

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

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Western Australia

LEGISLATIVE ASSEMBLY

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

A Bill for

An Act to amend the *Education and Care Services National Law (WA) Act 2012*, and to make consequential amendments to the *Spent Convictions Act 1988* and the *Working with Children (Criminal Record Checking) Act 2004* and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Education and Care Services National Law (WA) Amendment Act 2018*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act —
 - (i) if assent day is before 1 October 2018 — 1 October 2018; or
 - (ii) if assent day is on or after 1 October 2018 — on a day fixed by proclamation.

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

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

Division 2 Education and Care Services National Law amended

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1 **5. Section 10 amended**

2 In section 10 delete “*Western Australian College of Teaching*
3 *Act 2004*” and insert:

4

5 *Teacher Registration Act 2012*

6

7 **6. Section 15 amended**

8 Delete section 15(3).

9 **7. Section 19 deleted; transitional regulations repealed**

10 (1) Delete section 19.

11 (2) The *Education and Care Services National Law (Transitional)*
12 *Regulations 2012* are repealed.

13 **8. Part 4 deleted**

14 Delete Part 4.

15 **Division 2 — Education and Care Services National**
16 **Law amended**

17 **9. Provisions amended**

18 This Division amends the Education and Care Services National
19 Law set out in the Schedule to the *Education and Care Services*
20 *National Law (WA) Act 2012*.

21 **10. Section 5 amended**

22 (1) In section 5(1) delete the definitions of:

23 *approved family day care venue*

24 *certified supervisor*

25 *family day care service*

26 *Ministerial Council*

1 *nominated supervisor*
2 *office*
3 *supervisor certificate*

4 (2) In section 5(1) insert in alphabetical order:

5
6 *approved family day care venue* means a place (other than a
7 residence) approved under section 50A or 54(8A) as a
8 family day care venue for an approved family day care
9 service;

10 *executor*, in relation to an approved provider, includes a
11 person —

- 12 (a) entitled to a grant of letters of administration in
13 relation to the estate of the approved provider,
14 including with the will annexed; or
15 (b) granted letters of administration in relation to the
16 estate of the approved provider, including with the
17 will annexed; or
18 (c) granted probate of the will of the approved
19 provider; or
20 (d) named as executor in a valid will of the approved
21 provider;

22 Note: This definition is not included in section 5 of the national law
23 as set out in the Schedule to the *Education and Care*
24 *Services National Law Act 2010* (Victoria).

25 *family day care educator assistant* means a person engaged
26 by or registered with a family day care service to assist
27 family day care educators;

28 *family day care service* means an education and care service
29 that —

- 30 (a) is delivered through the use of 2 or more educators
31 to provide education and care to children; and
32 (b) operates from 2 or more residences;

33 Note: A family day care service that is an approved family day
34 care service may provide education and care to children
35 from a family day care residence or an approved family day
36 care venue.

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

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

Division 2 Education and Care Services National Law amended

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- 1 **Ministerial Council** means the Ministerial Council
2 which —
- 3 (a) is constituted from time to time by Ministers of the
4 Crown of the Commonwealth, State and Territory
5 Governments; and
- 6 (b) is responsible for early childhood education and
7 care matters;
- 8 **nominated supervisor**, in relation to an education and care
9 service, means an individual who —
- 10 (a) is nominated by the approved provider of the
11 service under Part 3 to be a nominated supervisor of
12 that service; and
- 13 (b) unless the individual is the approved provider, has
14 provided written consent to that nomination;
- 15 Note: An individual may be both a nominated supervisor of a
16 family day care service and a family day care co-ordinator
17 for that service if the individual meets the criteria for each
18 role.
- 19 **office**, in relation to a family day care service, means —
- 20 (a) the principal office of the service; or
21 (b) the principal office of the approved provider of the
22 service; or
23 (c) any other business office of the approved provider
24 of the service; or
25 (d) any premises of the service from which the
26 service's family day care educators are
27 co-ordinated;
- 28 **person in day-to-day charge**, in relation to an education and
29 care service, means a person who is placed in day-to-day
30 charge of the service in accordance with the national
31 regulations;
- 32 **prohibition notice** means a prohibition notice given under
33 section 182(1) or 182(3);

1 **12. Section 14 amended**

2 In section 14(2) delete “request and” and insert:

3

4 request until

5

6 **13. Section 17 amended**

7 In section 17 delete “until it is cancelled or surrendered under this
8 Law, or this Law as applying in a participating jurisdiction.” and
9 insert:

10

11 until —

12 (a) it is cancelled or surrendered under this Law, or this
13 Law as applying in a participating jurisdiction; or

14 (b) if the provider approval is granted to an
15 individual — the individual dies.

16 Note: This section differs from section 17 of the national law as set
17 out in the Schedule to *the Education and Care Services*
18 *National Law Act 2010* (Victoria).

19

20 **14. Section 25 amended**

21 In section 25(1)(g)(i) delete “section 188B; or” and insert:

22

23 section 188AB; or

24

25 **15. Section 27 amended**

26 Delete section 27(a) and (b) and insert:

27

28 (a) if the suspension was proposed on a ground referred
29 to in section 25(1)(a), accept an undertaking from
30 the approved provider under section 179A; or

- 1 (b) in any case —
2 (i) suspend the provider approval for a period
3 not more than the prescribed period; or
4 (ii) decide not to suspend the provider approval.

5 Note: This section differs from section 27 of the national law as set
6 out in the Schedule to the *Education and Care Services*
7 *National Law Act 2010* (Victoria).
8

9 **16. Section 39 amended**

10 (1) Delete section 39(2) and insert:
11

12 (2) A nominated supervisor or a person in day-to-day charge of
13 an education and care service of the approved provider must
14 notify the Regulatory Authority of the approved provider's
15 death within 7 days after that death.
16

17 (2) In section 39(3) delete “the nominated supervisor or any certified
18 supervisor continues to manage the day to day” and insert:
19

20 that at least 1 nominated supervisor continues to manage the
21 day-to-day
22

23 (3) In section 39(6)(b) delete “any prescribed” and insert:
24

25 the prescribed
26

27 Note:

28 The note at the end of section 39 is to read:

29 Note: This section differs from section 39 of the national law as set out in
30 the Schedule to the *Education and Care Services National Law*
31 *Act 2010* (Victoria), including that the term executor is defined in
32 section 5 of this Law.

1 **17. Section 41 amended**

2 Delete section 41(4)(b) and insert:

3

4 (b) may be extended or further extended for periods of
5 not more than 6 months,

6

7 Note:

8 At the end of section 41 the following note is to be inserted:

9 Note: Executor is defined in section 5 of this Law but is not
10 defined in section 5 of the national law as set out in the
11 Schedule to the *Education and Care Services National Law*
12 *Act 2010* (Victoria).

13 **18. Section 43 amended**

14 In section 43(2) delete “supervisor” and insert:

15

16 supervisors

17

18 **19. Section 44 amended**

19 (1) In section 44(1)(c) delete “any prescribed” and insert:

20

21 the prescribed

22

23 (2) Delete section 44(1)(d) and insert:

24

25 (d) nominate one or more individuals to be nominated
26 supervisors of the service; and

27 (da) include from each nominated individual (other than
28 the approved provider) the written consent to the
29 nomination; and

30

1 (3) Delete section 44(3) and insert:

2

3 (3) An application for a service approval for a family day care
4 service may include a request for approval of a place (other
5 than a residence) as a family day care venue for that service.

