

EXPLANATORY MEMORANDUM

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

Overview

The Education and Care Services National Law (WA) Amendment Bill 2018 amends the Education and Care Services National Law (WA) Act 2012 (the **Act**) and the Education and Care Services National Law (the **National Law**) which is contained in the Schedule of the Act.

The National Law is a national applied law scheme, one of the aims of which is to establish a nationally consistent framework for the regulation of early childhood education and care services in Australia.

Rather than applying the National Law as a law of its own, Western Australia has enacted a law which mirrors or substantially corresponds to the National Law.

The amendments to the National Law form part of reforms to the National Quality Framework (the **NQF**) identified as part of the 2014 Review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (the **Review**). The recommendations of the Review, including the amendments to the National Law, were approved by the Education Council on 31 January 2017. The Amendment Act implementing the Review has commenced in all States and Territories excepting Western Australia.

The amendments identified by the Review improve the NQF by—

- streamlining the assessment and rating process for education and care services by implementing a revised National Quality Standard (the **NQS**) that retains the benefits of the NQS as a driver of service quality improvement. The changes also clarify concepts within the NQS to improve consistency in outcomes and interpretation; and
- strengthening the National Law as it applies to family day care services to improve the quality of education and care provided to children by—
 - 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 providers of family day care services engage a minimum number of family day care co-ordinators based on the number of family day care educators at the service;
 - clarifying that a family day care service can only operate from an approved family day care venue in exceptional circumstances and where the Regulatory Authority has given approval;
 - 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; and
- 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.
- removing supervisor certificate requirements to reduce the compliance burden for education and care services; and
- simplifying and streamlining the National Law to address unnecessary administrative processes thereby decreasing administrative costs for the Regulatory Authority of participating jurisdictions and reducing the regulatory burden on services; and
- making minor and technical changes to specific provisions in the National Law to clarify their operation and effect.

The Bill also makes amendments to the **Spent Convictions Act 1988** and the **Working with Children (Criminal Record Checking) Act 2004** as a consequence of amendments to the National Law.

Clause Notes

Part 1—Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 is the commencement provision, which provides for the Bill to come into operation on 1 October 2018 if enacted by 1 October 2018 or on a day to be proclaimed if the Bill is enacted after 1 October 2018.

Part 2— Education and Care Services National Law (WA) Act 2012 amended

Division 1 — Local application provisions of the Education and Care Services National Law (WA) Act 2012 amended

Clause 3 provides that local application provisions means the provisions other than the Education and Care Services National Law set out in Schedule 1 of the Act. Division 1 amends the local application provisions.

Clause 4 amends section 6 of the Act by:

- substitutes the definition of *magistrate* to include Justice of the Peace; and
- substitutes the definition of *registered teacher* to update the reference to *Western Australian College of Teaching Act 2004* with *Teacher Registration Act 2012*.

Clause 5 replaces *Western Australian College of Teaching Act 2004* with *Teacher Registration Act 2012*.

Clause 6 deletes the obsolete transitional provision relating to declared certified supervisors.

Clause 7 Repeals obsolete transitional regulations.

Clause 8 Deletes Part 4 containing obsolete transitional provisions.

Division 2 – Education and Care Services National Law amended

Clause 9 provides that this Division amends the Education and Care Services National Law set out in the Schedule to the Education and Care Services National Law (WA) Act 2012.

Clause 10 amends section 5(1) of the National Law by inserting, substituting and repealing various definitions or expressions used in the National Law. In particular, clause 10—

- repeals the definitions of **certified supervisor** and **supervisor certificate** as a consequence of the removal of the provisions relating to certified supervisors.
- substitutes the definition of **approved family day care venue** as a result of the amendments to the National Law; and
- inserts a definition of **executor** to clarify that *executor* includes a person entitled to a grant of administration in relation to the estate of a deceased approved provider.
- inserts a definition **family day care educator assistant** for the purposes of the new family day care register requirements in the amended section 269; and
- substitutes the definition of **family day care service** to clarify that, in addition to having 2 or more educators who provide education and care to children, the service must operate from at least 2 or more residences; and
- substitutes the definition of **Ministerial Council** to clarify that, for the purposes of the definition, the Council (as opposed to the Ministers who constitute the Council) must also be responsible for early childhood education and care matters; and
- substitutes the definition of **nominated supervisor** to remove the reference to certified supervisor as a consequence of the removal of the provisions relating to certified supervisors; and
- substitutes the definition of **office** to clarify that the term, in relation to a family day care service, also includes the principal office of the service; and
- inserts a definition of **person in day-to-day charge**; and
- inserts a definition of **prohibition notice**, which covers the different types of prohibition notices that may be issued under current section 182(1) and new section 182(3); and
- inserts a definition of **serious incident**, which replicates the definition being removed from section 174(5) (clause 53(2) of the Bill) and
- amends the definition of **staff member** to clarify that more than one nominated supervisor may be nominated for an education and care service; and

Clause 11 inserts new section 13(2)(c) and (d) into the National Law.

Section 13(2) of the National Law sets out certain factors that the Regulatory Authority may have regard to when determining whether an applicant or a person with management or control of a service to be operated by the applicant is a fit and proper person, for the purposes of an application for a provider approval.

New section 13(2)(c) of the National Law provides that the Regulatory Authority may also consider whether the person has the management capability to operate an education and care service in accordance with the National Law. The expression "management capability" is already used in section 47 of the National Law in relation to the assessment of an applicant for service approval.

New section 13(2)(d) of the National Law provides that the Regulatory Authority may also consider any sanction imposed under section 200, suspension imposed under section 201A or infringement notice issued under section 219TSI, of the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth in relation to a child care service approved under that Act and operated by the person or in relation to which the person was a person with management or control.

Clause 12 amends section 14(2) of the National Law. Section 14(2) provides that, if the Regulatory Authority requests further information for the purposes of assessing a person's fitness and propriety under section 14(1), the time taken to provide the requested information is not included in the 60 day period in which the Regulatory Authority is required to determine an application for a provider approval under section 15(3).

The amendment ensures that section 14(2) uses consistent language with other similar provisions in the National Law (for example, sections 45(2), 110(2) and 154(2)) without changing the effect of the provision.

Clause 13 amends section 17 of the National Law. Section 17 provides for duration of provider approval. This change arises from State Solicitor's Office advice that section 17 be amended to clarify beyond doubt that provider approval ceases upon the death of an individual approved provider.

Clause 14 amends section 25 to update reference to section 188B with section 188AB.

Clause 15 amends section 27 of the National Law to empower the Regulatory Authority to accept an enforceable undertaking from the approved provider, rather than suspend the provider approval, in certain circumstances.

Section 25(a) of the National Law permits the Regulatory Authority to suspend a provider approval where the approved provider has been charged with an indictable offence or circumstances indicate that the approved provider is not a fit and proper person to be involved in the provision of an education and care service.

After going through a show cause notice process under section 26, current section 27 provides that the Regulatory Authority may either suspend or decide not to suspend the provider approval.

New section 27(a) empowers the Regulatory Authority to accept an enforceable undertaking from the approved provider if a ground referred to in section 25(a) exists.

New section 27(b) provides that, where any ground in section 25 (including in paragraph (a)) exists, the Regulatory Authority will retain the discretion to suspend or decide not to suspend the provider approval after considering the approved provider's response to the show cause notice given under section 26.

Clause 16 amends section 39 of the National Law.

Section 39 relates to notification of the death of an approved provider and continued operation of an education and care service in those circumstances. Clause 16 removes references to certified supervisors as a consequence of the repeal of Part 4, and to reflect that more than one nominated supervisor may be nominated for an education and care service.

