

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

[2010-104]



New South Wales

## Status Information

### Currency of version

Current version for 30 October 2023 to date (accessed 22 December 2024 at 15:09)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Authorisation

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File last modified 30 October 2023

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



New South Wales

An Act to apply as a law of this State a national law relating to the regulation of education and care services for children.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Children (Education and Care Services National Law Application) Act 2010*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria.

### 3 Definitions

- (1) In this Act—

***Children (Education and Care Services) National Law (NSW)*** means the provisions applying in this jurisdiction because of section 4.

- (2) Terms used in this Act and also in the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria have the same meanings in this Act as they have in that Law.

## Part 2 Adoption of National Law

### 4 Adoption of Education and Care Services National Law

The Education and Care Services National Law, as in force from time to time, set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria—

- (a) applies as a law of this jurisdiction, and

(b) as so applying may be referred to as the *Children (Education and Care Services) National Law (NSW)*, and

(c) so applies as if it were part of this Act.

## **5 Exclusion of legislation of this jurisdiction**

(1) The following Acts of this jurisdiction do not apply to the *Children (Education and Care Services) National Law (NSW)* or to instruments made under that Law—

(a) the *Government Information (Public Access) Act 2009*,

(b) the *Health Records and Information Privacy Act 2002*,

(c) the *Interpretation Act 1987*,

(d) the *Privacy and Personal Information Protection Act 1998*,

(e) the *Subordinate Legislation Act 1989*.

(2) The following Acts of this jurisdiction do not apply to the *Children (Education and Care Services) National Law (NSW)* or to instruments made under that Law, except to the extent that the Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority—

(a) the *Government Sector Finance Act 2018*,

(b) the *Ombudsman Act 1974*,

(c) the *Government Sector Audit Act 1983*,

(d) the *Government Sector Employment Act 2013*.

(3) However, Part 4 of the *Children's Guardian Act 2019* does apply in respect of approved education and care services under the *Children (Education and Care Services) National Law (NSW)*.

## **6 Application of State Records Act 1998**

To avoid any doubt, it is declared that the *State Records Act 1998* applies to the Regulatory Authority for this jurisdiction and its records.

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

In the *Children (Education and Care Services) National Law (NSW)*—

**child protection law** means the following—

(a) the *Children and Young Persons (Care and Protection) Act 1998* and regulations made under that Act,

(b) the *Children's Guardian Act 2019*, Parts 6 and 8 and regulations made under the parts.

**de facto relationship** means a relationship between 2 persons who are de facto partners of each other within the meaning of section 21C of the *Interpretation Act 1987*.

**local authority** means a council within the meaning of the *Local Government Act 1993*.

**magistrate** means a Magistrate appointed under the *Local Court Act 2007*.

**public authority** means a public authority of the State, and includes a State owned corporation within the meaning of the *State Owned Corporations Act 1989* and a subsidiary of a public authority or State owned corporation, but does not include a council, county council or joint organisation within the meaning of the *Local Government Act 1993*.

**registered teacher** means a teacher who is accredited under the *Institute of Teachers Act 2004*.

**superior court** means the Supreme Court of New South Wales.

**this jurisdiction** means New South Wales.

## 8 Relevant tribunal or court

For the purposes of the definition of **relevant tribunal or court** in section 5 of the *Children (Education and Care Services) National Law (NSW)*—

- (a) the District Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of section 181 of that Law, and
- (b) the Civil and Administrative Tribunal is declared to be the relevant tribunal or court for this jurisdiction for the purposes of Part 8 of that Law.

## 9 Regulatory Authority

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

## 10 Children's services law

(1) For the purposes of the definition of **children's services law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, each of the following is declared to be a children's services law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*—

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

(b) the regulations made under that Act.

(2) For the purposes of the definition of **children's services regulator** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the Secretary of the Department of Education is declared to be a children's services regulator for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

## 11 Education law

For the purposes of the definition of **education law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the following Acts and the regulations made under those Acts are declared to be an education law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*—

- (a) the *Education Act 1990*,
- (b) the *Institute of Teachers Act 2004*,
- (c) the *Teaching Service Act 1980*,
- (d) the *Technical and Further Education Commission Act 1990*,
- (e) the *Education (School Administrative and Support Staff) Act 1987*.

## 12 Former education and care services law

For the purposes of the definition of **former education and care services law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the following provisions of the *Children and Young Persons (Care and Protection) Act 1998* are declared to be a former education and care services law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*—

- (a) Chapters 12 and 12A of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) Chapters 1, 2, 15, 16 and 17 and Schedule 3 of the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to Chapters 12 and 12A of that Act,
- (c) the regulations made under the *Children and Young Persons (Care and Protection) Act 1998* in so far as they relate to a provision referred to in paragraph (a) or (b).

## 13 Infringements law

For the purposes of the definition of **infringements law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Fines Act 1996* and the regulations made under that Act are declared to be an infringements law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

#### 14 Public sector law

For the purposes of the definition of **public sector law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Government Sector Employment Act 2013* and the regulations and rules made under that Act are declared to be a public sector law for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

#### 15 Working with children law

For the purposes of the definition of **working with children law** in section 5 of the *Children (Education and Care Services) National Law (NSW)*, the *Child Protection (Working with Children) Act 2012* and the regulations made under that Act are declared to be a working with children law for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

#### 16 Penalty at end of provision

In the *Children (Education and Care Services) National Law (NSW)*, a penalty specified at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty not more than the specified penalty.

#### 17 Transitional

- (1) For the purposes of the definition of **declared approved family day care service** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a family day care children's service that was an approved children's service under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved family day care service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (2) For the purposes of the definition of **declared approved provider** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was a licensed service provider under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved provider for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (3) For the purposes of the definition of **declared approved service** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a children's service that held a children's service approval under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared approved service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (4) For the purposes of the definition of **declared certified supervisor** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was an



authorised supervisor under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared certified supervisor for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

- (5) For the purposes of the definition of **declared compliance notice** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a compliance notice under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared compliance notice for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (6) For the purposes of the definition of **declared enforceable undertaking** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a written undertaking in force under section 219X of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared enforceable undertaking for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (7) For the purposes of the definition of **declared nominated supervisor** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a person who was an authorised supervisor under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared nominated supervisor for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (8) For the purposes of the definition of **declared out of scope service** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, an out of school hours care service under the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a declared out of scope service for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.
- (9) For the purposes of the definition of **former approval** in section 305 of the *Children (Education and Care Services) National Law (NSW)*, a children's services approval under Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* is declared to be a former approval for this jurisdiction for the purposes of the *Children (Education and Care Services) National Law (NSW)*.

## **17A Modification of transitional provisions**

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

- (3) Subsection (1) also ceases to apply if—
  - (a) the approved provider for the service does not nominate a declared nominated supervisor as the sole nominated supervisor for the education and care service

within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority, or

- (b) the approved provider for the service nominates another declared nominated supervisor as the sole nominated supervisor for the education and care service within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority.

## **Part 3 Miscellaneous**

### **18 Application of *Industrial Relations (Commonwealth Powers) Act 2009***

An employee of the National Authority is not a State public sector employee for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.

### **19 Regulations**

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.

### **20 Savings and transitional regulations**

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

### **21 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.