

Education and Care Services National Law (WA) Amendment Bill 2018

Second Reading Speech

Quality early childhood education and care plays a vital role in supporting the learning and development of Australian children in the early years and helps to lay the foundation for better health, education and employment outcomes later in life.

This Bill proposes amendments to the Education and Care Services National Law (WA) Act 2012. Schedule 1 of the Western Australian Act primarily gives effect to the Education and Care Services National Law Act 2010 that was made through the Victorian Parliament. The Education and Care Services National Law Act 2010 is a template Law that applies in all jurisdictions, except Western Australia, and is commonly known as the National Law. The Western Australian Parliament passed the Education and Care Services National Law (WA) Act 2012 as a corresponding law. All proposed amendments to the National Law must be introduced and passed in the Western Australian Parliament before they can commence in this state.

In December 2009, the Council of Australian Governments (COAG) agreed to the National Partnership Agreement on The National Quality Agenda for Early Childhood Education and Care. This Agreement established a jointly governed, unified National Quality Framework for long day care, family day care, preschool and outside school hours care services to raise quality and consistency in the education and care sector and improve outcomes for all Australian children.

The Framework strikes the right balance between quality and affordability, by focusing on improving the quality of services, providing access to information about the quality of services and reducing the regulatory burden on services.

The Framework consists of:

- a national applied law scheme consisting of the national law and the Education and Care Services National Regulations (national regulations);
- a national quality standard (NQS);
- a national quality assessment and rating process;
- regulatory authorities in each state and territory; and
- a national body, the Australian Children's Education and Care Quality Authority (ACECQA).

The Agreement requires COAG to conduct a review every five years. A review commenced in 2014 and found that the Framework is a significant achievement, and that considerable progress has been made in what are ambitious and ground-breaking reforms. The review recommendations were agreed to by national consensus through the Education Council in January 2017, identifying that after several years of operation, the Framework requires some technical and operational improvements.

The review recommended amendments to both the national law and the national regulations. The amendments to the law were passed by the Victorian Parliament in March 2017 and commenced in all states except Western Australia in October 2017.

The WA bill now seeks to implement these recommendations for changes to the national law. The key features of the bill include:

- strengthening the eligibility criteria for an application for the 'Excellent' rating as part of implementing the revised National Quality Standard;
- improving oversight of, and support for educators engaged by, family day care services;
- removing the supervisor certificate requirements and making approved providers responsible for ensuring that only fit and proper persons with suitable skills to perform the role are appointed nominated supervisors;
- simplifying administrative and enforcement provisions; and
- making other minor and technical improvements to the operation of the national law.

The Standard sets a benchmark for assessing and rating the performance of education and care services, to provide accurate and meaningful information about service quality and to ensure that the assessment and rating system is sustainable and comparable across services. These Standards has been strengthened, streamlined and clarified through amendments to the national regulations that commenced in February 2018 in all states and territories including Western Australia.

Strengthening eligibility requirements for 'Excellent' rating

The revised Standard will be complemented by the proposal in the bill to strengthen the eligibility requirements for the 'Excellent' rating. The purpose of the 'Excellent'

rating (the highest possible rating) is to celebrate highly accomplished practice, innovation and sector leadership in the delivery of education and care to children.

To ensure that the 'Excellent' rating recognises consistent performance and to further differentiate the 'Excellent' rating, the bill proposes amendments to require a service to be rated as 'Exceeding the NQS' in all seven quality areas to be eligible to apply for the 'Excellent' rating.

Strengthening family day care service provisions

In WA the Department of Communities' Education and Care Regulatory Unit (ECRU) has worked closely with the family day care sector through a co-regulatory model to maintain the high quality of service that the community has enjoyed for decades.

However, the review identified areas to improve the support provided by approved services to family day care educators and allowing regulatory authorities to better monitor family day care services in their respective jurisdictions.

