

Explanatory Statement

EDUCATION AND CARE SERVICES (NATIONAL UNIFORM LEGISLATION) AMENDMENT BILL 2019 SERIAL NO. 93

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR EDUCATION

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill amends the *Education and Care Services (National Uniform Legislation) Act 2011* and the *Education (Infringement Notice) Regulations 2019*.

The purpose of the Bill is to streamline the administration of the *Education and Care Services (National Uniform Legislation) Act 2011* (the Act) by amending the mechanism used to adopt the Education and Care Services National Law (the National Law) in the Northern Territory (NT).

The National Law, and any nationally approved amendments to the National Law, are currently enacted in the NT by regulations pursuant to section 5 of the Act. Regulations made under section 5 of the Act establish the National Law as an Appendix to the Act.

The Bill proposes to repeal section 5 of the Act, removing the Appendix and allowing nationally approved amendments to National Law to be automatically adopted in the NT upon commencement in the host jurisdiction, Victoria. This amendment will establish the National Law in the NT as set out in the Schedule to the *Education and Care Services National Law Act 2010 (Vic)* and will eliminate the need for the NT to duplicate national processes for approving amendments to the National Law through having to enact nationally approved amendments by regulations.

The Bill proposes minor technical amendments to clarify the intent of certain provisions and ensure alignment between the Act, the National Law and subordinate legislation.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill once passed.

Clause 2. Commencement

This is a formal clause which provides that the Act commences on a date specified by the Administrator by notice in the Northern Territory Government *Gazette*.

Part 2 Amendment of the *Education and Care Services (National Uniform Legislation) Act 2011*

Clause 3. Act amended

This clause identifies that this part of the Bill will amend the *Education and Care Services (National Uniform Legislation) Act 2011*.

Clause 4. Section 3 amended (Interpretation)

This clause removes references to the Appendix to the Act, which contained the National Law. The Appendix to the Act is repealed by clause 12 of this Bill.

The National Law as set out in the Appendix to the Act is replaced with the National Law as set out in the Schedule to the *Education and Care Services National Law 2010* (Vic).

Further to this, the clause clarifies that terms used in the *Education and Care Services (National Uniform Legislation) Act 2011* and the National Law as set out in Schedule to the *Education and Care Services National Law 2010* (Vic) have the same meaning.

This clause maintains the policy position of adopting the National Law in the NT, but does so through reference to, and application of, the legislation in the host jurisdiction, Victoria.

Clause 5. Section 4 amended (Adoption of Education and Care Services National Law)

This clause further clarifies the meaning of the *Education and Care Services National Law (NT)*.

The Bill removes reference to the Appendix to the Act, which is repealed by clause 12 of the Bill, and provides that the National Law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Vic) applies as a law of the NT and, in doing so, may be referred to as the *Education and Care Services National Law (NT)*.

The clause also specifies that section 303(4) of the National Law as set out in the *Schedule to the Education and Care Services National Law 2010* (Vic) does not apply as a law of the NT. This ensures that the Legislative Assembly can disallow a national regulation without the need for the majority of participating jurisdictions to also disallow the regulation. This clause maintains the policy position that was previously achieved through omitting section 303(4) from the Appendix to the Act.

Clause 6. Section 5 repealed (Uniform adoption of nationally approved amendments to Education and Care Services National Law)

This clause repeals section 5 of the Act, removing the requirement for the NT to adopt nationally approved amendments to the National Law through the making of regulations. This clause, in conjunction with clause 12 of the Bill which repeals the Appendix to the Act, gives effect to the automatic adoption of nationally approved amendments to the National Law.

Clause 7. Section 7 amended (Exclusion of legislation of this jurisdiction)

This clause removes reference to the “local application provisions” which was previously used to distinguish the provisions contained in the *Education and Care Services (National Uniform Legislation) Act 2011* from those contained in the Appendix to the Act for the purposes of applying the *Interpretation Act 1978*.

The effect of the clause is to confirm that the *Interpretation Act 1978* applies to this Act.

Clause 8. Section 9 amended (Meaning of other terms)

This clause amends the definition of infringements law, for the purpose of section 5(1) of the *Education and Care Services National Law (NT)*. The amendments remove the requirement to specifically name the subordinate legislation relevant to issuing infringement notices, the “Education (Infringement Notice) Regulations”, and applies a generic provision that defines infringements law as “regulations made under this Act”.

Clause 9. Section 16A inserted

This clause inserts a delegation power into the *Education and Care Services (National Uniform Legislation) Act 2011* enabling the Regulatory Authority to delegate any of his or her powers and functions contained in the regulations made under the Act. Delegation can be to a person and must be in writing.

Clause 10. Part 4, Division 1 heading inserted

This clause inserts a division heading to distinguish the application of transitional matters for the *Education and Care Services (National Uniform Legislation) Act 2011* from the transitional matters for the *Education and Care Services (National Uniform Legislation) Amendment Act 2019*.

Clause 11. Part 4, Division 2 inserted

Clause 11 applies transitional provisions to the *Education and Care Services (National Uniform Legislation) Amendment Act 2019*.

The transitional provisions ensure there is no impact on any act done, approval granted or decision made under the Appendix to the Act, and that there is a continuation of the application of both the National Law and the Education and Care Services National Regulations as in force immediately prior to the commencement of the *Education and Care Services (National Uniform Legislation) Amendment Act 2019*.

Clause 12. Appendix repealed (Education and Care Services National Law)

This clause repeals the Appendix to the Act which previously contained the National Law.

As described in clause 5, the National Law is now set out in the Schedule to the *Education and Care Services National Law Act 2010 (Vic)*, for the purposes of adoption in the NT.

Part 3 Amendment of Education (Infringement Notice) Regulations 2019

Clause 13. Regulations amendment

This clause identifies that this part of the Bill will amend the *Education (Infringement Notice) Regulations 2019*.

Clause 14. Regulation 1 amended (Citation)

This clause renames the regulations for the issuing of infringement notices in the NT, from the Education (Infringement Notice) Regulations 2019 to the Education and Care Services (National Uniform Legislation) (Infringement Notice) Regulations 2019. The amendments ensure consistency across the naming of the Act and the Regulations, and ensures a marked distinction is made from the *Education Act 2015* and any subordinate legislation.

Clause 15. Regulation 3 amended (Definitions)

This clause removes reference to the Education and Care Services National Law from the definitions for infringement notice and prescribed amount replacing it with *Education and Care Services National Law (NT)*. This amendment ensures consistency in the way to which the National Law is referred in the Education and Care Services (National Uniform Legislation) (Infringement Notice) Regulations 2019 and the *Education and Care Services (National Uniform Legislation) Act 2011*.

Clause 16. Regulation 4 amended (Infringement notice offences)

This clause removes reference to the Education and Care Services National Law from regulation 4(a) and (b), replacing it with *Education and Care Services National Law (NT)*. This amendment ensures consistency in the way to which the National Law is referred in the Education and Care Services (National Uniform Legislation) (Infringement Notice) Regulations 2019 and the *Education and Care Services (National Uniform Legislation) Act 2011*.

Clause 17. Regulation amended (Withdrawal of infringement notice)

This clause removes reference to the Chief Executive Officer, replacing it with the Regulatory Authority. Although, at this point in time, the Chief Executive Officer and the Regulatory Authority are the same person performing different roles, this amendment ensures consistency with the terminology used in the *Education and Care Services (National Uniform Legislation) Act 2011*.

Part 4 Repeal of Act

Clause 18. Repeal of Act

This is a standard clause which provides that the *Education and Care Services (National Uniform Legislation) Act 2019* is repealed the day after it commences.