Clause 17 substitutes section 41(4)(b) of the National Law to remove the limit on the number of times that the Regulatory Authority may extend, or further extend, a provider approval granted under section 41 to the legal personal representative or guardian of an incapacitated approved provider.

Clause 18 amends section 43(2) of the National Law to clarify that more than one nominated supervisor may be nominated for an education and care service. Section 43(2) will provide that an approved provider may only apply for a service approval if the approved provider will be responsible for the management of all the nominated supervisors of the service.

Clause 19 amends section 44 of the National Law.

Current section 44(1)(d) requires an application for a service approval to nominate a certified supervisor to be the nominated supervisor for the service.

New sections 44(1)(d) and 44(1)(da) are consequential on repeal of provisions relating to certified supervisors, respectively requiring an application for a service approval to nominate one or more individuals to be nominated supervisors of the service and include the written consent to the nomination from each nominated individual (other than the approved provider).

Subclause (2) substitutes section 44(3) of the National Law to clarify the requirements for the approval of family day care venues. It is currently unclear whether the responsibility for approving family day care venues lies with the approved provider or the Regulatory Authority.

New section 44(3) allows an approved provider to request, as part of an application for a service approval of a family day care service, that the Regulatory Authority approve a place (other than a residence) as a family day care venue. The Regulatory Authority may approve a place under new section 50A (which is inserted by clause 21 of the Bill).

Clause 20 substitutes section 47(1)(e) of the National Law to remove the reference to a certified supervisor and reflect that more than one nominated supervisor may be nominated for a service.

New section 47(1)(e) requires the Regulatory Authority to consider if all individuals nominated as nominated supervisors (except for those who are also the approved provider) have consented in writing to the nomination (which is a requirement under section 44 of the National Law).

Clause 21 inserts new section 50A into the National Law.

New section 50A empowers the Regulatory Authority, on request of an approved provider under new section 44(3), to approve a place (other than a residence) to be an approved family day care venue in exceptional circumstances. The approval is given at the same time the service approval for the family day care service is granted under section 48(1).

Clause 22 amends section 51 of the National Law, which attaches various conditions to service approvals for an education and care service granted under section 48(1)(a). A breach of a condition under section 51 is an offence pursuant to section 51(8) and attracts a maximum penalty of \$10 000 for an individual and \$50 000 in any other case.

Subclause (1) substitutes section 51(2) of the National Law and inserts new section 51(2A). Section 51(2) currently subjects a service approval for a family day care service to a condition that requires the approved provider to ensure that—

- the service has sufficient family day care co-ordinators appointed to monitor and support family day care educators (paragraph (a)); and
- the family day care educators of the service are adequately monitored and supported (paragraph (b)).

The amendment removes the condition in current section 51(2)(a), which is being replaced by new requirements in relation to the minimum number of family day care co-ordinators that must be engaged by a family day care service which are being introduced by amendments to section 163 of the National Law. New section 51(2) continues to subject family day care services to the condition set out in current section 51(2)(b).

New section 51(2A) introduces an additional condition to which service approvals of a family day care service are subjected. The new condition limits the geographic operation of a family day care service by requiring all family day care residences and approved family day care venues (if any) of the service to be located in the jurisdiction in which the service approval was granted.

New section 51(4A) imposes a condition on the service approval requiring the approved provider to ensure that the service does not educate and care for more than the maximum number of children allowed by the service approval.

New section 51(4B) provides an exception to new subsection (4B) where a child or children are being educated and cared for by the service in an emergency and the approved provider is reasonably satisfied that exceeding the maximum allowable number of children will not affect the health, safety and wellbeing of other children attending the service.

Clause 23 amends section 52(b) of the National Law, to clarify that the reference to the principal office in that provision is a reference to the principal office of the service.

Clause 24 amends section 54 of the National Law, which currently allows the approved provider of an education and care service to apply to the Regulatory Authority for an amendment to the service approval.

Subclause (1) inserts new section 54(1A) into the National Law to allow an approved provider to request, in an application for an amendment to a service approval of a family day care service, that the Regulatory Authority approve a place as a family day care venue (as opposed to a family day care residence) for the service.

Subclause (2) amends section 54(2)(b)

Subclause (3) amends section 54(4) of the National Law. Section 54(4) provides that, if the Regulatory Authority requests further information for the purposes of determining an application for an amendment to a service approval under section 54(3), the time taken

to provide the requested information is not included in the 60 day period in which the Regulatory Authority is required to determine the application under section 54(5).

The amendment ensures that section 54(4) uses consistent language with other similar provisions in the National Law (for example, sections 45(2), 110(2) and 154(2)) without change the effect of the provision.

Current section 54(8) provides that an amendment to a service approval cannot change the location of the education and care service. Subclause (3) creates an exception by inserting new section 54(8A), which empowers the Regulatory Authority to approve a place (other than a residence) to be an approved family day care venue for that service in exceptional circumstances.

Clause 25 inserts new section 55A into the National Law.

Section 55 empowers the Regulatory Authority to amend a service approval of an education and care service at any time and without application from the approved provider. New section 55A provides the Regulatory Authority with the ability to amend a service approval to impose a stricter requirement than the standard family day care co-ordinator minimum number requirements in amended section 163 of the National Law.

New section 55A(1) provides that the Regulatory Authority is empowered under section 55 to amend a service approval for a family day care service to impose a condition requiring the approved provider to engage at least one qualified person as a family day care co-ordinator for every 15 family day care educators registered with the service.

New section 55A(2)(a) provides that the condition may only be imposed if the family day care service has been operating for more than 12 months. The minimum number of family day care co-ordinators within the first 12 months of a family day care service's operation will be prescribed in the National Regulations for the purposes of new section 163.

New section 55A(2)(b) provides that the condition may only be imposed if the Regulatory Authority has considered the approved provider's capability and history of compliance with the National Law and decided that the family day care educators of the service are not being adequately monitored and supported.

New section 55A(3) provides that section 163 does not apply to an approved provider of a family day care service if the Regulatory Authority has imposed a condition under section 55A(1). This is because the approved provider is instead subject to penalty under section 51(8) for failure to comply with a condition of the service approval.

New section 55A(4) provides that a person is a qualified person under section 55A if the person meets the qualification requirements prescribed in the national regulations. This is consistent with the requirements of section 163(2).

Clause 26 substitutes section 56 of the National Law, which currently requires the approved provider of an education and care service to notify the Regulatory Authority of an intention to change the nominated supervisor of the service (who must be a certified supervisor). The changes remove the references to certified supervisors in section 56 and clarify that more than one nominated supervisor may be nominated for an education and care service. The requirements for notification and the content of the notice are otherwise unchanged.

Inserts new section 56A into the National Law to require the approved provider of an education and care service to notify the Regulatory Authority, in writing, of a change to the name or contact details of any nominated supervisor of the service.

Clause 27 amends section 62 of the National Law.

Sections 62(2) and 62(3) require the Regulatory Authority to notify a transferor and transferee of a decision to intervene in the transfer of a service approval at least 28 days before the date on which the transfer is intended to take effect.

The clause inserts new section 62(5), which provides that the time limit within which the notification must be given does not apply where the Regulatory Authority has not been notified of the intended transfer under section 59. This ensures that the Regulatory Authority has sufficient time to consider the transfer before deciding whether or not to intervene.

Clause 28 amends section 70 to update the reference from s188B to s188AB.

Clause 29 amends section 72 of the National Law to empower the Regulatory Authority to accept an enforceable undertaking from the approved provider, rather than suspend the service approval, in certain circumstances.