6 Note:

7 The note at the end of section 44 is to read:

8 Notes:

- 9 1. This approval is granted under section 50A only if exceptional
10 circumstances exist.
- 11 2. This section differs from section 44 of the national law as set
12 out in the Schedule to the *Education and Care Services*
13 *National Law Act 2010* (Victoria).
14

15 **20. Section 47 amended**

16 Delete section 47(1)(e) and insert:

17

18 (e) except in the case of a nominated supervisor who is
19 the approved provider, whether each nominated
20 supervisor has consented in writing to the
21 nomination; and
22

23 **21. Section 50A inserted**

24 After section 50 insert:

25

26 **50A. Approval of a place as a family day care venue**

27 The Regulatory Authority may, at the time of granting the
28 service approval for a family day care service, approve a
29 place (other than a residence) as a family day care venue for
30 that service if the Regulatory Authority considers
31 exceptional circumstances exist.
32

1 **22. Section 51 amended**

2 (1) Delete section 51(2) and insert:

3

4 (2) A service approval for a family day care service is granted
5 subject to a condition that the approved provider must
6 ensure that each family day care educator engaged by or
7 registered with the service is adequately monitored and
8 supported by a family day care co-ordinator.

9 (2A) A service approval for a family day care service is granted
10 subject to a condition that each family day care residence,
11 and any approved family day care venue of the service, are
12 to be located within this jurisdiction.

13

14 (2) After section 51(4) insert:

15

16 (4A) A service approval for an education and care service other
17 than a family day care service is granted subject to a
18 condition that the approved provider must ensure that the
19 number of children educated and cared for by the service at
20 any one time does not exceed the maximum number of
21 children specified in the service approval.

22 (4B) An approved provider is not required to comply with
23 subsection (4A) if —

24 (a) the maximum number of children is exceeded
25 because a child is being educated and cared for by
26 the education and care service in an emergency; and

27 (b) the approved provider is satisfied on reasonable
28 grounds that this will not affect the health, safety
29 and wellbeing of any other child who is attending
30 the education and care service.

31 Example: An emergency under this subsection would include
32 circumstances where a child is in need of protection under a
33 child protection order or where the parent of a child needs
34 urgent health care that prevents that parent caring for the
35 child.

36

1 Note:

2 At the end of section 51 the following note is to be inserted:

3 Note: This section differs from section 51 of the national law as set
4 out in the Schedule to the *Education and Care Services*
5 *National Law Act 2010* (Victoria).

6 **23. Section 52 amended**

7 In section 52(b) after “principal office” insert:

8

9 of the service

10

11 **24. Section 54 amended**

12 (1) After section 54(1) insert:

13

14 (1A) An application under subsection (1) may include a request
15 for the approval of a place (other than a residence) as a
16 family day care venue for a family day care service.

17

18 (2) In section 54(2)(b) delete “any prescribed” and insert:

19

20 the prescribed

21

22 (3) In section 54(4) delete “request and” and insert:

23

24 request until

25

26 (4) Delete section 54(8) and insert:

27

28 (8) Subject to subsection (8A), an amendment cannot change a
29 location of an education and care service.

- 1 (8A) The Regulatory Authority may approve a place (other than a
2 residence) as a family day care venue for a family day care
3 service if the Regulatory Authority considers exceptional
4 circumstances exist.
5

6 **25. Section 55A inserted**

7 After section 55 insert:
8

9 **55A. Condition relating to family day care co-ordinators**

- 10 (1) Without limiting section 55, an amendment under that
11 section may impose a condition on the service approval for a
12 family day care service requiring the approved provider to
13 ensure that there is a minimum of 1 qualified person
14 employed or engaged as a family day care co-ordinator for
15 each 15 family day care educators engaged by or registered
16 with that service.
- 17 (2) A condition may only be imposed under subsection (1) if —
18 (a) the family day care service has been operating for
19 more than 12 months; and
20 (b) the Regulatory Authority —
21 (i) has taken into account the approved
22 provider's capability and compliance with
23 this Law in respect of the family day care
24 service; and
25 (ii) considers that family day care educators are
26 not adequately monitored and supported by
27 a family day care co-ordinator.
- 28 (3) Section 163 does not apply if a condition is imposed under
29 subsection (1) in respect of a family day care service.
- 30 (4) A person is a qualified person under this section if the
31 person has the qualifications prescribed by the national
32 regulations.
33

1 **26. Section 56 replaced**

2 Delete section 56 and insert:

3

4 **56. Notice of change to nominated supervisor**

5 (1) The approved provider of an education and care service
6 must give written notice to the Regulatory Authority in
7 accordance with this section if the approved provider wishes
8 to add a new nominated supervisor of the education and care
9 service.

10 (2) The notice must —

11 (a) nominate one or more individuals to be nominated
12 supervisors of the service and, unless the individual
13 nominated is the approved provider, include from
14 each nominated individual the written consent to the
15 nomination; and

16 (b) include the prescribed information that is requested
17 by the Regulatory Authority; and

18 (c) be given —

19 (i) at least 7 days before the individual is to
20 commence work as a nominated supervisor;
21 or

22 (ii) if that period of notice is not possible in the
23 circumstances, as soon as practicable but
24 not more than 14 days after the individual
25 commences work as a nominated
26 supervisor.

27 Notes:

28 1. Section 173(2)(b) requires an approved provider to notify the
29 Regulatory Authority of the removal of a nominated supervisor

30 2. This section differs from section 56 of the national law as set
31 out in the Schedule to the *Education and Care Services*
32 *National Law Act 2010* (Victoria).

1 **56A. Notice of change of a nominated supervisor’s name or**
2 **contact details**

3 The approved provider of an education and care service
4 must give written notice to the Regulatory Authority of any
5 change to the name or contact details of any nominated
6 supervisor of the education and care service.
7

8 **27. Section 62 amended**

9 (1) In section 62(3) delete “The notice” and insert:

10
11 Subject to subsection (5), the notice
12

13 (2) Delete section 62(4) and insert:

14
15 (4) A notification under subsection (2) must be in writing.

16 (5) The period within which notice must be given under
17 subsection (3) does not apply where the Regulatory
18 Authority has not been notified of the intended transfer of a
19 service approval in accordance with section 59.
20

21 **28. Section 70 amended**

22 In section 70(1)(i)(i) deleted “188B; or” and insert:

23
24 188AB; or
25

26 **29. Section 72 amended**

27 Delete section 72(a) and (b) and insert:

28
29 (a) if the suspension was proposed on the ground
30 referred to in section 70(1)(a), (c) or (d), accept an

- 1 undertaking from the approved provider under
2 section 179A; or
3 (b) in any case —
4 (i) suspend the service approval for a period
5 not more than the prescribed period; or
6 (ii) decide not to suspend the service approval.
- 7 Note: This section differs from section 72 of the national law as set
8 out in the Schedule to the *Education and Care Services*
9 *National Law Act 2010* (Victoria).
- 10

11 **30. Section 84 amended**

12 In section 84(1) delete “or 81.” and insert:

13

14 or 82.

15

16 **31. Section 89 amended**

17 (1) In section 89 delete “For” and insert:

18

19 (1) For

20

21 (2) At the end of section 89 insert:

22

23 (2) If the Regulatory Authority asks the applicant for further
24 information under this section, the period from the making
25 of that request until the provision of further information is
26 not included in the period referred to in section 91(2) for the
27 Regulatory Authority to make a decision on the application.
28

1 **32. Section 91 amended**

2 Delete section 91(4) and insert:

3

4 (4) If a service waiver is granted, the Regulatory Authority may
5 place any conditions on the service waiver, including any
6 condition limiting the use of the service waiver.

