if the authorised officer reasonably believes that documents or other evidence relevant to the possible commission of an offence against this Law are present at those premises.
- (4) Schedule 2 applies in relation to the issue of the search warrant and the powers of the authorised officer on entry.

## **202 Seized items**

- (1) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must take reasonable steps to return the thing to the person from whom it was taken if the reason for the taking no longer exists.
- (2) If the thing has not been returned within 60 days after it was taken, the authorised officer must take reasonable steps to return it unless—
  - (a) proceedings have been commenced within the period of 60 days and those proceedings (including any appeal) have not been completed; or
  - (b) a court makes an order under section 203 extending the period the thing can be retained.
- (3) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must provide the owner of the thing with reasonable access to the thing.

## **203 Court may extend period**

- (1) An authorised officer may apply to a court within the period of 60 days referred to in section 202 or within a period extended by the court under this section for an extension of the period for which the thing can be held.
- (2) The court may order the extension if satisfied that retention of the thing is necessary—

- (a) for the purposes of an investigation into whether an offence has been committed; or
  - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.
- (3) The court may adjourn an application to enable notice of the application to be given to any person.

### **Division 3 Other powers**

#### **204 Power to require name and address**

- (1) This section applies if—
- (a) an authorised officer finds a person committing an offence against this Law; or
  - (b) an authorised officer finds a person in circumstances that lead, or the authorised officer has information that leads, the officer to reasonably suspect the person is committing, or has committed, an offence against this Law.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

#### **205 Power to require evidence of age, name and address of person**

- (1) This section applies if—
- (a) the national regulations require a staff member, a family day care educator or a volunteer to have attained a prescribed minimum age; and
  - (b) an authorised officer reasonably suspects that a person—
    - (i) is employed or engaged as a staff member or a family day care educator by, or is a volunteer at, an education and care service; and
    - (ii) has not attained that prescribed minimum age.
- (2) The authorised officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.
- (3) Also, the authorised officer may require the person to provide evidence of the correctness of the stated date of birth—
- (a) at the time of making the requirement under subsection (2) if, in the circumstances, it would be reasonable to expect the person to be in possession of



evidence of the correctness of the stated date of birth; or

(b) otherwise, within 14 days of making the requirement under subsection (2).

(4) The authorised officer may require the person to state the person's name and residential address if—

(a) the person refuses or is unable to comply with a requirement under subsection (2) or (3); or

(b) according to the date of birth the person states, or the evidence of the person's age the person gives, the person has not attained the prescribed minimum age.

## **206 Power of authorised officers to obtain information documents and evidence**

(1) An authorised officer may exercise a power under this section for any of the following purposes—

(a) monitoring compliance with this Law;

(b) a rating assessment of an approved education and care service under Part 5;

(c) obtaining information requested under section 35 or 83.

(2) An authorised officer may, by written notice, require a specified person to provide to the authorised officer, by writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice.

(3) The time specified in the notice must not be less than 14 days from the date the notice is issued.

(4) In this section—

***specified person*** means a person who is or has been—

(a) an approved provider, a certified supervisor or a staff member of, or a volunteer at, an approved education and care service; or

(b) a family day care educator.

## **Division 4 Offences relating to enforcement**

### **207 Offence to obstruct authorised officer**

A person must not obstruct an authorised officer in exercising his or her powers under this Law.

Penalty:

\$8000, in the case of an individual.

\$40 000, in any other case.

**208 Offence to fail to assist authorised officer**

A person must not, without reasonable excuse—

- (a) refuse to answer a question lawfully asked by an authorised officer (other than a question asked under section 197(2)(e)); or
- (b) refuse to provide information or produce a document lawfully required by an authorised officer; or
- (c) fail to comply with a requirement made by an authorised officer under clause 5(2)(f) or (g) of Schedule 2.

Penalty:

\$8000, in the case of an individual.

\$40 000, in any other case.

**209 Offence to destroy or damage notices or documents**

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept under this Law.

Penalty:

\$8000, in the case of an individual.

\$40 000, in any other case.

**210 Offence to impersonate authorised officer**

A person must not impersonate an authorised officer.

Penalty: \$8000.

**211 Protection against self incrimination**

- (1) An individual may refuse or fail to give information or do any other thing that the individual is required to do by or under this Law if giving the information or doing the thing might incriminate the individual.
- (2) However, subsection (1) does not apply to—
  - (a) the production of a document or part of a document that is required to be kept under this Law; or
  - (b) the giving of the individual's name or address in accordance with this Law; or
  - (c) anything required to be done under section 215 or 216.

