

EDUCATION AND CARE SERVICES NATIONAL LAW (WA) AMENDMENT BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.13 pm]: I move —

That the bill be now read a second time.

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 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; 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 the Council of Australian Governments 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 groundbreaking 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 Western Australian 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. This standard 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 the "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 in order to be eligible to apply for the "excellent" rating.

Strengthening family day care service provisions: In Western Australia, 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 operate only from a jurisdiction for which they hold a service approval and to have a principal office in each jurisdiction in which they operate. They also include ensuring that 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. They also clarify that a family day care service can operate from a venue that is a location other than a family residence only in exceptional circumstances, such as in rural and remote Western Australia, when 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. The changes also include requiring approved providers of family day care services to notify the regulatory authority of a change in the location of their principal office prior to the change and to 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.

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 that 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 when a suspension or prohibition notice may be disproportionate to the noncompliance. The proposed amendments expand the grounds on which the regulatory authority may accept enforceable undertakings to include certain grounds that 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 that children and families benefit from this important national framework.

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.

[See paper 1490.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

Point of Order

Hon MICHAEL MISCHIN: I will not make a big deal out of this, other than to say that there is a small technical issue with the Education and Care Services National Law (WA) Amendment Bill 2018. The bills that can be referred to the Standing Committee on Uniform Legislation and Statutes Review are uniform legislation bills. It is open to the government and the member introducing the bill to say whether it is a uniform legislation bill in their view or not. In this case, the government has said that it has received advice that it is not and it has quite helpfully given the reasons for that advice. The Council may accept that or it may reject that. Standing order 126(3) states —

The Council may order that a Bill is a Uniform Legislation Bill notwithstanding contrary advice from the Member in charge of the Bill.

Technically, rather than saying that it is not a uniform legislation bill but still sending it to the committee, which does not have a remit to deal with it, the government is inviting the Council to consider it as a uniform legislation bill, which then falls within the remit of the committee to be able to address it. It is perhaps as much a matter about form as substance; otherwise, the bill ought to go to the Standing Committee on Legislation or some other committee.

Hon SUE ELLERY: The advice that the responsible minister received was that it is not a uniform legislation bill. I am really in the hands of the house. I do not know that I can change the second reading speech without checking with the minister. Maybe the safest thing to do is to take on board the advice that the member has given. I am leaning towards not referring the bill to the committee and deeming it not to be requiring to be referred. If any members have an issue with that, please let me know because we are relaxed about this; we want to do the right thing. The best thing for me to do is make sure that I am speaking on behalf of the minister. I do not know what the process is. Should I adjourn at this particular point of my second reading speech?

The PRESIDENT: Minister, given what you have said in the second reading speech, we have already referred the bill to the committee and you have tabled the explanatory memorandum. I am happy for you to go away and have that discussion with the minister, but you made that call on their behalf during the second reading speech. Even though it is not technically a traditional uniform legislation bill, the government has decided that it does need to be looked at by the committee and, on that basis, it has been referred. I take on board what Hon Michael Mischin has said but I think one or two bills may have been sent to that committee on a similar basis in the past. I might seek some advice about what we do with it now and the minister might go away and talk to the minister in the other place.

Hon MICHAEL MISCHIN: I understand what the government is trying to do. As a matter of certainty and for the comfort of members, it is seeking to have it considered as a uniform legislation bill by the Standing Committee on Uniform Legislation and Statutes Review. In a sense, although it has a view that it is not and it is arguable that it is not, the government is really inviting the Council to treat it as a uniform legislation bill. In the penultimate paragraph, the government is saying that in order to provide certainty for members, the bill is referred to the committee. That is effectively what it is doing. I do not think it will compromise the leader's position if she makes that concession, in which case we can carry on with the job. I do not care one way or the other as Chair of the committee whether we get it or not; we will do whatever the Council wants us to do. That might expedite the process; otherwise, if the Council wants to have a debate about whether it is or not, it will need time to consider the bill, and this is the first it has seen it.

Hon Sue Ellery: I was not inviting a debate; I was saying that the government has made a judgement. To be certain, we should refer it.

Hon MICHAEL MISCHIN: Sure, but I am saying that if the minister is going to adjourn the question of whether or not it is uniform and we accept her advice, members need to consider the bill.

The PRESIDENT: The minister made that call in her second reading speech. I note the comments made by Hon Michael Mischin. I think at this point we should just leave it as it is and the bill is referred to your committee and the explanatory memorandum tabled. I think that is the cleanest and simplest way to manage this.