The key changes to the family day care service provisions in the national law include:

- requiring approved providers of family day care services to only operate from a jurisdiction where they hold a service approval and to have a principal office in each jurisdiction in which they operate;
- ensuring approved family day care services engage a minimum number of family day care coordinators based on the number of family day care educators at the service;
- clarifying that a family day care service can only operate from a venue - that is a location other than a family residence - in exceptional circumstances; such as in rural and remote Western Australia where a venue in a central location is used rather than the educator's more remote home. Previously family day care providers approved the use of venues but this will now be the responsibility of the regulatory authority;
- requiring approved providers of family day care services to notify the regulatory authority of a change in the location of its principal office prior to the change and provide proof of occupancy of the new premises;
- requiring family day care educators to notify approved providers of changes to the circumstances at the educator's residence and of other information such

as serious incidents and complaints alleging serious incidents or breaches of the national Law;

- clarifying the provisions regarding the role and use of family day care educator assistants;
- allowing authorised officers to enter a family day care residence to investigate an offence if there is a reasonable belief that a service is operating at the time of entry.

Removal of supervisor certificates

The bill will repeal the supervisor certificate requirements in the national law.

Supervisor certificates were intended to ensure that a person with the appropriate skills, experience and character for supervising a service is always present while education and care is being provided to children to ensure their safety and wellbeing.

The supervisor certificate application process is considered unnecessarily burdensome on approved providers and to be of limited benefit to the regulatory authority in ensuring quality and compliance. The review has identified a more efficient way of ensuring only suitable persons oversee the operation of a service.

The other states and territories ceased issuing individual supervisor certificates in 2014 and this amendment will bring Western Australia back in line with the rest of Australia.

The bill contains amendments which do this by making approved providers responsible for assessing the suitability of the service's nominated supervisors or persons in day to day charge when appointing people to those positions whilst preserving the oversight of the regulatory authority over who is fit and proper to be a nominated supervisor.

Simplifying administrative and enforcement provisions

State and territory regulators have requested some flexibility in being able to agree to an enforceable undertaking instead of suspending an approval or issuing a prohibition notice, particularly where a suspension or prohibition notice may be disproportionate to the non-compliance.

The proposed amendments expand the grounds on which the regulatory authority may accept enforceable undertakings to include certain grounds which currently force the regulatory authority to suspend an approval or issue a prohibition notice.

Other technical amendments in the bill seek to improve and simplify the administrative provisions in relation to:

- the approvals processes;
- service waivers and temporary waivers;
- the operational requirements of education and care services;
- the investigative and enforcement powers of regulatory authorities; and
- information sharing between regulatory authorities, the national authority, state and territory governments and the commonwealth.

In Western Australia, we are committed to and have a proud record of high-quality, safe and affordable education and care services for children. We are also strongly committed to improving children's educational and developmental outcomes in the early years and providing access to high quality education and care services for all Western Australian children.

This bill gives effect to changes agreed by national consensus. In introducing this bill, we are honouring our shared commitment to ensuring children and families benefit from this important national framework.

Referral to Committee

Pursuant to Standing Order 126(1), the Minister for Community Services has received advice that this amendment Bill is not a new uniform legislation Bill.

The original WA national law was referred to the Standing Committee on Uniform Legislation and Statutes Review in May 2012. This amendment Bill does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, due to its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth, rather, it amends an existing scheme.

The amendments to the existing scheme clarify and simplify some aspects of the regulatory regime - the National Quality Standard; and strengthen other aspects of the regulatory regime – Family Day Care. No new or additional intergovernmental agreement underpins these regulatory improvements, rather they fortify the existing national scheme.

Further, regulations made to support the amendments to the existing scheme are made by the Governor in Executive Council, published in the Government Gazette, tabled before each House of Parliament and submitted to the Joint Standing Committee on Delegated Legislation

However, in order to provide certainty for members of the Council, I refer the Bill to the Committee and respectfully ask that the Standing Committee on Uniform Legislation and Statutes Review discharge its review function in a timely manner.

I commend the bill to the house and table the explanatory memorandum.