- (3) Any document referred to in subsection (2)(a) that is produced by an individual or any information obtained directly or indirectly from that document produced by an individual is not admissible in evidence against the individual in any criminal proceedings (except for criminal proceedings under this Law) or in any civil proceedings.

### **212 Warning to be given**

- (1) Before requiring a person to answer a question or provide information or a document under this Part or Schedule 2, an authorised officer must—
  - (a) identify himself or herself to the person as an authorised officer by producing the officer's identity card; and
  - (b) warn the person that a failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
  - (c) in the case of an individual, warn the person about the effect of section 211.
- (2) Nothing in this section prevents an authorised officer from obtaining and using evidence given to the authorised officer voluntarily by any person.
- (3) This section does not apply to a request made under section 197.

### **213 Occupier's consent to search**

- (1) An occupier who consents in writing to the entry and inspection of his or her premises under Division 2 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed until the contrary is proved that the occupier did not consent to the entry and search.

## **Division 5 Powers of Regulatory Authority**

### **215 Power of Regulatory Authority to obtain information, documents and evidence by notice**

- (1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.
- (2) The Regulatory Authority may, by written notice, require a specified person—
  - (a) to provide to the Regulatory Authority, in writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice; or
  - (b) to produce to the Regulatory Authority, or to a person specified in the notice

acting on the Regulatory Authority's behalf, in accordance with the notice, any relevant document referred to in the notice; or

(c) to appear before the Regulatory Authority, or a person specified in the notice acting on the Regulatory Authority's behalf, at a time and place specified in the notice to give any evidence or to produce any relevant document specified in the notice.

(3) The notice must—

(a) warn the person that failure or refusal to comply with the notice would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority or the person specified in the notice acting on the Regulatory Authority's behalf may require the evidence referred to in subsection (2)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.

(5) The person may give evidence under subsection (2)(c) by telephone or video conference or other electronic means unless the Regulatory Authority, on reasonable grounds, requires the person to give that evidence in person.

(6) In this section, ***specified person*** has the meaning given in section 206(4).

#### **216 Power of Regulatory Authority to obtain information, documents and evidence at education and care service**

(1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.

(2) The Regulatory Authority may require a specified person at an education and care service—

(a) to provide the Regulatory Authority, or a person acting on the Regulatory Authority's behalf, with any specified information that is relevant to the suspected offence; or

(b) to produce to the Regulatory Authority, or to a person acting on the Regulatory Authority's behalf, any specified document that is relevant to the suspected offence.

(3) The Regulatory Authority must—

(a) warn the person that failure or refusal to comply with the requirement would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority must not require a person to remain at the education and care service more than a reasonable time for the purposes of providing information or producing documents under subsection (2).

(5) In this section, **specified person** has the meaning given in section 206(4).

#### **217 Offence to fail to comply with notice or requirement**

A person must not refuse or fail to comply with a requirement under section 215 or 216 to the extent that the person is capable of complying with that requirement.

Penalty:

\$8000, in the case of an individual.

\$40 000, in any other case.

#### **218 Offence to hinder or obstruct Regulatory Authority**

A person must not obstruct or hinder the Regulatory Authority in exercising a power under section 215 or 216.

Penalty:

\$8000, in the case of an individual.

\$40 000, in any other case.

#### **219 Self incrimination not an excuse**

(1) A person is not excused from complying with a notice or requirement under section 215 or 216 on the ground that complying with the notice or requirement may result in information being provided that might tend to incriminate the person.

(2) Subject to subsection (3), disclosed information is not admissible in evidence against the individual in any criminal proceedings (other than proceedings under section 218 or 295) or in any civil proceedings.

(3) Despite subsection (2), any information obtained from a document or documents required to be kept under this Law that is produced by a person is admissible in evidence against the person in criminal proceedings under this Law.

(4) In this section—

**disclosed information** means—

(a) the answer by an individual to any question asked under section 215 or 216; or

(b) the provision by an individual of any information in compliance with section 215 or 216; or

- (c) any information obtained directly or indirectly because of that answer or the provision of that information.

## **Part 12 Regulatory Authority**

### **262 Delegations**

- (1) The Regulatory Authority may in writing delegate any of its functions and powers under this Law (other than this power of delegation) to—
  - (a) any person employed under a public sector law of this jurisdiction; or
  - (b) a prescribed person or a person in a prescribed class of persons.
- (2) A delegate of the Regulatory Authority must disclose to the Regulatory Authority, at the request of the Authority, any direct or indirect personal or pecuniary interest the delegate may have in relation to the delegated functions and powers.

