

EDUCATION AND CARE SERVICES NATIONAL LAW APPLICATION BILL 2024

Introduction and First Reading

Bill introduced, on motion by **Ms S.E. Winton (Minister for Early Childhood Education)**, and read a first time.
Explanatory memorandum presented by the minister.

Second Reading

MS S.E. WINTON (Wanneroo — Minister for Early Childhood Education) [10.17 am]: 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 their early years and helps build the foundation for better health, education and employment outcomes in later life. It plays a vital role in supporting families by facilitating their participation in the labour market as well as in training opportunities, access to study, volunteering time to the community, and managing personal and family circumstances when they arise.

In Australia, over 1.4 million children benefit from early childhood education and care services. Of that number, over 126 000 children in Western Australia attend an approved service, including many in regional communities. In 2009, all states and territories agreed to develop a national quality framework, known as the NQF, to ensure a largely uniform regulation of early childhood education and care services. Commencing in 2012, this framework is built around objectives and principles that include ensuring the safety, health and wellbeing of children and improving educational and developmental outcomes; promoting continuous improvement in service provision together with reducing regulatory and administrative burden; the best interests of the child being paramount; and principles of equity, inclusion and diversity with support for the roles of parents and families.

The national quality framework regulates education and care services that are provided to children on a regular basis, including long-day care services, family day care services and outside school hours care services. The NQF consists of the Education and Care Services National Law and National Regulations and the National Quality Standard. All jurisdictions apply the Education and Care Services National Law, enacted by the Victorian Parliament and adopted by participating jurisdictions. Western Australia has been adopting the national law through the enactment of corresponding legislation to maintain national consistency of the NQF, which means it is implemented later than in other jurisdictions.

In this context, the Education and Care Services National Law Application Bill 2024 will apply the Education and Care Services National Law as a law of Western Australia and repeal WA's current corresponding Education and Care Services National Law (WA) Act 2012 and regulations made under that act. Applying the national law in this way will support ongoing improvement in the sector by continuing the operation in WA of the NQF in a way that is more nationally consistent and supports more timely application of future amendments.

I will now expand upon the key aspects of the bill. Part 2 of the bill includes an applied law mechanism. This will provide for the application of amendments to the national law and national regulations in WA. The applied law mechanism to apply the national law will preserve the sovereignty of the Western Australian Parliament and is consistent with the recommendations of the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review for other national schemes operating in WA, such as the Legal Profession Uniform Law Application Act 2022, the Fair Trading Amendment Act 2022 and the Health Practitioner Regulation National Law Application Act 2024.

The sovereignty of the WA Parliament will be maintained as the bill provides for the tabling of amendments to the national law and national regulations and for either house of Parliament to disallow those amendments following consideration by the Joint Standing Committee on Delegated Legislation.

The bill will apply the national law, with modifications, as a law of WA as it is in force on 20 June 2024. This will bring WA into alignment with the other jurisdictions. The bill provides for an amending act, being a Victorian act, that subsequently amends the national law to be laid before each house of Parliament within 18 days after the day on which the amending act receives royal assent in Victoria. An amending act will not become a law in WA until there is consideration by the Parliament and, if necessary, the amending act will be disallowed.

The bill also deals with the application of the national regulations and will apply them with modifications as in force on commencement day. As with an amending act, the bill provides a mechanism for the tabling and disallowance of amending regulations. Moving from a corresponding to an applied law mechanism means that amendments to the national law in Victorian acts prior to 20 June 2024 will apply in WA. These acts are the Victorian Regulatory Legislation Amendment (Reform) Act 2022, the Victorian Early Childhood Legislation Amendment Act 2022 and the Victorian Early Childhood Legislation Amendment (Premises Approval in Principle) Act 2023. Repositioning WA to an applied law framework will reduce the delay between the time that any future amendments to the early childhood

education and care national legislation applies in all other jurisdictions and the time that those amendments will apply in WA, ensuring the ongoing safety and wellbeing of children in early childhood education and care settings.

This bill provides an important step towards greater alignment with all other jurisdictions, enhancing the operation of the NQF in WA to provide greater certainty and support for the sector, the regulatory authority and the Australian Children's Education and Care Quality Authority in the continued delivery of high-quality early childhood education and care services.

A review of the bill is to be carried out as soon as practicable after five years to report back to each house of Parliament as an assessment of the changes made by the bill.