Section 70 of the National Law sets out certain grounds on which the Regulatory Authority may suspend a service approval including, by virtue of paragraphs (a), (c) and (d) respectively, where—

- the Regulatory Authority reasonably believes that it is not in the best interests of children being educated and cared for by the service if the service was to continue;
- the service is not being managed in accordance with the National Law; and
- the service has been rated as not meeting the National Quality Standard (and a waiver does not apply to the service in respect of non-compliance and there has been no improvement in the rating level).

After going through a show cause notice process under section 71, section 72 provides that the Regulatory Authority may either suspend or decide not to suspend the service approval.

New section 72(a) empowers the Regulatory Authority to accept an enforceable undertaking from the approved provider if a ground referred to in section 70(a), (c) or (d) exists.

New section 72(b) provides that, where any ground in section 70 exists (including in paragraphs (a), (c) or (d)), the Regulatory Authority will retain the discretion to suspend or decide not to suspend the service approval after considering the approved provider's response to the show cause notice given under section 71.

Clause 30 amends section 84(1) of the National Law to replace the incorrect reference to section 81 with a reference to section 82, to avoid doubt that the section applies to cancellation of a service approval under section 82. Section 84 requires an approved provider to notify parents of the suspension or cancellation, if required to do so by the Regulatory Authority.

Clause 31 inserts new section 89(2) into the National Law. Part 3 of Division 5 of the National Law allows approved providers to apply to the Regulatory Authority for a service waiver of a prescribed element of the National Quality Standard or requirement of the national regulations (service waiver).

New section 89(2) clarifies that, if the Regulatory Authority requests further information under section 89 in relation to an application for a service waiver, the time period within which the Regulatory Authority must, under section 91(2), determine an application does not include the time it takes for the applicant to satisfy the request. This ensures that the Regulatory Authority has sufficient time to properly consider and determine the application.

Clause 32 amends section 91 of the National Law.

New section 91(4) provides the Regulatory Authority with the ability to place conditions on the service waiver including any condition limiting the use of the waiver.

New section 91(5) empowers the Regulatory Authority to remove, add to or vary any conditions of a service waiver imposed under new section 91(4) at any time.

If a service waiver is granted, current section 91(4) requires the Regulatory Authority to issue or reissue the service approval specifying the waived element of the National Quality Standard or requirement of the national regulations. New section 91(6) re-enacts this requirement but also requires the Regulatory Authority issue or reissue a service approval so that it specifies any conditions placed on a waiver under new section 91(4) or any amendments to those conditions under new section 91(5).

Clause 33 inserts new section 96(2) into the National Law. Part 3 of Division 6 of the National Law allows approved providers to apply to the Regulatory Authority for a temporary waiver of a prescribed element of the National Quality Standard or requirement of the national regulations (temporary waiver).

New section 96(2) clarifies that, if the Regulatory Authority requests further information under section 96 in relation to an application for a temporary waiver, the time period within which the Regulatory Authority must, under section 98(1), determine an application does not include the time it takes for the applicant to satisfy the request. This ensures that the Regulatory Authority has sufficient time to properly consider and determine the application.

Clause 34 amends section 98 of the National Law.

Section 98(3) allows approved providers to apply for, and Regulatory Authorities to grant, extensions to the period of a temporary waiver. Determining an application for an extension to a temporary waiver requires similar amounts of time and resources as an initial application, however, the Regulatory Authority is currently only able to impose a fee for the latter. New section 98(4) empowers the Regulatory Authority to charge a fee, prescribed by the national regulations, where an approved provider makes an application for an extension.

New section 98(5) provides the Regulatory Authority with the ability to place conditions on the temporary waiver including any condition limiting the use of the temporary waiver.

New section 98(6) empowers the Regulatory Authority to remove, add to or vary any conditions of a temporary waiver imposed under new section 98(5) at any time.

If a temporary waiver is granted, current section 98(4) requires the Regulatory Authority to issue or reissue the service approval specifying the element of the National Quality Standard or requirement of the national regulations that has been temporarily waived and the period of the waiver. New section 98(7) re-enacts this requirement but also requires the Regulatory Authority to issue or re-issue a service approval so that it specifies any conditions placed on a temporary waiver under new section 98(5) or any amendments to those conditions under new section 98(6).

Clause 35 inserts new section 103A into the National Law, an offence provision, to require approved providers of a family day care service to ensure that education and care is not provided to children, as part of the service, from a place that is not a family day care residence or an approved family day care venue unless otherwise permitted by the National Law. The commission of the offence will attract a maximum penalty of \$20 000 for an individual and \$100 000 in any other case.

Clause 36 repeals Part 4 of the National Law to remove the provisions relating to certified supervisors. This implements reform identified by the Review, intended to reduce burdens on the sector created by the requirements for supervisor certificates.

Clause 37 substitutes section 142(4) of the National Law, which currently provides that the 30 days within which a review of rating levels for an education and care service under section 142 must be conducted may be extended by up to 30 days—

- if the reviewer has requested more information; or
- by agreement between the approved provider and the Regulatory Authority.

There are some instances where it may be appropriate for the Regulatory Authority to undertake a reassessment of specific standards or elements as part of the review before making a final decision to confirm or amend a service's rating levels under section 143(1). The current maximum 60 day (30 days plus 30 days) timeframe has been difficult to meet in many instances.

New section 142(4) expands the current provision so that the Regulatory Authority may extend the standard 30 day review period—

- for an additional period of up to 30 days, if a request for further information is made; or
- for an additional period of up to 30 days, by agreement between the approved provider and the Regulatory Authority; or
- for an additional period of up to 60 days, where the Regulatory Authority considers there are special circumstances that warrant an extension of time to conduct the review.

Clause 38 amends section 152(5) of the National Law to change the minimum requirements that must be satisfied before an approved provider may apply to the National Authority for a service to be assessed for the highest rating level.

Section 152(5) currently provides that an application for an education and care service to be assessed for the highest rating level (Excellent rating) may only be made if the service has attained the overall second highest rating level (Exceeding the National Quality Standard rating).

The effect is that providers may currently apply for, and a service may be awarded, the Excellent rating even if that service does not exceed the National Quality Standard in all seven quality areas.

New section 152(5) provides that an application for the highest rating level may only be made if the approved education and care service holds the rating levels prescribed in the national regulations. It is intended that the regulations will be amended to require a service

to be rated the second highest rating level in all quality areas in order to be eligible for consideration for the highest rating level.

Clause 39 substitutes section 158(b) of the National Law, which currently provides that the Australian Children's Education and Care Quality Authority Board must revoke an Excellent rating of an education and care service if the Regulatory Authority advises the Board that the overall rating level of the service is lower than the second highest rating level.

As a consequence of the change to section 152(5) by clause 38 of the Bill, new section 158(b) provides that the Board must revoke an Excellent rating if the Regulatory Authority advises the Board that the service no longer meets the rating levels prescribed for the purposes of section 152(5).

Clause 40 amends section 161 of the National Law to clarify that more than one nominated supervisor may be nominated for an education and care service.

As a result, new section 161 of the National Law provides that the approved provider must not operate the service unless there is at least one nominated supervisor for the service.

Clause 41 inserts new section 161A into the National Law, an offence provision, to prevent an approved provider from nominating an individual to be a nominated supervisor unless the individual meets the prescribed minimum requirements for nomination. The commission of the offence will attract a maximum penalty of \$5000 for an individual and \$25 000 in any other case.

Clause 42 amends section 162(1) of the National Law.

Current section 162 makes it an offence for the approved provider of an education and care service (other than a family day care service) to fail to ensure that one of the following persons is present while children are being educated and cared for at the service—

- the approved provider (if the approved provider is an individual) or another individual with management or control of the service;
- the nominated supervisor of the service;
- a certified supervisor who has been placed in day-to-day charge of the service in accordance with the national regulations.