## **Part 13 Information, records and privacy**

### **Division 4 Registers**

#### **267 Register of education and care services**

- (1) The Regulatory Authority must keep a register of approved education and care services operating in the participating jurisdiction.
- (2) The register of approved education and care services must contain the following information—
  - (a) the name of each service;
  - (b) the name of the approved provider of each service;
  - (c) except in the case of a family day care service, the address of each education and care service premises;
  - (d) in the case of an approved family day care service, the address of the principal office of the service;
  - (e) the rating levels for each service;
  - (f) any other prescribed information.
- (3) The register of approved education and care services may be inspected at the office of the Regulatory Authority during normal office hours without charge.

## **Division 5 Publication of information**

### **270 Publication of information**

- (1) The National Authority and the Regulatory Authority may publish the following information about approved providers, approved education and care services and certified supervisors—
  - (a) the name of each provider, service or supervisor;
  - (b) except in the case of approved family day care services, the address of each education and care service premises;
  - (c) in the case of approved family day care services, the address of the principal office of each service;
  - (d) the rating levels of each approved education and care service;
  - (e) other prescribed information in respect of approved education and care services.
- (2) The National Authority—
  - (a) must publish on its website—
    - (i) the register of approved providers; and
    - (ii) the register of certified supervisors; and
  - (b) may publish on its website the register of approved education and care services as kept by a Regulatory Authority.
- (3) The Regulatory Authority must publish on its website the register of approved education and care services kept by the Regulatory Authority.
- (4) The relevant Commonwealth Department is authorised to publish the register of approved education and care services on a website kept by that department.
- (5) The Regulatory Authority may publish the prescribed information about—
  - (a) enforcement actions taken under this Law, including information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals or certificates; and
  - (b) any prescribed matters.
- (6) Information published under this section must not include information that could identify or lead to the identification of an individual other than—
  - (a) an approved provider or certified supervisor; or

- (b) a person who is being prosecuted for an offence against this Law.

## **Division 6 Disclosure of information**

### **271 Disclosure of information to other authorities**

- (1) The Regulatory Authority and any government department, public authority and local authority may disclose information in respect of education and care services to each other for the purposes of this Law.
- (2) The Regulatory Authority may disclose information in respect of education and care services to the National Authority or a Regulatory Authority of a participating jurisdiction or a person acting for that Authority—
  - (a) for the purposes of this Law; or
  - (b) for the purposes of research and the development of national policy with respect to education and care services.
- (4) The Regulatory Authority must disclose to the Regulatory Authorities of other participating jurisdictions the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor or certified supervisor of which it is notified under this Law.
- (5) The Regulatory Authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice issued under this Law as applying in any participating jurisdiction in respect of the person.
- (7) Information provided under this section must not include information that could identify or lead to the identification of an individual other than—
  - (a) an approved provider or a certified supervisor; or
  - (b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or
  - (c) a person to whom a prohibition notice applies; or
  - (d) a person who is being prosecuted for an offence against this Law.

### **272 Disclosure of information to education and care services**

- (1) If requested by an approved provider, the Regulatory Authority may disclose the following information—
  - (a) whether a person named in the request is subject to a prohibition notice issued under this Law as applying in any participating jurisdiction;



- (b) whether a family day care educator named in the request has been suspended from providing education and care to children as part of a family day care service.

### **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 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.

#### **285 Offences by bodies corporate**

- (1) If a body corporate commits an offence against this Law, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence also commits that offence and is liable to the penalty for that offence.
- (2) The penalty for an offence referred to in this section is the penalty applicable to an individual.

#### **286 Application of Law to partnerships and eligible associations and other entities**

- (1) If this Law would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (2) If this Law would otherwise require or permit something to be done by an eligible association, the thing may be done by one or more of the members of the executive committee on behalf of the association.
- (3) If this Law would otherwise require or permit something to be done by a prescribed entity, the thing may be done by one or more of the persons with management or control of the entity on behalf of the entity.
- (4) An offence against this Law that would otherwise be committed by the partnership is taken to have been committed by each partner who is a person with management or control of the partnership.
- (5) An offence against this Law that would otherwise be committed by an eligible association is taken to have been committed by each person who is a person with management or control of the association.
- (6) An offence against this Law that would otherwise be committed by a prescribed entity is taken to have been committed by each person who is a person with management or control of that entity.
- (7) The penalty for an offence that is taken to be committed under this section is the penalty applicable to an individual.