7 (5) The Regulatory Authority may, at any time remove, add to
8 or vary any conditions placed on a service waiver under
9 subsection (4).

10 (6) If a service waiver is granted or its conditions are amended
11 under subsection (5), the Regulatory Authority must issue or
12 reissue the service approval specifying —

13 (a) the element or elements of the National Quality
14 Standard and the national regulations that have been
15 waived; and

16 (b) any conditions placed on the waiver.
17

18 **33. Section 96 amended**

19 (1) In section 96 delete “For” and insert:

20

21 (1) For
22

23 (2) At the end of section 96 insert:
24

25 (2) If the Regulatory Authority asks the applicant for further
26 information under this section, the period from the making
27 of that request until the provision of further information is
28 not included in the period referred to in section 98(1) for the
29 Regulatory Authority to make a decision on the application.
30

1 **34. Section 98 amended**

2 Delete section 98(4) and insert:

3

- 4 (4) An application under subsection (3) must include payment
5 of the prescribed fee.
- 6 (5) If a temporary waiver is granted, the Regulatory Authority
7 may place any conditions on the temporary waiver,
8 including any condition limiting the use of the temporary
9 waiver.
- 10 (6) The Regulatory Authority may, at any time remove, add to
11 or vary any conditions placed on a temporary waiver under
12 subsection (5).
- 13 (7) If a temporary waiver is granted or its conditions are
14 amended under subsection (6), the Regulatory Authority
15 must issue or reissue the service approval specifying —
- 16 (a) the element or elements of the National Quality
17 Standard and the national regulations that have been
18 temporarily waived; and
- 19 (b) the period of the waiver; and
- 20 (c) any conditions placed on the waiver.

21

22 **35. Section 103A inserted**

23 After section 103 insert:

24

25 **103A. Offence relating to places where education and care is**
26 **provided as part of a family day care service**

27 An approved provider of a family day care service must
28 ensure that education and care is not provided to children, as
29 part of the service, from a place that is not a family day care
30 residence or an approved family day care venue unless
31 otherwise permitted by this Law.

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

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

Division 2 Education and Care Services National Law amended

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1 Penalty: \$20 000, in the case of an individual.
2 \$100 000, in any other case.
3

4 **36. Part 4 deleted**

5 Delete Part 4.

6 **37. Section 142 amended**

7 Delete section 142(4) and insert:
8

9 (4) The Regulatory Authority may extend the 30 day review
10 period under subsection (3) in one of the following
11 circumstances —

- 12 (a) for an additional period of up to 30 days, if a
13 request for further information is made under
14 subsection (2);
15 (b) for an additional period of up to 30 days, by
16 agreement between the approved provider and the
17 Regulatory Authority;
18 (c) for an additional period of up to 60 days, where the
19 Regulatory Authority considers there are special
20 circumstances that warrant an extension of time to
21 conduct the review.
22

23 **38. Section 152 amended**

24 Delete section 152(5) and insert:
25

26 (5) An application may be made for the highest rating level only
27 if the approved education and care service holds the rating
28 levels prescribed for the purposes of this section.
29

1 **42. Section 162 amended**

2 Delete section 162(1)(b) and (c) and insert:

3

4 (b) a nominated supervisor of the service;

5 (c) a person in day-to-day charge of the service.

6

7 **43. Section 162A inserted**

8 After section 162 insert:

9

10 **162A. Persons in day-to-day charge and nominated supervisors**
11 **to have child protection training**

12 The approved provider of an education and care service
13 must ensure that each nominated supervisor and each person
14 in day-to-day charge of the service has successfully
15 completed the child protection training (if any) required by
16 or under the law of this jurisdiction, a Government protocol
17 applying to the approved provider in this jurisdiction or
18 otherwise required by this jurisdiction.

19

20 **44. Section 163 amended**

21 In section 163(1) delete “one or more” and insert:

22

23 the prescribed minimum number of

24

25 **45. Section 164 amended**

26 Delete section 164(1)(b) and (c) and insert:

27

28 (b) a nominated supervisor of the service;

29 (c) a person in day-to-day charge of the service.

30

1 **46. Section 164A inserted**

2 After section 164 insert:

3

4 **164A. Offence relating to the education and care of children by**
5 **family day care service**

6 (1) The approved provider of a family day care service must
7 ensure that any child being educated and cared for as part of
8 the service is not educated and cared for by a person other
9 than a family day care educator, except in the circumstances
10 prescribed by the national regulations.

11 Penalty: \$10 000, in the case of an individual.

12 \$50 000, in any other case.

13 (2) A family day care educator must ensure that any child being
14 educated and cared for by the educator as part of a family
15 day care service is not educated or cared for by any other
16 person at the family day care residence or approved family
17 day care venue, except in the circumstances prescribed by
18 the national regulations.

19 Penalty: \$2 000.

20

21 **47. Section 165 amended**

22 In section 165(2) delete “The nominated” and insert:

23

24 A nominated

25

26 **48. Section 165A amended**

27 In section 165A(2) delete “The nominated” and insert:

28

29 A nominated

30

1 **49. Section 166 amended**

2 In section 166(2) delete “The nominated” and insert:

3

4 A nominated

5

6 **50. Section 170 amended**

7 (1) Delete section 170(2), (3) and (4) and insert:

8

9 (2) The approved provider of the education and care service
10 must ensure that a person does not remain at the education
11 and care service premises while children are being educated
12 and cared for at the premises, unless —

13 (a) the person is an authorised person; or

14 (b) the person is under the direct supervision of an
15 educator or other staff member of the service.

16 Penalty: \$1 000, in the case of an individual.

17 \$5 000, in any other case.

18 (3) A nominated supervisor of the education and care service
19 must ensure that a person does not remain at the education
20 and care service premises while children are being educated
21 and cared for at the premises, unless —

22 (a) the person is an authorised person; or

23 (b) the person is under the direct supervision of an
24 educator or other staff member of the service.

25 Penalty: \$1 000.

26 (4) A family day care educator must ensure that a person does
27 not remain at the family day care residence or approved
28 family day care venue at which the educator is educating
29 and caring for children, unless —

30 (a) the person is an authorised person; or

1 (b) the person is under the direct supervision of the
2 educator.

3 Penalty: \$1 000.
4

5 (2) In section 170(5) delete the definition of *unauthorised person*.

6 (3) In section 170(5) insert in alphabetical order:
7

8 *authorised person* means a person who is —

9 (a) a person who holds a current working with children
10 check or working with children card; or

11 (b) a parent or family member of a child who is being
12 educated and cared for by the education and care
13 service or the family day care educator; or

14 (c) an authorised nominee of a parent or family
15 member of a child who is being educated and cared
16 for by the education and care service or the family
17 day care educator; or

18 (d) in the case of an emergency, medical personnel or
19 emergency service personnel; or

20 (e) a person who is permitted under the working with
21 children law of this jurisdiction to remain at the
22 education and care service premises without holding
23 a working with children check or a working with
24 children card.
25

26 **51. Section 172 amended**

27 Delete section 172(c) and insert:
28

29 (c) each nominated supervisor of the service;
30

1 **52. Section 173 amended**

2 (1) In section 173(2):

3 (a) in paragraph (a) delete “or certified supervisor”;

4 (b) delete paragraph (b) and insert:

5

6 (b) if a nominated supervisor of an approved education
7 and care service —

8 (i) ceases to be employed or engaged by the
9 service; or

10 (ii) is removed from the role of nominated
11 supervisor; or

12 (iii) withdraws consent to the nomination;

13

14 (c) in paragraph (d) delete “ceasing” and insert:

15

16 if the approved provider ceases

17

18 (2) Delete section 173(3) and (4) and insert:

19

20 (3) A notice under subsection (1) or (2) must —

21 (a) be in writing; and

22 (b) include any prescribed information.