While the clause removes the provisions relating to certified supervisors, the intention is to retain the concept of a "responsible person" (whether that be the approved provider, nominated supervisor or another person who has been placed in day-to-day charge) who must be present at all times the service is educating and caring for children. There will be minimum requirements, prescribed in the national regulations, which must be satisfied when selecting a person who is placed in day-to-day charge of a service.

Clause 43 inserts new section 162A into the National Law which requires the approved provider of an education and care service to ensure that each nominated supervisor and person in day-to-day charge of the service has successfully completed the child protection training that may be required by the relevant jurisdiction.

Clause 44 amends section 163(1) of the National Law, an offence provision, which currently requires an approved provider of a family day care service to ensure that one or more qualified persons are employed or engaged as family day care co-ordinators to assist with the operation, and to support, monitor and train the family day care educators, of the service.

The clause replaces the requirement in section 163(1) that a family day care service must employ or engage one or more family day care co-ordinators, with a requirement to employ or engage the prescribed minimum number of family day care co-ordinators.

The intention is that the national regulations will prescribe the minimum number of family day care co-ordinators to be—

- for the first 12 months of the service's operation, at least one for every 15 family day care educators of the service; and
- after the first 12 months of the service's operation, at least one for every 25 family day care educators of the service.

Clause 45 amends section 164(1) of the National Law.

Current section 164 makes it an offence if the approved provider of a family day care service fails to ensure that one of the following persons is available to provide support to the service's family day care educators while educating and caring for children as part of the service—

- the approved provider (if the approved provider is an individual) or another individual with management or control of the service;
- the nominated supervisor of the service;
- a certified supervisor who has been placed in day to day charge of the service in accordance with the national regulations.

New sections 164(1)(b) and 164(1)(c) now have the effect of permitting a nominated supervisor or a person in day-to-day charge of the service to be available to provide support to the service's family day care educators.

Clause 46 inserts new section 164A into the National Law.

New section 164A(1), an offence provision, requires an approved provider of a family day care service to ensure that any child being educated and cared for by the service is not educated and cared for by a person other than a family day care educator (unless otherwise provided by the national regulations). The commission of the offence attracts a maximum penalty of \$10 000 for an individual and \$50 000 in any other case.

New section 164A(2), an offence provision, requires a family day care educator to ensure that any child being educated and cared for by the educator is not educated and cared for by any other person at the family day care residence or approved venue (unless otherwise provided by the national regulations). The commission of the offence attracts a maximum penalty of \$2000.

Clause 47 amends section 165(2) to clarify that more than one nominated supervisor may be nominated for an education and care service.

Clause 48 amends section 165A to clarify that more than one nominated supervisor may be nominated for an education and care service.

Clause 49 amends section 166 to clarify that more than one nominated supervisor may be nominated for an education and care service.

Clause 50 amends section 170 of the National Law.

Current section 170 of the National Law applies to education and care services in jurisdictions that have a working with children law (defined by section 5(1) to mean a law declared by a law of a participating jurisdiction to be a working with children law).

For those jurisdictions with a working with children law, current sections 170(2) and 170(3) provide that an offence is committed if the approved provider or nominated supervisor of an education and care service fails to ensure that an unauthorised person does not remain at the education and care service premises while the service is operating unless under the supervision of a staff member. Current section 170(4) provides that an offence is committed if a family day care educator fails to ensure that an unauthorised person does not remain at the family day care residence or approved family day care venue (as the case may be) while the educator is educating and caring for children unless under the supervision of the educator.

Regulatory Authorities and the education and care services sector have encountered difficulties in the interpretation of section 170 due in part to the use of the double negative in the definition of **unauthorised person** in subsection (5). The confusion around section 170 has led to differing interpretations and applications of the provision in different jurisdictions. The amendments clarify section 170 by using the term "authorised persons" as opposed to "unauthorised persons". Clause 50(2) amends section 170(5) of the National Law to replace the term "unauthorised person" with "authorised person". The current paragraphs (a) to (e) are re-enacted without change.

New sections 170(2) and 170(3), which are offence provisions, respectively require the approved provider and any nominated supervisor to ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises unless the person is an authorised person and under the direct supervision of an educator or another staff member of the service. The penalties for these offences remain unchanged.

New section 170(4), an offence provision, requires a family day care educator to ensure that a person does not remain at the family day care residence or approved family day venue (as the case may be) at which the educator is educating and caring for children, unless the person is an authorised person and under the direct supervision of the educator. The penalty for this offence remains \$1000.

Clause 51 substitutes section 172(c) of the National Law to clarify that more than one nominated supervisor may be nominated for an education and care service. New section 172(c) provides that an approved provider must ensure that information, prescribed by the national regulations, about each nominated supervisor of the service is clearly visible to anyone from the main entrance of the education and care service premises.

Clause 52 amends section 173 of the National Law, which requires an approved provider to notify certain matters to the Regulatory Authority.

Subclause (1)(a) amends section 173(2)(a) to replace the reference to certified supervisor with a reference to nominated supervisor. Section 173(2)(a) provides that an approved provider must notify the Regulatory Authority if the approved provider is notified of the suspension or cancellation of a working with children card or teacher registration of, or disciplinary proceedings under an education law in respect of, a nominated supervisor engaged by the service.

Subclause (1)(b) substitutes section 173(2)(b), which currently provides that an approved provider of an education and care service must notify the Regulatory Authority if a nominated supervisor of the service ceases to be employed or engaged by the service or withdraws consent to the nomination.

New section 173(2)(b) expands on the current provision by also requiring the approved provider to notify the Regulatory Authority if a nominated supervisor is removed from the role of nominated supervisor. This recognises that a nominated supervisor may be removed from this role but continue to be employed or engaged by the approved provider in some other capacity.

Current section 173(3) sets out the requirements (timing and form) for notifications required to be given under subsection (1). Current section 173(4) sets out the requirements (timing and form) for notifications required to be given under subsection (2).

New section 173(3) provides that notices under subsection (1) or (2) must be in writing and include any prescribed information.

New section 173(4) provides that a notice under subsection (1) must be provided within the prescribed time to the Regulatory Authority that granted the relevant provider approval.

New section 173(5) provides that a notice under subsection (2) must be provided within the prescribed time to the Regulatory Authority that granted the relevant service approval.

Clause 53 amends section 174 of the National Law, which currently requires the approved provider to notify the Regulatory Authority of certain information.

Section 174(2)(b) currently provides that an approved provider must notify the Regulatory Authority of any complaints alleging that the safety, health or wellbeing of a child is being compromised while the child is being educated and cared for by the service or that the National Law has been contravened.

New section 174(2)(b) provides that an approved provider must notify the Regulatory Authority of any complaints alleging that—

- a serious incident has occurred or is occurring while a child is being educated and cared for by the service; or
- the National Law has been contravened.

Subclause (2) repeals section 174(5) because the definition of **serious incident** in that section is being re-enacted in section 5(1) of the National Law by clause 10 of the Bill.

Clause 54 inserts new section 174A into the National Law to require family day care educators who educate and care for children as part of a family day care service to notify the approved provider of the service of—

- any serious incident that occurs while the educator is educating and caring for a child as part of the service;
- any complaints alleging that a serious incident has occurred or is occurring while the educator is educating and caring for a child or that the National Law has been contravened; or
- information about any matters prescribed in the national regulations.

A family day care educator who fails to comply with the notification requirements under section 174A will commit an offence, which attracts a maximum penalty of \$2000.