**287 Multiple holders of an approval**

If more than one person holds a provider approval or service approval under this Law each holder of the approval is jointly and severally responsible for compliance with this Law.

**288 Double jeopardy**

If a person has been convicted or found guilty in another participating jurisdiction for an offence against this Law as it applies in that jurisdiction, proceedings cannot be brought in this jurisdiction against the same person in respect of an offence concerning the same subject-matter.

**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.
- (3) The Regulatory Authority (if an individual) or a member of the governing body of the Regulatory Authority is not personally liable for anything done or omitted to be done in good faith—
  - (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.
- (4) Any liability resulting from an act or omission that would, but for subsection (3), attach to an individual referred to in that subsection attaches instead to the State.

**290 Immunity—education law**

- (1) This section applies if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under an education law of a participating jurisdiction.
- (2) The Regulatory Authority may refer the matter to the relevant disciplinary body under the education law.
- (3) If the Regulatory Authority refers a matter under subsection (2), a prosecution cannot

be brought under this Law for an offence in relation to that matter.

### **291 Infringement offences**

- (1) An authorised officer or other person authorised by the Regulatory Authority may serve an infringement notice on a person for a contravention of—
  - (a) section 172, 173 or 176; or
  - (b) offences against the national regulations that are prescribed for the purposes of this section.
- (2) The infringement penalty for an offence for which an infringement notice may be served on a person is the amount which is 10 per cent of the maximum penalty that could be imposed on the person in respect of that offence.
- (3) An infringement notice must be in the form prescribed or contain the information prescribed by the infringements law of this jurisdiction.
- (4) Subject to this section, the infringements law of this jurisdiction applies to infringement notices served under this section in this jurisdiction.
- (5) The payment of an infringement penalty expiates the offence and is not to be considered in—
  - (a) assessing whether a person is a fit and proper person to be involved in the provision of, or to be a supervisor of, an education and care service; or
  - (b) assessing an approved education and care service under Part 5.

### **292 Evidentiary certificates**

A certificate purporting to be signed by the chief executive officer of the National Authority or by a Regulatory Authority and stating any of the following matters is prima facie evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Law—
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction or requirement;
  - (iii) a supervisor certificate;
  - (iv) a register, or an extract from a register;
  - (v) a record, or an extract from a record;
- (b) a stated document is another document kept under this Law;

- (c) a stated document is a copy of a document mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a stated person was or was not an approved provider or a certified supervisor;
- (e) on a stated day, or during a stated period, an education and care service was or was not an approved education and care service;
- (f) on a stated day, or during a stated period, an approval was or was not subject to a stated condition;
- (g) on a stated day, an approval or supervisor certificate was suspended or cancelled;
- (h) on a stated day, or during a stated period, an appointment as authorised officer was, or was not, in force for a stated person;
- (i) on a stated day, a stated person was given a stated notice or direction under this Law;
- (j) on a stated day, a stated requirement was made of a stated person.

## **Division 5 Service of notices**

### **293 Service of notices**

- (1) If this Law requires or permits a notice to be served on a person, the notice may be served—
  - (a) on an individual by—
    - (i) delivering it to the individual personally; or
    - (ii) leaving it at, or by sending it by post to, the address notified to the sender by the individual as an address at which service of notices under this Law will be accepted or otherwise the address of the place of residence or business of the individual last known to the person serving the document; or
    - (iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or
    - (iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or
  - (b) on a person other than an individual by—
    - (i) leaving it at, or by sending it by post to, the address notified to the sender by the person as an address at which service of notices under this Law will be accepted or otherwise the address of the head office, a registered office or the

principal place of business of the person; or

- (ii) sending it by facsimile transmission to a facsimile number notified to the sender by the person as an address at which service of notices under this Law will be accepted; or
- (iii) sending it by email to an internet address notified to the sender by the person as an address at which service of notices under this Law will be accepted.

- (2) Subsection (1) applies whether the word “deliver”, “give”, “notify”, “send” or “serve” or another expression is used.
- (3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a notice otherwise than as provided in that subsection.

#### **294 Service by post**

If a notice authorised or required to be served (whether the word “deliver”, “give”, “notify”, “send” or “serve” or another expression is used) on a person is served by post, service of the notice—

- (a) may be effected by properly addressing, prepaying and posting a letter containing the document; and
- (b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth day after the letter was posted; and
- (c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

### **Division 6 False or misleading information**

#### **295 False or misleading information or documents**

- (1) A person must not give the Regulatory Authority or an authorised officer under this Law any information or document that the person knows is false or misleading in a material particular.