Part 3 of the bill will modify the national law as it is to apply in Western Australia to preserve the important and established WA-specific differences in the NQF legislation. The NQF is largely uniform, while still recognising individual jurisdictional differences and the need for local provisions tailored to suit the individual circumstances of one or several jurisdictions, with every effort made to minimise these incidences. Many of the modifications in part 3 replicate current provisions in WA's corresponding legislation, which are subject to parliamentary scrutiny and which are sought to be retained. For example, these modifications will provide for the continued integration of the national law with WA's School Education Act 1999 to enable the delivery of preschool, known as kindergarten in WA, as a program in WA; maintain higher penalties than those in any other jurisdiction for failing to ensure that a child leaves a service in one of the prescribed ways, such as into the care of a parent; include WA's power to take disciplinary action against a person linked to a WA service; include reference to family members in addition to parents in respect of Aboriginal and Torres Strait Islander parenting practices; and include a range of small amendments that will clarify and broaden regulatory powers and, in combination, enhance the WA regulatory authority's administrative and enforcement capability under the NQF.

Uniquely, the bill provides a mechanism to address circumstances in which a provision of an amending act will effect a modification to the national law contained in part 3. If this causes a modification to the national law to not have effect, a regulation may be made as a temporary measure to ensure that the modification to the national law in part 3 will continue to apply. Any such regulation would be for no longer than 12 months after it commenced, so an amendment bill could be drafted and introduced for consideration by the WA Parliament.

Part 4 of the bill provides for the making of regulations by the Governor for matters required or convenient for giving effect to the bill. This includes modifying the national regulations for the purpose of applying them in WA. The current WA regulations include provisions that are unique to WA and therefore not included in the national regulations, such as our swimming pool regulations, which are specific to family day care services and provide a safer environment for WA children. Modifications will be made to preserve WA's established differences from the national regulations.

Part 5 of the bill will repeal the Education and Care Services National Law (WA) Act 2012 and subsidiary legislation. It sets out transitional provisions to facilitate the change from the WA corresponding legislation, the Education and Care Services National Law (WA) Act 2012 and its subsidiary legislation, to the Education and Care Services National Law application legislation and to preserve existing rights and obligations and administrative processes and proceedings under the new law. For example, the transitional provisions will ensure that existing service approvals continue as if granted under the applied national law. There will also be a limited power to make transitional regulations during the first two years after commencement to deal with any unforeseen matters that may arise.

The national law that will be applied by the bill incorporates amendments approved by the national education ministers and made to the national law, but not yet to the WA law, following the review of the national quality framework that commenced in 2019. The 2019 review sought to refine and modernise the NQF, whilst also considering its ongoing effectiveness and sustainability in light of the evolution of the early childhood education and care sector.

The key changes made to the national law in 2022 and 2023 to give effect to these decisions that will come into effect when the national law is applied in WA include strengthening the safety of children in early childhood education and care services by addressing gaps between the national principles for child-safe organisations and the national quality framework and requiring that all family day care coordinators complete child protection training prior to commencing employment.

It will improve safety and oversight in family day care services by enabling improved access for regulatory authorities to family day care residential-level information on a service's family day care register, which will enable risk-based proactive approaches to regulation and assist in the identification of family day care educators during emergency situations. It will improve oversight and compliance tools for regulatory authorities through minor changes to the process for transfer of services between approved providers; provide that cancellation or refusal of provider approval under the commonwealth Family Assistance Law for lack of fitness and propriety is to be a specific ground for cancellation or refusal of a provider approval under the national law; and confirm that the

regulatory authority may administer questions to an applicant for provider approval to assess their fitness and propriety and to undertake an assessment of their knowledge of the NQF.

This bill will update the maximum penalties for offences throughout the national law by increasing those penalties by 14.9 per cent to keep up with the cumulative increase in the consumer price index since the NQF began in 2012; reduce the burden for early childhood education and care services by aligning the definition of a “person with management or control of a service” with the Family Assistance Law definition of a “person with management or control of a provider”, to better capture persons exercising significant influence over the operation of a service; and make minor and technical amendments to clarify existing provisions, such as the calculation of family day care coordinator-to-educator ratios.

This bill will give effect to the shared commitment to the continued and enhanced operation of the national quality framework, ensuring that children, families and the early childhood education and care sector that supports them continue to benefit from this important national framework.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle (Deputy Leader of the Opposition)**.