The new requirements will assist approved providers of a family day care service to comply with their notification obligations under section 174 of the National Law by ensuring that the service's family day care educators pass on required information.

Clause 55 amends section 178 to clarify that more than one nominated supervisor may be nominated for an education and care service.

Clause 56 substitutes Division 2 of Part 7 of the National Law. Section 180(1) of the National Law currently empowers the Regulatory Authority to accept an undertaking where there has been a contravention or an allegation of a contravention of the National Law.

Clause 56, together with clauses 15, 29 and 58, of the Bill expands the circumstances in which the Regulatory Authority may accept an undertaking under new section 179A of the National Law to include the acceptance of written undertakings given by—

- an approved provider of an education and care service, by virtue of new section 27(a), where the approved provider has been charged with an indictable offence or circumstances indicate that the approved provider may not be a fit and proper person to be involved in the provision of an education and care service (see section 25(a));
- an approved provider of an education and care service, by virtue of new section 72(a), where—
 - the Regulatory Authority reasonably believes that it is not in the best interests of children being educated and cared for by the service if the service was to continue (see section 70(a));
 - the service is not being managed in accordance with the National Law (see section 70(c)); or
 - the service has been rated as not meeting the National Quality Standard (and a waiver does not apply to the service in respect of non-compliance and there has been no improvement in the rating level) (see section 70(d)); and
- a person, by virtue of new section 184(3), where—
 - the person is involved with an education and care service and the Regulatory Authority considers that there may be an unacceptable risk of harm to a child if the person were allowed to remain on the service premises or educate and care for children (see section 182(1)); or
 - the Regulatory Authority considers the person is not suitable to be nominated as a nominated supervisor of the service (see new section 182(3)).

New section 179A(2) re-enacts section 180(2) to permit the Regulatory Authority to accept from a person who has contravened, or is alleged to have contravened, the National Law a written undertaking by the person to take or refrain from taking certain actions to comply with the National Law.

New section 179A(3) provides that the Regulatory Authority may accept a written undertaking from an approved provider of an education and care service in the circumstances provided for by section 27 or 72.

New section 179A(4) provides that the Regulatory Authority may accept a written undertaking from a person other than an approved provider in the circumstances set out in section 184.

New section 179A(5) re-enacts section 180(3), providing that a person who has given an undertaking may withdraw or amend the undertaking if the Regulatory Authority consents to the withdrawal or amendment.

New section 179A(6) re-enacts section 180(4), providing that the Regulatory Authority may withdraw its acceptance of an undertaking at which time the undertaking ceases to be in force.

New section 179A(7) provides that the Regulatory Authority may publish on its website an undertaking accepted under section 179A.

While an undertaking is in force, new section 179B of the National Law prevents the Regulatory Authority from taking certain actions against the approved provider or another person who gave the undertaking.

New section 179B(1) provides that during the period for which an undertaking under section 179A(2) is in force, criminal proceedings must not be instituted for any offence which may have been committed because of the contravention or alleged contravention for which the undertaking was accepted.

New section 179B(2) provides that during the period for which an undertaking under section 179A(3) is in force, the Regulatory Authority must not (as the case requires)—

- suspend the provider approval under section 27 on the same grounds on which undertaking was accepted; or
- suspend the service approval under section 72 on the same grounds on which the undertaking was accepted; or
- give a prohibition notice under section 182 on the same grounds on which the undertaking was accepted.

New section 179B(3) provides that during the period for which an undertaking under section 179A(4) is in force, the Regulatory Authority must not give a prohibition notice under section 182 on the same grounds on which the undertaking was accepted.

New section 180(1) provides that, if a person complies with the requirements of an undertaking under section 179A(2), criminal proceedings must not be instituted for any offence which may have been committed because of the contravention or alleged contravention for which the undertaking was accepted.

New section 180(2) provides that, if an approved provider complies with the requirements of an undertaking under section 179A(3), the Regulatory Authority must not (as the case requires)—

- suspend the provider approval under section 27 on the same grounds on which undertaking was accepted;

- suspend the service approval under section 72 on the same grounds on which the undertaking was accepted; or
- give a prohibition notice under section 182 on the same grounds on which the undertaking was accepted.

New section 180(3) provides that, if a person complies with the requirements of an undertaking under section 179A(4), the Regulatory Authority must not give a prohibition notice under section 182 on the same grounds on which the undertaking was accepted.

New section 181 of the National Law sets out—

- the procedure for the Regulatory Authority to enforce an undertaking that it has accepted under section 179A; and
- what action the Regulatory Authority may take if the relevant tribunal or court makes a determination that an approved provider or another person has failed to comply with an undertaking under section 179A.

New section 181(1) re-enacts current section 181(1) to provide that the Regulatory Authority may apply to the relevant tribunal or court for an order to enforce the undertaking, if the Regulatory Authority forms the opinion that a person has failed to comply with an undertaking, (**relevant tribunal or court** means the tribunal or court declared by a law of a participating jurisdiction to be the relevant tribunal or court for the purposes of the National Law—see section 5(1)).

New section 181(2) re-enacts current section 181(2) to provide that if the relevant tribunal or court is satisfied that the person has failed to comply with a term of the undertaking, it may make any of the following orders—

- an order directing the person to comply with the term of the undertaking;
- an order that the person take any specified action for the purpose of complying with the undertaking;
- any other order that the tribunal or court considers appropriate in the circumstances.

New section 181(3) provides that, if the tribunal or court determines that the person has failed to comply with an undertaking under section 179A(2), criminal proceedings may be instituted for any offence which may have been committed by the contravention or alleged contravention of the National Law for which the undertaking was given.

New section 181(4) provides that, if the tribunal or court determines that an approved provider has failed to comply with an undertaking under section 179A(3), the Regulatory Authority may proceed to (as the case requires)—

- suspend the provider approval under section 27;
- suspend the service approval under section 72;
- give a prohibition notice under section 182.

New section 181(5) provides that, if the tribunal or court determines that a person has failed to comply with an undertaking under section 179A(4), the Regulatory Authority may proceed to give a prohibition notice under section 182.

New sections 181(4) and (5) make it clear that a Regulatory Authority may proceed to suspend a provider approval or service approval or give a prohibition notice after the relevant tribunal or court has determined that a person has failed to comply with an undertaking without repeating the relevant show cause notice processes required by sections 26, 71 or 183. This is because the show cause notice process was already undertaken prior to the Regulatory Authority accepting an enforceable undertaking under new sections 27(a), 72(a) or 184(3) (see new clause notes to clauses 15, 29 and 58 for more information).

New section 181(6) provides that criminal proceedings may be instituted within 6 months of the tribunal's or court's determination or within 2 years of the date of the alleged offence, whichever date is the later. Section 181(6) applies to proceedings for an offence in respect of which an undertaking was given and accepted under section 179A(2) and in place of the general time limit before which proceedings must be brought in section 284 of the National Law.

Clause 57 amends section 182 of the National Law to expand the grounds on which the Regulatory Authority may give a prohibition notice to a person.

Subclause (1)(a) substitutes section 182(2)(b) to refer to a nominated supervisor, replacing the reference to a certified supervisor.

Subclause (1)(b) inserts new section 182(2)(h) to clarify that a person is involved in the provision of an approved education and care service, and may be given a prohibition notice, if the person was formerly a person referred to in paragraphs (a) to (g). This ensures that the Regulatory Authority is not prevented from issuing a prohibition notice to a person listed in section 182(2) simply because the person's engagement with an education and care service ceases.