23 (4) A notice under subsection (1) must be provided within the
24 relevant prescribed time to the Regulatory Authority that
25 granted the provider approval to which the notice relates.

26 (5) A notice under subsection (2) must be provided within the
27 relevant prescribed time to the Regulatory Authority that
28 granted the service approval for the education and care
29 service to which the notice relates.

30

1 **53. Section 174 amended**

2 (1) Delete section 174(2)(b) and insert:

3

4 (b) any complaints alleging —

5 (i) that a serious incident has occurred or is
6 occurring while a child was or is being
7 educated and cared for by the approved
8 education and care service; or

9 (ii) that this Law has been contravened;

10

11 (2) Delete section 174(5).

12 **54. Section 174A inserted**

13 After section 174 insert:

14

15 **174A. Family day care educator to notify certain information**
16 **to approved provider**

17 A family day care educator who educates and cares for
18 children as part of a family day care service must notify the
19 approved provider of the service of the following
20 information —

21 (a) any serious incident that occurs while a child is
22 being educated and cared for by the educator as part
23 of the service;

24 (b) any complaints alleging —

25 (i) that a serious incident has occurred or is
26 occurring while a child was or is being
27 educated and cared for by the educator; or

28 (ii) that this Law has been contravened;

29 (c) information in respect of any other prescribed
30 matters.

31 Penalty: \$2 000.

32

1 **55. Section 178 amended**

2 In section 178(1)(a) delete “the nominated” and insert:

3

4 a nominated

5

6 **56. Part 7 Division 2 replaced**

7 Delete Part 7 Division 2 and insert:

8

9 **Division 2 — Enforceable undertakings**

10 **179A. Enforceable undertakings**

11 (1) This section applies —

12 (a) if a person has, or believes the person may have,
13 contravened, or if the Regulatory Authority alleges
14 a person has contravened, a provision of this Law;
15 or

16 (b) in the circumstances set out in section 27(a), 72(a)
17 or 184(3).

18 (2) If subsection (1)(a) applies, the Regulatory Authority may
19 accept a written undertaking from the person, under which
20 the person undertakes to take certain actions, or refrain from
21 taking certain actions, to comply with this Law.

22 (3) If subsection (1)(b) applies in relation to the approved
23 provider of an education and care service, the Regulatory
24 Authority may accept a written undertaking from the
25 approved provider, under which the approved provider
26 undertakes to take certain actions, or refrain from taking
27 certain actions in relation to the education and care service.

28 (4) If subsection (1)(b) applies in relation to a person other than
29 the approved provider of an education and care service, the
30 Regulatory Authority may accept a written undertaking
31 from the person, under which the person undertakes to take

- 1 certain actions, or refrain from taking certain actions in
2 relation to an education and care service.
- 3 (5) A person may, with the consent of the Regulatory Authority,
4 withdraw or amend an undertaking.
- 5 (6) The Regulatory Authority may withdraw its acceptance of
6 the undertaking at any time and the undertaking ceases to be
7 in force on that withdrawal.
- 8 (7) The Regulatory Authority may publish on the Regulatory
9 Authority's website an undertaking accepted under this
10 section.
- 11 Note: This section differs from section 179A of the national law as
12 set out in the Schedule to the *Education and Care Services*
13 *National Law Act 2010* (Victoria).
- 14 **179B. Certain actions prohibited while undertaking is in force**
- 15 (1) While an undertaking is in force under section 179A(2),
16 proceedings may not be brought for any offence constituted
17 by the contravention or alleged contravention in respect of
18 which the undertaking is given.
- 19 (2) While an undertaking is in force under section 179A(3), the
20 Regulatory Authority must not (as the case requires) —
- 21 (a) suspend the provider approval under section 27 in
22 relation to a matter that is the subject of the
23 undertaking; or
- 24 (b) suspend the service approval under section 72 in
25 relation to a matter that is the subject of the
26 undertaking; or
- 27 (c) give a prohibition notice under section 182 in
28 relation to a matter that is the subject of the
29 undertaking.
- 30 (3) While an undertaking is in force under section 179A(4), the
31 Regulatory Authority must not give a prohibition notice
32 under section 182 in relation to a matter that is the subject of
33 the undertaking.

- 1 **180. Certain actions prohibited if undertaking is complied**
2 **with**
- 3 (1) If a person complies with the requirements of an
4 undertaking under section 179A(2), no further proceedings
5 may be brought for any offence constituted by the
6 contravention or alleged contravention in respect of which
7 the undertaking was given.
- 8 (2) If an approved provider complies with the requirements of
9 an undertaking under section 179A(3), the Regulatory
10 Authority must not (as the case requires) —
- 11 (a) suspend the provider approval under section 27 in
12 relation to a matter that is the subject of the
13 undertaking; or
- 14 (b) suspend the service approval under section 72 in
15 relation to a matter that is the subject of the
16 undertaking; or
- 17 (c) give a prohibition notice under section 182 in
18 relation to a matter that is the subject of the
19 undertaking.
- 20 (3) If a person complies with the requirements of an
21 undertaking under section 179A(4), the Regulatory
22 Authority must not give a prohibition notice under
23 section 182 in relation to a matter that is the subject of the
24 undertaking.
- 25 **181. Failure to comply with enforceable undertakings**
- 26 (1) If the Regulatory Authority considers that a person who
27 gave an undertaking under section 179A has failed to
28 comply with any of its terms, the Regulatory Authority may
29 apply to the relevant tribunal or court for an order under
30 subsection (2) to enforce the undertaking.

- 1 (2) If the relevant tribunal or court is satisfied that the person
2 has failed to comply with a term of the undertaking, the
3 relevant tribunal or court may make any of the following
4 orders —
- 5 (a) an order directing the person to comply with the
6 term of the undertaking;
- 7 (b) an order that the person take any specified action
8 for the purpose of complying with the undertaking;
- 9 (c) any other order that the relevant tribunal or court
10 considers appropriate in the circumstances.
- 11 (3) If the relevant tribunal or court determines that the person
12 has failed to comply with a term of an undertaking under
13 section 179A(2), proceedings may be brought for any
14 offence constituted by the contravention or alleged
15 contravention in respect of which the undertaking was
16 given.
- 17 (4) If the relevant tribunal or court determines that an approved
18 provider has failed to comply with a term of an undertaking
19 under section 179A(3), the Regulatory Authority may
20 without further notice —
- 21 (a) if the undertaking was given in circumstances set
22 out in section 27(a), suspend the provider approval
23 under section 27; or
- 24 (b) if the undertaking was given in circumstances set
25 out in section 72(a), suspend the service approval
26 under section 72; or
- 27 (c) if the undertaking was given in circumstances set
28 out in section 184(3), give a prohibition notice
29 under section 182 in relation to a matter that is the
30 subject of the undertaking.
- 31 (5) If the relevant tribunal or court determines that a person has
32 failed to comply with a term of an undertaking under
33 section 179A(4), the Regulatory Authority may, without
34 further notice, give a prohibition notice under section 182 in
35 relation to a matter that is the subject of the undertaking.