Penalty:

\$6000, in the case of an individual.

\$30 000, in any other case.

- (2) Subsection (1) does not apply in respect of the giving of a document, if the person when giving the document—

- (a) informs the Regulatory Authority or authorised officer, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the Regulatory Authority or authorised officer if the person has, or can reasonably obtain, the correct information.

## **Division 7 Protection from reprisal**

### **296 Definitions**

In this Division—

**protected disclosure** means a disclosure of information or provision of documents to the Regulatory Authority—

- (a) pursuant to a request under this Law; or
- (b) where the person making the disclosure has a reasonable belief that—
  - (i) an offence against this Law has been or is being committed; or
  - (ii) the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk;

**serious detrimental action** includes dismissal, involuntary transfer, loss of promotion and demotion.

### **297 Protection from reprisal**

- (1) A person must not take serious detrimental action against a person in reprisal for a protected disclosure.

Penalty:

\$10 000 in the case of an individual.

\$50 000 in any other case.

- (2) A person takes serious detrimental action in reprisal for a protected disclosure if—
  - (a) the person takes or threatens to take the action because—
    - (i) a person has made, or intends to make, a protected disclosure; or
    - (ii) the person believes that a person has made or intends to make the protected disclosure; or
  - (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.
- (3) In determining whether a person takes serious detrimental action in reprisal, it is

irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

### **298 Proceedings for damages for reprisal**

- (1) A person who takes serious detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the serious detrimental action.

### **299 Application for injunction or order**

A person who believes that serious detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the superior court for—

- (a) an order requiring the person who has taken the serious detrimental action to remedy that action; or
- (b) an injunction.

### **300 Injunction or order**

- (1) If, on receipt of an application under section 299, the superior court is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure, the court may—
  - (a) order the person who took the serious detrimental action to remedy that action; or
  - (b) grant an injunction in any terms the court considers appropriate.
- (2) The superior court, pending the final determination of an application under section 299, may—
  - (a) make an interim order in the terms of subsection (1)(a); or
  - (b) grant an interim injunction.



## **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.

## **Schedule 2 Powers of entry by search warrant**

### **1 Application for warrant**

- (1) An authorised officer may apply to a magistrate of a participating jurisdiction for a search warrant in relation to premises if the officer believes on reasonable grounds that—
  - (a) a person is or has been operating an education and care service at the premises in contravention of this Law; or
  - (b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

## 2 Issue of warrant

- (1) The magistrate may issue the warrant in respect of premises only if the magistrate is satisfied there are reasonable grounds to believe that—
  - (a) a person is operating an education and care service at the premises in contravention of this Law; or
  - (b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.
- (2) The warrant must state—
  - (a) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the premises and any other premises necessary for entry; and
    - (ii) exercise the authorised officer's powers under this Schedule; and
  - (b) the matter for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the premises may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 3 Application by electronic communication

- (1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under clause 1(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the **original warrant**) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under subclause (1); and
  - (b) the way the application was made under subclause (1) was appropriate.

- (4) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the authorised officer must complete a form of warrant including by writing on it—
      - (A) the magistrate’s name; and
      - (B) the date and time the magistrate issued the warrant; and
      - (C) the other terms of the warrant.
- (5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the **duplicate warrant**), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with clause 1(2) and (3); and
  - (b) if the authorised officer completed a form of warrant under subclause (4)(b), the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.
- (8) Despite subclause (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and
  - (b) the original warrant is not produced in evidence—
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This clause does not limit clause 1.



#### **4 Procedure before entry under warrant**

- (1) Before entering premises under a warrant, an authorised officer must do or make a reasonable attempt to do the following—
  - (a) identify himself or herself to a person present at the premises who is an occupier of the premises by producing the authorised officer's identity card;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the premises;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the premises without using force.
- (2) However, the authorised officer need not comply with subclause (1) if the authorised officer reasonably believes that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

#### **5 Powers after entering premises**

- (1) This clause applies if an authorised officer enters premises under clause 4.
- (2) The authorised officer may for the purposes of the investigation do the following—
  - (a) search any part of the premises;
  - (b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;
  - (c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;
  - (d) copy, or take an extract from, a document, at the premises;
  - (e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Schedule;
  - (f) require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);
  - (g) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.