Subclause (2) inserts new section 182(3) to empower the Regulatory Authority to give a prohibition notice to a person to—

- prohibit the person from being nominated as a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be a nominated supervisor; or
- impose one or more conditions on the nomination of the person as a nominated supervisor, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor subject to those conditions.

Clause 58 inserts new section 184(3) into the National Law.

After going through a show cause notice process in accordance with sections 183 and 184(1), the Regulatory Authority may currently either give a prohibition notice under section 182 of the National Law or decide not to give a prohibition notice.

New section 184(3) empowers the Regulatory Authority to accept an undertaking from a person under section 180 instead of giving a prohibition notice.

Clause 59 substitutes section 185 of the National Law, which currently sets out what information a prohibition notice given under section 182 must contain.

New section 185(1), which re-enacts current section 185(a), provides that a prohibition notice issued under section 182(1) must state that the person to whom the notice is given is prohibited from doing one or more of the following—

- providing education and care to children as part of an education and care service;
- being engaged as an educator, family day care educator, employee, contractor or staff member, or being a volunteer of an education and care service;
- performing any other function or activity in relation to an education and care service.

New section 185(2) provides that a prohibition notice issued under section 182(3) must state—

- that the person is prohibited from being nominated as a nominated supervisor; or
- that the person may only be nominated as a nominated supervisor subject to the condition or conditions specified by the Regulatory Authority in the notice.

New section 185(3), which re-enacts current sections 185(b) and 185(c), provides that a prohibition notice must state that the person may apply for cancellation of the notice and the manner in which such an application must be made.

Clause 60 inserts new section 186(4A) into the National Law to complement the expanded grounds on which a prohibition notice may be issued under new section 182(3) relating to nominated supervisors (which is inserted by clause 57 (2) of the Bill).

New section 186(4A) provides that, a person applying for cancellation of a prohibition notice under section 186, may state in the application anything that the person believes to be relevant to whether the person is a fit and proper person to be nominated as a nominated supervisor with or without conditions.

Clause 61 amends section 187 of the National Law to complement the expanded grounds on which a prohibition notice may be issued under new section 182(3) (which is inserted by clause 57(2) of the Bill).

The clause inserts new section 187(2), which makes it an offence if, during the period for which a prohibition notice under section 182(3) is in force, the person who is the subject of the notice—

- consents to a nomination as a nominated supervisor (in the case of a prohibition notice given under section 182(3)(a)); or
- consents to a nomination as a nominated supervisor in contravention of a condition stated in the notice (in the case of a prohibition notice given under section 182(3)(b)).

The commission of the offence attracts a maximum penalty of \$20 000, equivalent to that applying to section 187(1).

Clause 62 amends section 188 of the National Law to complement the expanded grounds on which a prohibition notice may be issued under new section 182(3) relating to nominated supervisors (which is inserted by clause 57 (2) of the Bill).

Section 188 creates an offence for engaging a person who is subject to a prohibition notice. New section 188(2) makes it an offence if an approved provider nominates a person as a nominated supervisor if the approved provider knows, or ought reasonably to know, that the nomination is contrary to a prohibition notice in force under the National

Law. The commission of the offence attracts a maximum penalty of \$20 000 for an individual and \$100 000 in any other case.

New section 188(3) makes it an offence if an approved provider nominates a person as a nominated supervisor the approved provider knows, or ought reasonably to know, that the nomination contravenes a condition of a prohibition notice in force under the National Law. The commission of the offence attracts a maximum penalty of \$20 000 for an individual and \$100 000 in any other case.

Clause 63 inserts new section 188A, an offence provision, to prevent a person who is subject to a prohibition notice from giving an approved provider false or misleading information about the content or existence of the prohibition notice. The commission of the offence attracts a maximum penalty of \$6000.

Clause 64 deletes the reference to *certified supervisor in section 188A*.

Clauses 65 – 67 Section 188A was limited to the Western Australian legislation until a new section 188A was inserted into the Education and Care Services National Law by the 2017 amendments. Clause 67 renumbers sections 188A, 188B and 188C in Part 7 Division 3A as sections 188AA, 188AB and 188AC. Clauses 65 and 66 correct the cross references to subsections as a consequence of the renumbering of these sections.

Clause 68 amends section 190 to remove redundant provisions for internal review of decisions relating to supervisor certificates.

Clause 69 repeals section 192(b)(v), which relates only to reviews of decisions relating to supervisor certificates.

Clause 70 amends section 199(4) of the National Law. Current section 199(4) provides that an authorised officer may only exercise the power under section 199 to enter a residence if an approved education and care service is operating at the residence at the time of entry or with the written consent of the occupier.

Authorised officers have found it difficult to determine whether a family day care service is operating at a residence and, therefore, the entry power under section 199, insofar as it relates to family day care services, has been largely ineffective. The amendments to section 199(4) clarify the circumstances within which an authorised officer may enter a family day care residence under section 199.

The clause amends section 199(4)(a) to provide that an authorised officer may exercise the entry power under section 199 if the authorised officer reasonably believes that an education and care service is operating at the residence at the time of entry. An authorised officer may form the reasonable belief, for example, if he or she observes children being dropped off at the residence by adults.

New section 199(4)(ab) provides that an authorised officer may exercise the entry power under section 199 if the register of family day care educators records that the approved service is operating at the time of entry. Approved providers are required to keep a register of the family day care educators engaged by the service under section 269(1) of the National Law. The register must contain the prescribed information which includes the hours and days of operation.

The power of authorised officers to enter a residence under section 199(4)(b) with the written consent of the occupier is unchanged.

Clause 71 amends section 200(1) of the National Law to clarify that the reference in that provision to principal office is a reference to the principal office of the approved provider of the service.

Clause 72 inserts new section 200A into the National Law.

Authorised officers are currently permitted to enter premises for the purposes of investigating whether an education and care service is operating without a service approval at the premises (in contravention of section 103) with a search warrant under section 201(1) of the National Law. However, there is no express power for an authorised officer to enter residential premises without a search warrant to determine whether section 103 has been contravened even if the occupier of the residence has given his or her consent. New section 200A provides authorised officers with this power.

New section 200A(1) provides that an authorised officer may enter residential and non-residential premises to determine if an education and care service is operating without a service approval from the premises if—

- the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103; and
- the occupier of the premises has consented in writing to the entry and inspection.

New section 200A(2) prevents an authorised officer from entering and searching the premises under section 200A unless the authorised officer has produced the officer's identity card for inspection and informed the occupier of the premises—

- of the purpose of the search (i.e. to determine if an education and care service is operating at the premises without a service approval) and the powers which may be exercised by the authorised officer; and
- that the occupier may refuse consent to entry and search or to the authorised officer taking anything from the premises; and
- that the occupier may refuse consent to the authorised officer taking any copy or extract from a document found on the premises during the search.

New section 200A(3) confers on an authorised officer who enters premises under section 200A the powers set out in clauses 5(2)(a) to 5(2)(e) of Schedule 2 to the National Law, namely, the powers to—

- search any part of the premises;
- inspect, measure, test, photograph or film or make audio recordings of, any part of or anything at the premises;
- take a thing, or a sample of a thing, at the premises;
- copy, or take an extract from, a document at the premises; and
- take onto the premises any person, equipment and materials reasonably required to exercise a power referred to above.

Clause 73 amends section 201(3) of the National Law to clarify that the reference in that provision to "principal office" is a reference to the "principal office of the approved provider of the service".

Clause 74 amends section 202 of the National Law as a consequence of the introduction of the new entry and access power under new section 200A.

New section 202 provides for the return of items taken by an authorised officer under new section 200A (in addition to current sections 199 and 200).