- 1 (6) Proceedings referred to in subsection (3) may be brought
2 within 6 months of the determination or within 2 years of
3 the date of the alleged offence, whichever occurs last.
4

5 **57. Section 182 amended**

- 6 (1) In section 182(2):

7 (a) delete paragraph (b) and insert:

8

9 (b) a nominated supervisor;

10

11 (b) delete paragraph (g) and insert:

12

13 (g) a volunteer;

14 (h) a person who was formerly a person referred to in
15 paragraphs (a) to (g) in relation to the approved
16 education and care service,
17

18 (2) After section 182(2) insert:
19

20 (3) The Regulatory Authority may give a prohibition notice to a
21 person to —

22 (a) prohibit the person from being nominated as a
23 nominated supervisor if the Regulatory Authority
24 considers the person is not a fit and proper person to
25 be nominated as a nominated supervisor of a
26 service; or

27 (b) impose one or more conditions on the nomination of
28 the person as a nominated supervisor that the
29 Regulatory Authority considers appropriate, if the
30 Regulatory Authority considers the person is a fit
31 and proper person to be nominated as a nominated
32 supervisor of a service subject to those conditions.
33

1 Note:

2 The heading to amended section 182 is to read:

3 **Grounds for giving prohibition notice**

4 **58. Section 184 amended**

5 After section 184(2) insert:

6

7 (3) The Regulatory Authority may accept an undertaking from a
8 person under section 179A instead of giving a prohibition
9 notice under this Division.

10

11 Note:

12 The heading to amended section 184 is to read:

13 **Deciding whether to give prohibition notice**

14 **59. Section 185 replaced**

15 Delete section 185 and insert:

16

17 **185. Content of prohibition notice**

18 (1) A prohibition notice given to a person under section 182(1)
19 must state that the person is prohibited from doing one or
20 more of the following —

21 (a) providing education and care to children for an
22 education and care service;

23 (b) being engaged as an educator, family day care
24 educator, employee, contractor or staff member of,
25 or being a volunteer at, an education and care
26 service;

27 (c) carrying out any other activity relating to an
28 education and care service.

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- 1 (2) A prohibition notice given to a person under section 182(3)
2 must state that either —
3 (a) the person is prohibited from being nominated as a
4 nominated supervisor of an education and care
5 service; or
6 (b) the person may only be nominated as a nominated
7 supervisor of an education and care service on the
8 condition or conditions specified by the Regulatory
9 Authority in the notice.
- 10 (3) A prohibition notice given to a person under section 182(1)
11 or (3) must state —
12 (a) that the person may apply for cancellation of the
13 notice; and
14 (b) how an application for cancellation must be made.
15

16 **60. Section 186 amended**

17 After section 186(4) insert:
18

- 19 (4A) The person may state in the application anything the person
20 considers relevant to the Regulatory Authority's decision
21 about whether the person is a fit and proper person to be
22 nominated as a nominated supervisor with or without
23 conditions.
24

25 **61. Section 187 amended**

- 26 (1) In section 187:
27 (a) delete “While a prohibition notice” and insert:
28
29 (1) While a prohibition notice under section 182(1)
30

- 1 (b) in paragraph (b) delete “a supervisor, educator,” and
2 insert:
3
4 an educator,
5
6 (2) At the end of section 187 insert:
7
8 (2) While a prohibition notice under section 182(3) is in force
9 under this Law as applying in any participating jurisdiction
10 for a person, the person must not —
11 (a) in the case of a prohibition notice under
12 section 182(3)(a), consent to a nomination of that
13 person as a nominated supervisor of an education
14 and care service; or
15 (b) in the case of a prohibition notice under
16 section 182(3)(b), consent to a nomination of that
17 person as a nominated supervisor of an education
18 and care service in contravention of a condition or
19 conditions stated in the prohibition notice.
20 Penalty: \$20 000.
21

22 **62. Section 188 amended**

- 23 (1) In section 188 delete “An approved provider must not engage a
24 person as a supervisor, educator,” and insert:
25
26 (1) An approved provider must not engage a person as an
27 educator,
28
29 (2) At the end of section 188 insert:
30
31 (2) An approved provider must not nominate a person as a
32 nominated supervisor of an education and care service if the
33 approved provider knows, or ought reasonably to know, that

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1 a prohibition notice is in force under this Law as applying in
2 any participating jurisdiction prohibiting the nomination of
3 that person as a nominated supervisor of an education and
4 care service.

5 Penalty: \$20 000, in the case of an individual.

6 \$100 000, in any other case.

7 (3) An approved provider must not nominate a person as a
8 nominated supervisor of an education and care service if the
9 approved provider knows, or ought reasonably to know, that
10 the nomination would place the person in contravention of a
11 condition of a prohibition notice in force under this Law as
12 applying in any participating jurisdiction.

13 Penalty: \$20 000, in the case of an individual.

14 \$100 000, in any other case.
15

16 **63. Section 188A inserted**

17 At the end of Part 7 Division 3 insert:
18

19 **188A. False or misleading information about prohibition notice**

20 A person who is subject to a prohibition notice under this
21 Law as applying in any participating jurisdiction must not
22 give an approved provider any information about the content
23 or existence of the prohibition notice that is false or
24 misleading in any material particular.

25 Penalty: \$6 000.
26

27 **64. Section 188A amended**

28 In Part 7 Division 3A section 188A in the definition of *person*
29 *linked to a WA service* delete paragraph (c).

1 **65. Section 188B amended**

2 In section 188B(3)(b) delete “section 188C,” and insert:

3

4 section 188AC,

5

6 **66. Section 188C amended**

7 (1) In section 188C(1) delete “section 188B(3)(b)” and insert:

8

9 section 188AB(3)(b)

10

11 (2) In section 188(2) delete “section 188B(3)(b).” and insert:

12

13 section 188AB(3)(b).

14

15 **67. Sections 188A, 188B and 188C renumbered**

16 In Part 7 Division 3A renumber sections 188A, 188B and 188C
17 as sections 188AA, 188AB and 188AC.

18 Notes:

19 1. The heading to amended section 188AC (as renumbered) is to read:

20 **Limitation on section 188AB(3)(b)**

21 2. The note at the end of section 188AA (as renumbered) is to be altered
22 by deleting “Section 188A” and inserting:

23 Section 188AA

24 3. The note at the end of section 188AB (as renumbered) is to be altered
25 by deleting “Section 188B” and inserting:

26 Section 188AB

27 4. The note at the end of section 188AC (as renumbered) is to be altered
28 by deleting “Section 188C” and inserting:

29 Section 188AC

1 **68. Section 190 amended**

2 In section 190:

3 (a) in paragraph (a) delete “approval, a service approval or a
4 supervisor certificate; or” and insert:

5

6 approval or a service approval; or

7

8 (b) delete paragraph (d)(iii).

9 **69. Section 192 amended**

10 Delete section 192(b)(v).

11 **70. Section 199 amended**

12 Delete section 199(4)(a) and insert:

13

14 (a) the authorised officer reasonably believes that an
15 approved education and care service is operating at
16 the residence at the time of entry; or

17 (ab) the register of family day care educators records
18 that the approved education and care service
19 operates at the residence at the time of entry; or

20

21 **71. Section 200 amended**

22 In section 200(1) delete “principal office or any other business
23 premises of an approved provider.” and insert:

24

25 principal office of the approved provider of the service or any other
26 business office of the approved provider of the service.