Clause 75 amends the definition of specified person in section 206(4) by replacing the reference to "a certified supervisor" with "a nominated supervisor". Section 206 relates to powers of authorised officers to require specified persons to provide information.

Clause 76 amends section 225(1) of the National Law.

Subclause (a) substitutes section 225(1)(g), which currently provides that the National Authority's functions include keeping national registers of approved providers, approved education and care services and certified supervisors. Subclause (a) removes the reference to "certified supervisors".

Subclause (b) substitutes section 225(1)(l). Subclause (b) changes "parents" to "parents, family members" on recommendation of the Joint Standing Committee on Delegated Legislation.

Subclause (c) substitutes section 225(1)(o), which currently provides that the National Authority's functions include determining the qualifications for authorised officers and to provide support and training for Regulatory Authority staff. The qualifications for authorised officers will be determined by Regulatory Authorities.

Clause 77 amends section 249(1) of the National Law, by substituting the words "day to day" with "day-to-day" to ensure consistent language is used throughout the National Law.

Clause 78 substitutes sections 261(2)(b) and 261(2)(c) to replace references to "certified supervisors" with "nominated supervisors". Section 261 sets out powers of the Regulatory Authority.

Clause 79 repeals section 268 of the National Law, which currently requires the National Authority to keep a register of certified supervisors, as a consequence of the removal of the provisions relating to certified supervisors.

Clause 80 substitutes section 269 of the National Law, which currently requires approved providers of a family day care service to maintain a register of family day care educators and other persons engaged by the family day care service to educate and care for children.

New section 269(1) creates an offence for an approved provider to fail to keep a register at the principal office of the service containing prescribed information in relation to—

- each family day care educator engaged by or registered with the service; and
- each family day care co-ordinator employed or engaged by the service; and
- each family day care educator assistant engaged by or registered with the service.

The penalty is \$4000 for an individual and \$20 000 in any other case.

New section 269(2) requires the approved provider to take reasonable steps to ensure that the information contained in the register is accurate. A failure to do so is an offence with a penalty of \$2000.

New section 269(3) makes it an offence if an approved provider fails to comply with a request of the Regulatory Authority to provide any information, or any changes to the

information, on the register within 24 hours of the request. The penalty is \$4000 for an individual and \$20 000 in any other case.

Clause 84 amends section 291 of the National Law to provide that an infringement notice may be served on a person for a contravention of the new offences in section 269.

Clause 81 amends section 270 of the National Law, which permits the National and Regulatory Authorities to publish certain information. Subclauses (1), (2), (3) and (4)(a) remove redundant references to certified supervisors.

Subclauses (4)(b) inserts new section 270(6)(c), to provide that information published under section 270 may include information that could identify or lead to the identification of an individual who is a person with management or control of an education and care service, if the Regulatory Authority is satisfied that it is in the public interest to do so.

By empowering the Regulatory Authority to publish enforcement action taken against persons with management or control of an education and care service, new section 270(6)(c) enables other body corporate approved providers and interstate Regulatory Authorities to perform checks on past action taken against the person (who may be seeking to join the approved provider or obtain an approval in a different jurisdiction).

Clause 82 substitutes sections 271 and 272 of the National Law. Current sections 271 and 272 provide for the sharing of information between the National Authority, government authorities (both within and between participating jurisdictions) and between the Regulatory Authority and approved providers.

Clause 82 substitutes section 271 of the National Law to clarify who may disclose information, and to whom information may be disclosed, and to expand on the limited purposes for which information may currently be disclosed.

New sections 271(1) and 271(2) provide that the National Authority and the Regulatory Authority, respectively, may disclose information in relation to an education and care service for a purpose listed in subsection (4) to—

- a relevant Commonwealth Government Department (defined in section 5(1)); and
- any State or Territory Government Department (which includes a Government Department of another state or territory); and
- any Commonwealth, State or Territory public authority (for example, the Australian Bureau of Statistics); and
- any State or Territory local authority (which includes a local authority of another state or territory); and
- the Regulatory Authority of any participating jurisdiction.

New section 271(3) provides that the National Authority, the Regulatory Authority and any Government Department, public authority or local authority (in the relevant participating jurisdiction) may disclose information to each other in respect of an education and care service for a purpose listed in subsection (4).

The purposes for disclosure of information referred to in subsections (1), (2) and (3) are set out in new section 271(4), namely that the disclosure is—

- reasonably necessary to promote the objectives of the national education and care services quality framework (which are set out in section 3(2) of the National Law); or
- to enable or assist the entity receiving the information to perform or exercise any of its functions or powers under the National Law; or
- for research or the development of national, state or territory policy with respect to education and care services; or
- for a purpose related to the funding of education and care services; or
- for a purpose relating to the payment of benefits or allowances to persons using education and care services (provided the disclosure is not otherwise prohibited by law).

New section 271(5) provides that, where a Regulatory Authority is notified of a suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor, it is required to disclose that information to the Regulatory Authorities of other jurisdictions. This re-enacts current section 271(4) without the reference to certified supervisor as the provisions relating to certified supervisors are being removed from the National Law.

New section 271(6) (which re-enacts current section 271(5)) provides that, if the Regulatory Authority issues a prohibition notice under the National Law, it has the ability to disclose that information to the head of the government department responsible for the administration of the working with children law (in the relevant participating jurisdiction).

New section 271(7) provides that a disclosure of information under section 271 is subject to Division 1 of Part 13 of the National Law, which applies the Privacy Act 1988 of the Commonwealth as a law of the participating jurisdiction, and any relevant protocol agreed to by—

- the National Authority, all participating jurisdictions and the Commonwealth (paragraph (a)); and
- the National Authority and one or more Regulatory Authorities (paragraph (b)).

Any protocols between the National Authority and Regulatory Authorities are subject to any protocol between the National Authority, participating jurisdictions and the Commonwealth.

New section 271(8) clarifies that information provided under section 271 for the purpose of research or the development of education and care services related policy (under subsection (4)(c)), must not include information that could identify or lead to the identification of individuals other than—

- an approved provider or a nominated supervisor; or
- 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
- of a person to whom a prohibition notice applies; or
- a person who is being prosecuted for an offence against the National Law.

Clause 82 also substitutes section 272 of the National Law.

New section 272(1) empowers the National Authority and the Regulatory Authority, at the request of an approved provider, to disclose the following information to the provider, if the relevant Authority considers on reasonable grounds that the provider requires the information to comply with the provider's obligations under the National Law—

- information regarding whether a person named in the request is subject to a prohibition notice (under section 182); or
- information regarding 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 (under section 178).

New section 272(2) provides that a disclosure of information under section 272 is subject to Division 1 of Part 13 of the National Law, which applies the Privacy Act 1988 of the Commonwealth as a law of the participating jurisdiction, and any relevant protocol agreed to by—

- the National Authority, all participating jurisdictions and the Commonwealth (paragraph (a)); and
- the National Authority and one or more Regulatory Authorities (paragraph (b)).

Any protocols between the National Authority and Regulatory Authorities are subject to any protocol between the National Authority, participating jurisdictions and the Commonwealth.

Clause 83 amends section 284 of the National Law.

Section 284 currently requires criminal proceedings must be brought within 2 years from the date of the alleged offence.

Clause 83 amends the section to clarify that the time limit is subject to new section 181(6). New section 181(6) provides that, for a contravention of the National Law in respect of which an undertaking has been given and accepted, criminal proceedings must be instituted before the later of either 6 months of a determination by a relevant tribunal or court or 2 years after the date of the alleged offence.

Clause 84 amends section 291(1)(a) of the National Law to permit an authorised officer or another person authorised by the Regulatory Authority to serve an infringement notice on a person for a contravention of the new offences contained in new section 269, inserted by clause 80.

Clause 85 amends section 292 by removing the reference to "certified supervisor" in section 292(a)(i).

Clause 86 amends section 301(3)(a) to remove the reference to "certificates". Section 301 authorises making of regulations.

Clause 87 amends section 305 to remove the definition of declared certified supervisor.

Clause 88 repeals section 315. Section 315 is a transitional provision relating to certified supervisors.

Clause 89 inserts new Divisions 5 and 6 into Part 15 of the National Law to provide for transitional arrangements for the changes made by the Bill.

New section 325 sets out the definitions of **2018 Act** and **commencement day** for the purposes of new Division 5.

New section 326 of the National Law provides for transitional arrangements relating to the amendments changing the process and requirements for the approval of a place as an approved family day care venue.

New section 326 applies to a family day care venue which was an approved family day care venue immediately before the commencement of the amendments.

New section 326(2) provides that a formerly approved family day care venue ceases to be an approved family day care venue 6 months after the commencement of the amendments (i.e. the appointed day) unless, before the appointed day, the Regulatory Authority approved an application under new section 54 for that venue to be an approved family day care venue. This provision is subject to new section 326(3).

New section 326(3) provides that, if the Regulatory Authority had not determined an application under section 54 for approval of the venue within 6 months of the commencement of the amendments (i.e. the appointed day), the formerly approved family day care venue continues to be an approved family day care venue until the application is determined.

This effectively gives approved providers, currently operating from approved family day care venues, 6 months to apply for approval of those venues as approved family day care venues under the amended National Law. If the approved provider does not apply for approval under section 54, those venues cease to be approved family day care venues under the amended National Law 6 months after the amendments commence.

If an application has been made, the service can continue to be provided from those venues until the Regulatory Authority has determined the application.

New section 326(4) requires the Regulatory Authority to make a decision on an application within 6 months and new section 326(4) provides that the ordinary 60 day time limit in section 54(5) does not apply.

New section 327 of the National Law provides that, despite section 326, declared approved family day care venues that were deemed under section 308 to be approved family day care venues continue to be approved family day care venues after the amendments take effect and approved providers do not need to re-apply for approval of these places. Approved providers of family day care services which provide education and care from declared approved family day care venues are not required to apply to the Regulatory Authority for approval as those venues were already subject to an approval process at the commencement of the National Law.

New sections 328 and 329 of the National Law provide for transitional arrangements relating to the changes relating to requirements regarding family day care co-ordinators for family day care services, made by clauses 22, 25, and 44 of the Bill.

New section 328 applies to an approved family day care service that is subject to the condition in current section 51(2) at the time the amendments to sections 51 and 163 commence. The condition in section 51(2) currently requires an approved provider of a family day care service to ensure that the service has sufficient family day care co-ordinators to support and adequately monitor its family day care educators.

New section 328(3) provides that the amendments to sections 51(2) and 163 do not apply until 12 months after the amendments take effect (i.e. the appointed day) or the Regulatory Authority earlier amends the service approval to impose a condition referred to in section 55A.

New section 329 applies to an approved family day care service that is subject to a condition requiring the service to have a minimum number of family day care co-ordinators at the time the relevant amendments commence.

New section 329(2) provides that the condition requiring the service to have a minimum number of family day care co-ordinators continues to apply to the service until the condition is amended under section 54 or 55. Section 163 as in force before commencement also continues to apply to the service until that condition is amended.

New sections 330 and 331 of the National Law provide for transitional arrangements relating to the removal of the provisions relating to certified supervisors.

New section 330 gives the National Authority the ability to publish information under section 270 about enforcement action taken under the National Law before the commencement of the amendments in relation to a certified supervisor including—

- the prosecution of any offence; and
- the acceptance of an undertaking; and
- the suspension or cancellation of a supervisor certificate.

While the information will be historical in the sense that the provisions relating to certified supervisors are being repealed, the information will still be relevant to enable approved providers to consider whether a person is suitable to be nominated as a nominated supervisor or appointed as the person in day-to-day charge of a service.

New section 330 expires on 31 December 2022 as the information will no longer be relevant at that date.

New Section 330A provides for transitional arrangements relating to show cause notices issued prior to the commencement of this Act.

New Section 330B provides for transitional arrangements relating to enforcement decisions made by the Regulatory Authority before the removal of the certified supervisor requirements from the National Law. Section 330B enables the Regulatory Authority to convert a notice to cancel a supervisor certificate into a Prohibition Notice.

New Section 330C enables any reviews of decisions made to suspend or cancel supervisor certificates to continue.

New section 331 preserves the ability of the Regulatory Authority and the National Authority to certify matters relating to any persons who were a certified supervisor before the removal of the certified supervisor requirements from the National Law. Sections 292(d) and (g) currently empower the Regulatory Authority and the National Authority to issue a certificate stating that any of the following matters is prima facie evidence of the matter—

- on a stated day, or during a stated period, a stated person was or was not a certified supervisor; and
- on a stated day, a supervisor certificate was suspended or cancelled.

New section 331 expires on 31 December 2022.

New section 332 sets out the definitions of 2018 Act and commencement day for the purposes of new Division 6.

New section 333 does not apply as a law of Western Australia as it relates to transitional provisions arising from the commencement of the National Quality Standard in February 2018

New section 334 of the National Law provides for transitional arrangements in relation to applications made for the highest rating level under section 152 prior to the commencement of the relevant amendments contained in clause 38 of the Bill.

New section 334 applies if, before the commencement of Division 6, an approved provider had submitted an application for a service to be assessed for the highest rating level under section 152 and the application had not yet been determined by the National Authority.

New section 334(2) provides that the threshold for making the application under section 152(5), as in force immediately before the commencement day, continues to apply to that application.

New sections 334(3)(a) and (b) provide that the following continue to apply for the purposes of the assessment under section 153(2) of the service to which the application relates—

- the criteria, as published by the board of the National Authority under section 153(1) immediately before the commencement day; and
- the National Quality Standard and the national regulations, as in force immediately before the commencement day.

New section 335 of the National Law provides for transitional arrangements in relation to services that have been awarded the highest rating level before the commencement of the relevant amendments in clauses 38 and 39 of the Bill.

If an approved education and care service was awarded the highest rating level either before the commencement day or after the commencement day pursuant to an application referred to in section 334, new sections 335(2)(a) and (b) provide that the following continue to apply for the purposes of a reassessment under section 157 of the service—

- the criteria, as published by the board of the National Authority under section 153(1) immediately before the relevant amendments commence; and
- the National Quality Standard and the national regulations, as in force immediately before the relevant amendments commence.

New section 335(3)(a) provides that the following continue to apply for the purposes of a revocation of the highest rating level awarded to a service to which this section applies—

- section 158, as in force immediately before the relevant amendments commence; and
- the criteria, as published by the board of the National Authority under section 153(1) immediately before the relevant amendments commence.

New section 335(3)(b) provides that, for the purposes of a revocation of the highest rating level awarded to a service to which this section applies, the overall rating level is to be determined in accordance with the National Quality Standard, as in force immediately before the commencement day.

Clause 90 amends various provisions to delete “any prescribed” and replace with “the prescribed”.

Part 3 —*Spent Convictions Act 1988* amended

Clause 91 amends the *Spent Convictions Act 1988*

Clause 92 amends Schedule 3 clause 1(5) 6A by deleting reference to a supervisor certificate.

Part 4 – *Working with Children (Criminal Record Checking) Act 2004* amended

Clause 93 amends the *Working with Children (Criminal Record Checking) Act 2004*

Clause 94 amends section 38 by deleting “a certified supervisor”.