27

1 **72. Section 200A inserted**

2 After section 200 insert:

3

4 **200A. Entry to premises without search warrant**

5 (1) An authorised officer may enter any premises (including
6 residential or business premises) for the purpose of
7 determining whether an education and care service is
8 operating without a service approval at or from the
9 premises, if —

- 10 (a) the authorised officer reasonably believes that a
11 person is operating an education and care service in
12 contravention of section 103 at the premises; and
13 (b) the occupier of the premises has consented in
14 writing to the entry and inspection.

15 (2) An authorised officer must not enter and search the premises
16 under this section unless, before the occupier consents to the
17 entry, the authorised officer has —

- 18 (a) produced the authorised officer’s identity card for
19 inspection; and
20 (b) informed the occupier —
21 (i) of the purpose of the search and the powers
22 that may be exercised; and
23 (ii) that the occupier may refuse to consent to
24 the entry and search or the taking of
25 anything found during the search; and
26 (iii) that the occupier may refuse to consent to
27 the taking of any copy or extract from a
28 document found on the premises during the
29 search.

30 (3) An authorised officer who exercises a power of entry under
31 this section may for the purposes of the investigation do any
32 of the things referred to in clause 5(2)(a) to (e) of
33 Schedule 2 as if a reference to that Schedule included a
34 reference to this section.

35

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1 **73. Section 201 amended**

2 In section 201(3) delete “principal office or any other business
3 premises of an approved provider” and insert:

4
5 principal office of the approved provider of the service or any other
6 business office of the approved provider of the service
7

8 **74. Section 202 amended**

9 In section 202(1) and (3) delete “section 199 or 200” and insert:

10
11 section 199, 200 or 200A
12

13 **75. Section 206 amended**

14 In section 206(4) in the definition of *specified person*
15 paragraph (a) delete “a certified supervisor” and insert:

16
17 a nominated supervisor
18

19 **76. Section 225 amended**

20 In section 225(1):

21 (a) delete paragraph (g) and insert:

22
23 (g) to establish and maintain national registers of
24 approved providers and approved education and
25 care services and to publish those registers;
26

27 (b) in paragraph (l)(i) delete “parents” and insert:

28
29 parents, family members
30

- 1 (c) delete paragraph (o) and insert:
2
- 3 (o) to provide support and training for staff of
4 Regulatory Authorities;
5
- 6 Note:
7 At the end of section 225 the following note is to be inserted:
8 Note: This section differs from section 225 of the national law as
9 set out in the Schedule to the *Education and Care Services*
10 *National Law Act 2010* (Victoria).
- 11 **77. Section 249 amended**
- 12 In section 249(1) delete “day to day” and insert:
13
- 14 day-to-day
15
- 16 **78. Section 261 amended**
- 17 Delete section 261(2)(b) and (c) and insert:
18
- 19 (b) subject to the *Privacy Act 1988* of the
20 Commonwealth, to collect, hold and use
21 information about providers of education and care
22 services, family day care educators and nominated
23 supervisors;
24 (c) to maintain and publish registers of approved
25 providers and approved education and care services;
26
- 27 **79. Section 268 deleted**
- 28 Delete section 268.

1 **80. Section 269 replaced**

2 Delete section 269 and insert:

3

4 **269. Register of family day care educators, co-ordinators and**
5 **assistants**

6 (1) The approved provider of a family day care service must
7 keep a register at the principal office of the service that
8 contains the prescribed information in respect of the
9 following persons —

- 10 (a) each family day care educator engaged by or
11 registered with the service;
- 12 (b) each family day care co-ordinator employed or
13 engaged by the service;
- 14 (c) each family day care educator assistant engaged by
15 or registered with the service.

16 Penalty: \$4 000, in the case of an individual.

17 \$20 000, in any other case.

18 (2) The approved provider must take reasonable steps to ensure
19 that the information contained in the register is accurate.

20 Penalty: \$2 000.

21 (3) The approved provider must provide any information on the
22 register and any changes to the information on the register to
23 the Regulatory Authority on request within 24 hours of the
24 Regulatory Authority's request.

25 Penalty: \$4 000, in the case of an individual.

26 \$20 000, in any other case.

27

- 1 **81. Section 270 amended**
- 2 (1) In section 270(1) delete “certified” and insert:
- 3
- 4 nominated
- 5
- 6 (2) Delete section 270(2)(a) and insert:
- 7
- 8 (a) must publish on its website the register of approved
- 9 providers; and
- 10
- 11 (3) In section 270(5)(a) delete “approvals or certificates; and” and
- 12 insert:
- 13
- 14 approvals; and
- 15
- 16 (4) In section 270(6):
- 17 (a) in paragraph (a) delete “certified” and insert:
- 18
- 19 nominated
- 20
- 21 (b) delete paragraph (c) and insert:
- 22
- 23 (c) if the Regulatory Authority is satisfied that it is in
- 24 the public interest to do so, a person with
- 25 management or control of an education and care
- 26 service; or
- 27 (d) a person against whom disciplinary action has been
- 28 taken.
- 29

1 **82. Sections 271 and 272 replaced**

2 Delete sections 271 and 272 and insert:

3

4 **271. Disclosure of information to other authorities**

5 (1) The National Authority may disclose information in respect
6 of an education and care service for a purpose listed in
7 subsection (4), to —

8 (a) a relevant Commonwealth Government
9 Department; or

10 (b) any State or Territory Government Department; or

11 (c) any Commonwealth, State or Territory public
12 authority; or

13 (d) any State or Territory local authority; or

14 (e) a Regulatory Authority of a participating
15 jurisdiction.

16 (2) The Regulatory Authority may disclose information in
17 respect of an education and care service for a purpose listed
18 in subsection (4), to —

19 (a) a relevant Commonwealth Government
20 Department; or

21 (b) any State or Territory Government Department; or

22 (c) any Commonwealth, State or Territory public
23 authority; or

24 (d) any State or Territory local authority; or

25 (e) a Regulatory Authority of another participating
26 jurisdiction.

27 (3) The National Authority, the Regulatory Authority and any
28 Government Department, public authority or local authority
29 may disclose information to each other in respect of an
30 education and care service for a purpose listed in
31 subsection (4).

- 1 (4) The purposes for disclosure of information under this
2 section are —
- 3 (a) the disclosure is reasonably necessary to promote
4 the objectives of the national education and care
5 services quality framework; or
- 6 (b) the disclosure is for the purposes of enabling or
7 assisting the other entity to perform or exercise any
8 of its functions or powers under this Law; or
- 9 (c) the disclosure is for the purposes of research or the
10 development of National, State or Territory policy
11 with respect to education and care services; or
- 12 (d) the disclosure is for a purpose relating to the
13 funding of education and care services; or
- 14 (e) the disclosure is for a purpose relating to the
15 payment of benefits or allowances to persons using
16 education and care services, provided the disclosure
17 of information is not otherwise prohibited by law.
- 18 (5) The Regulatory Authority must disclose to the Regulatory
19 Authorities of other participating jurisdictions the
20 suspension or cancellation of a working with children check,
21 working with children card or teacher registration of a
22 nominated supervisor of which it is notified under this Law.
- 23 (6) The Regulatory Authority may disclose to the head of the
24 government department responsible for the administration of
25 a working with children law, any prohibition notice given
26 under this Law as applying in any participating jurisdiction
27 in respect of the person.
- 28 (7) A disclosure of information under this section is subject to
29 Division 1 and any protocol agreed for the purposes of this
30 section by —
- 31 (a) the National Authority, all participating
32 jurisdictions and the Commonwealth; and
- 33 (b) subject to any protocol referred to in paragraph (a),
34 the National Authority and the Regulatory
35 Authority, or the National Authority, the Regulatory

- 1 Authority and any Regulatory Authority of another
2 participating jurisdiction.
- 3 (8) Information disclosed under this section for the purpose of
4 research or the development of National, State or Territory
5 policy with respect to education and care services must not
6 include information that could identify or lead to the
7 identification of an individual other than —
- 8 (a) an approved provider or a nominated supervisor; or
9 (b) a family day care educator who has been suspended
10 from providing education and care to children as
11 part of a family day care service; or
12 (c) a person to whom a prohibition notice applies; or
13 (d) a person who is being prosecuted for an offence
14 against this Law.
- 15 **272. Disclosure of information to education and care services**
- 16 (1) At the request of an approved provider, the National
17 Authority or the Regulatory Authority may disclose the
18 following information to the provider, if the National
19 Authority or Regulatory Authority considers on reasonable
20 grounds that the provider requires the information to comply
21 with the provider's obligations under this Law —
- 22 (a) whether a person named in the request is subject to
23 a prohibition notice given under section 182;
24 (b) whether a family day care educator named in the
25 request has been suspended from providing
26 education and care to children as part of a family
27 day care service under section 178.
- 28 (2) A disclosure of information under this section is subject to
29 Division 1 and any protocol agreed for the purposes of this
30 section by —
- 31 (a) the National Authority, all participating
32 jurisdictions and the Commonwealth; and

1 (b) subject to any protocol referred to in paragraph (a),
2 the National Authority and the Regulatory
3 Authority, or the National Authority, the Regulatory
4 Authority and any Regulatory Authority of another
5 participating jurisdiction.
6

7 **83. Section 284 amended**

8 In section 284 delete “Proceedings” and insert:

9
10 Subject to section 181(6), proceedings
11

12 **84. Section 291 amended**

13 In section 291(1)(a) delete “173 or 176; or” and insert:

14
15 173, 176 or 269; or
16

17 **85. Section 292 amended**

18 In section 292:

19 (a) delete paragraph (a)(iii);

20 (b) in paragraph (d) delete “provider or a certified supervisor;”
21 and insert:

22
23 provider;
24

25 (c) in paragraph (g) delete “or supervisor certificate”.

26 **86. Section 301 amended**

27 In section 301(3)(a) delete “and certificates”.

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1 **87. Section 305 amended**

2 In section 305 delete the definition of *declared certified*
3 *supervisor*.

4 Note:

5 At the end of section 305 the following note is to be inserted:

6 Note: This section differs from section 305 of the national law as
7 set out in the Schedule to the *Education and Care Services*
8 *National Law Act 2010* (Victoria).

9 **88. Section 315 replaced**

10 Delete section 315 and insert:

11

12 **315. Certified supervisors**

13 Note: Section 315 of the national law as set out in the Schedule to
14 the *Education and Care Services National Law Act 2010*
15 (Victoria) does not apply as a law of WA.

16

17 **89. Part 15 Divisions 5 and 6 inserted**

18 At the end of Part 15 insert:

19

20 **Division 5 — Transitional provisions — *Education and Care***
21 ***Services National Law (WA) Amendment Act 2018***

22 **325. Definitions**

23 In this Division —

24 **2018 Act** means the *Education and Care Services National*
25 *Law (WA) Amendment Act 2018*;

26 **commencement day** means the day on which the *Education*
27 *and Care Services National Law (WA) Amendment Act 2018*
28 section 89 comes into operation;

1 ***repealed***, in relation to a section, means the section as in
2 force before the section was repealed by the 2018 Act.

3 Note: These definitions and the provisions of this Division that use
4 the definitions differ from the definitions and provisions in
5 this Division of the national law as set out in the Schedule to
6 the *Education and Care Services National Law Act 2010*
7 (Victoria).

8 **326. Approved family day care venues**

- 9 (1) In this section —
10 ***appointed day*** means the day that is 6 months after the
11 commencement day;
12 ***formerly approved family day care venue*** means a family
13 day care venue that, immediately before the commencement
14 day, was an approved family day care venue.
- 15 (2) Subject to subsection (3), a formerly approved family day
16 care venue ceases to be an approved family day care venue
17 on the appointed day unless, before the appointed day the
18 Regulatory Authority, on application by the approved
19 provider under section 54 (as amended by the 2018 Act),
20 approves the venue as a family day care venue.
- 21 (3) If, before the appointed day, the Regulatory Authority had
22 not determined an application by an approved provider
23 under section 54 (as amended by the 2018 Act) for approval
24 of the venue, the formerly approved family day care venue
25 continues to be an approved family day care venue until the
26 application is determined.
- 27 (4) Despite section 54(5), the Regulatory Authority must make
28 a decision on an application made under section 54 for
29 approval of a formerly approved family day care venue
30 within 6 months of receiving the application.

- 1 **327. Declared approved family day care venues continue to**
2 **be approved**
- 3 Despite section 326, a declared approved family day care
4 venue that was taken under section 308 to be an approved
5 family day care venue continues, on and after the
6 commencement day, to be an approved family day care
7 venue for the purposes of this Law.
- 8 **328. Service approval condition requiring sufficient family**
9 **day care co-ordinators**
- 10 (1) In this section —
11 *appointed day* means the day that is 12 months after the
12 commencement day.
- 13 (2) This section applies to a family day care service if,
14 immediately before the commencement day —
- 15 (a) the service was an approved family day care
16 service; and
- 17 (b) the service approval included a condition referred to
18 in section 51(2).
- 19 (3) Despite the commencement of the 2018 Act, sections 51(2)
20 and 163, as in force immediately before the commencement
21 day, continue to apply to the approved family day care
22 service until the appointed day, unless the Regulatory
23 Authority earlier amends the service approval to impose a
24 condition under section 55A.
- 25 **329. Service approval condition requiring minimum number**
26 **of family day care co-ordinators**
- 27 (1) This section applies to a family day care service if,
28 immediately before the commencement day —
- 29 (a) the service was an approved family day care
30 service; and
- 31 (b) the service approval included a condition requiring
32 the service provide a specified minimum number of
33 family day care co-ordinators.

- 1 (2) Despite the commencement of the 2018 Act, section 163, as
2 in force immediately before the commencement day, and the
3 condition requiring the service provide a specified minimum
4 number of family day care co-ordinators continue to apply
5 to the approved family day care service until the condition is
6 amended under section 54 or 55.

7 **330. Publication of information about certified supervisors**

- 8 (1) The National Authority may publish information about any
9 enforcement action taken under this Law before the
10 commencement day in relation to any person who was a
11 certified supervisor before that day, including —
12 (a) the prosecution of any offence; and
13 (b) the acceptance of an undertaking; and
14 (c) the suspension or cancellation of a supervisor
15 certificate.
16 (2) This section expires on 31 December 2022.

17 Note: This section differs from section 330 of the national law as
18 set out in the Schedule to the *Education and Care Services*
19 *National Law Act 2010* (Victoria).

20 **330A. Repeal of show cause notice if written notice not given**
21 **before commencement day**

- 22 (1) This section applies if —
23 (a) the Regulatory Authority has given a show cause
24 notice under repealed section 124 to a certified
25 supervisor; but
26 (b) the Regulatory Authority has not given the certified
27 supervisor a written notice under repealed
28 section 127 before the commencement day.
29 (2) The show cause notice is taken to have been repealed by the
30 Regulatory Authority on the commencement day.

31 Note: Section 330A does not form part of the national law as set
32 out in the Schedule to the *Education and Care Services*
33 *National Law Act 2010* (Victoria).

- 1 **330B. Effect of decisions made before commencement day**
2 **under repealed section 125**
- 3 (1) If, before the commencement day, the Regulatory Authority
4 gave a certified supervisor a written notice under repealed
5 section 127 of a decision under repealed section 125 to
6 cancel the supervisor certificate but, immediately before the
7 commencement day, the decision had not taken effect,
8 then —
- 9 (a) the notice becomes, on the commencement day —
- 10 (i) if the certificate was cancelled on the
11 ground set out in repealed section 123(a) —
12 a prohibition notice under section 182(3)(a);
13 or
14 (ii) if the certificate was cancelled on the
15 ground set out in repealed section 123(b) or
16 (c) — a prohibition notice under
17 section 182(1);
- 18 and
- 19 (b) the prohibition notice commences to have effect on
20 the commencement day.
- 21 (2) Subsection (3) applies if, before the commencement day —
- 22 (a) the Regulatory Authority decides to cancel a
23 person’s supervisor certificate under repealed
24 section 125; and
- 25 (b) the Regulatory Authority gave the person a written
26 notice under repealed section 127 of the decision
27 under repealed section 125 to cancel the supervisor
28 certificate; and
- 29 (c) the cancellation was in effect under repealed
30 section 127 immediately before the commencement
31 day.
- 32 (3) The written notice becomes, on the commencement day —
- 33 (a) if the supervisor certificate was cancelled under
34 repealed section 123(a) — a prohibition notice
35 under section 182(3)(a); or

- 1 (b) if the supervisor certificate was cancelled under
2 repealed section 123(b) or (c) — a prohibition
3 notice under section 182(1).
- 4 (4) The Regulatory Authority must —
- 5 (a) take reasonable steps to locate a person given a
6 notice to which subsection (2)(a) or (b) applies; and
- 7 (b) if the Regulatory Authority is able to locate the
8 person — give the person the information, in
9 writing, that would be required to be given —
- 10 (i) if subsection (1)(a)(i) or (3)(a) applies —
11 under section 185(2) and (3), if the notice
12 were a prohibition notice given under
13 section 182(3)(a); and
- 14 (ii) if subsection (1)(a)(ii) or (3)(b) applies —
15 under section 185(1) and (3), if the notice
16 were a prohibition notice given under
17 section 182(1).

18 Note: Section 330B does not form part of the national law as set
19 out in the Schedule to the *Education and Care Services*
20 *National Law Act 2010* (Victoria).

21 **330C. Continuation of reviews of decisions relating to**
22 **supervisor certificates in particular circumstances**

- 23 (1) In this section —
- 24 *application period* means the period within which an
25 application may be made under section 193(2).
- 26 (2) If a relevant tribunal or court was hearing a review of a
27 decision to cancel a supervisor certificate under repealed
28 section 125 and the review had not been finally dealt with
29 before the commencement day, the tribunal or court may
30 continue to hear the review as if the review were a review of
31 a decision to give a prohibition notice.
- 32 (3) Subsection (4) applies if —
- 33 (a) the Regulatory Authority decided before the
34 commencement day to cancel a person's supervisor
35 certificate; and

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- 1 (b) the person had not, before the commencement day,
2 applied to the relevant tribunal or court for a review
3 of the decision under section 193(1); and
4 (c) immediately before the commencement day the
5 application period has not ended.

- 6 (4) The person may, before the application period ends, apply
7 for a review of the Regulatory Authority's decision as if the
8 decision were a decision to give the person a prohibition
9 notice.

10 Note: Section 330C does not form part of the national law as set
11 out in the Schedule to the *Education and Care Services*
12 *National Law Act 2010* (Victoria).

13 **331. Evidentiary certificates**

- 14 (1) Despite the amendment of section 292 by the 2018 Act, a
15 Regulatory Authority or the National Authority may
16 continue to certify matters relating to any person who was a
17 certified supervisor before the commencement day as if that
18 section had not been amended.

- 19 (2) This section expires on 31 December 2022.

20 Note: This section differs from section 331 of the national law as
21 set out in the Schedule to the *Education and Care Services*
22 *National Law Act 2010* (Victoria).

23 **Division 6 — Further transitional provisions — *Education and***
24 ***Care Services National Law (WA) Amendment Act 2018***

25 **332. Definitions**

26 In this Division —

27 **2018 Act** means the *Education and Care Services National*
28 *Law (WA) Amendment Act 2018*;

29 **commencement day** means the day on which the *Education*
30 *and Care Services National Law (WA) Amendment Act 2018*
31 section 89 comes into operation.

32 Note: These definitions and the provisions of this Division that use
33 the definitions differ from the definitions and provisions in
34 this Division of the national law as set out in the Schedule to

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- 1 (2) Section 153(2) applies for the purposes of a reassessment
2 under section 157 of the approved education and care
3 service, as if a reference —
4 (a) to the criteria published under subsection (1) were a
5 reference to the criteria published under
6 subsection (1) immediately before the
7 commencement day; and
8 (b) to the National Quality Standard and the
9 requirements of the national regulations were a
10 reference to the National Quality Standard and the
11 national regulations as in force immediately before
12 the commencement day.
- 13 (3) Despite its amendment by the 2018 Act, section 158 as in
14 force immediately before the commencement day continues
15 to apply to the revocation of the highest rating level and for
16 the purposes of that section —
17 (a) the criteria to be met are the criteria published under
18 section 153(1) immediately before the
19 commencement day; and
20 (b) the overall rating level is to be determined in
21 accordance with the National Quality Standard as in
22 force immediately before the commencement day.
23

24 **90. Various provisions amended**

25 In the provisions listed in the Table delete “any prescribed” and
26 insert:

27
28 the prescribed
29

30

Table

s. 11(c)	s. 22(2)(b)
s. 37(2)(b)	s. 40(3)(b)

s. 59(2)(b)	s. 85(2)(b)
s. 88(b)	s. 95(b)
s. 139(2)(b)	s. 141(4)(c)

1

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1 **Part 3 — *Spent Convictions Act 1988* amended**

2 **91. Act amended**

3 This Part amends the *Spent Convictions Act 1988*.

4 **92. Schedule 3 amended**

5 In Schedule 3 clause 1(5) in the Table delete item 6A and insert:

6

- 6A. A person who —
- (a) holds, or is applying for, a provider approval under the *Education and Care Services National Law (Western Australia)*; or
 - (b) has, or will have, management or control of an education and care service operated, or to be operated, by a person that —
 - (i) is not an individual; and
 - (ii) holds, or is applying for, a provider approval under the *Education and Care Services National Law (Western Australia)*.
- Sections 18,
20 and 22 and
Division 4

7

1 **Part 4 — *Working with Children (Criminal Record***
2 ***Checking) Act 2004* amended**

3 **93. Act amended**

4 This Part amends the *Working with Children (Criminal Record*
5 *Checking) Act 2004*.

6 **94. Section 38 amended**

7 In section 38(3)(b)(ii) delete “a certified supervisor, a
8 nominated supervisor or a person with management or control,”
9 and insert:

10
11 a nominated supervisor or a person with management or control
12

13
