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Signed: *Griff*

BRIEFING TO SCRUTINY COMMITTEE

Monday 20 May 2019

**Education and Care Services (National Uniform Legislation)
Amendment Bill 2019**

- Good morning, I'm Agnes McGrath, General Manager, Early Childhood Education and Care, in the Department of Education.
- Thank you for providing an opportunity for me to talk to you about the Education and Care Services (National Uniform Legislation) Amendment Bill 2019 that was introduced to the Legislative Assembly on 16 May 2019.
- I would like to commence by providing some background information to the Committee in relation to the Education and Care Services National Law (which I will refer to as the National Law) and the Northern Territory's *Education and Care Services (National Uniform Legislation) Act 2011* (which I will refer to as the Act).
- Should it be of interest and assistance to the Committee, I would also like to table a document that provides additional background information relevant to the Bill. This includes information regarding:
 - the National Quality Framework for early childhood education and care; and
 - the national process for amending the National Law and the Education and Care Services National Regulations (which I will refer to as the National Regulations).

Background

- The National Law and the National Regulations commenced in the Northern Territory in January 2012. These two pieces of legislation form the legal platform for the National Quality Framework for early childhood education and care (known as the NQF).

- The NQF is designed to drive continuous improvement of quality in education and care services across Australia, including long day care, preschool, family day care and outside school hours care. It provides a unified national approach to regulating and assessing the quality of these services.
- The National Law is hosted by Victoria via the *Education and Care Services National Law Act 2010* (Vic), with other jurisdictions adopting the law through their own corresponding legislation. This means that Victoria is responsible for enacting the National Law, and any amendments to it, through the Victorian Parliament. Each state or territory then has its own mechanism and legislative process for adopting the law in their respective jurisdictions.
- The National Law has established a unified national regulatory framework for the delivery of quality education and care services to children across Australia. Its objectives include ensuring the safety, health and wellbeing of children attending education and care services as well as improving their education and developmental outcomes.
- The Northern Territory regulatory authority, Quality Education and Care NT, administers the National Law and National Regulations in the NT. Key responsibilities of this include:
 - approving service providers and premises prior to commencing operations in the NT;
 - quality rating services against the National Quality Standard;
 - monitoring service provision to ensure compliance with the National Law and National Regulations; and
 - conducting investigations into serious incidents that occur while children are attending an education and care service.
- The overarching objective of the National Law and National Regulations are to ensure the safety, health and wellbeing of children attending education and care services and to improve their educational and developmental needs.
- The National Law and National Regulations are achieving this through minimum standards such as educator to child ratios, qualification requirements, approved

learning frameworks and physical environment requirements to help ensure service providers and educators are providing quality education and care to children based on best practice.

- The *Education and Care Services (National Uniform Legislation) Act 2011* (which again, I will refer to as the Act) is the NT legislation that is used to apply the National Law as a law in the NT. The Act consists of two parts:
 - The first part is the administrative provisions located at the beginning of the Act, which provide the operational arrangements for enacting the National Law in the NT.
 - The second part is the National Law itself, which is set out as an Appendix to the Act. As you would be aware, when I talk about the National Law in this context, I am referring to the legislation that was passed in Victoria and replicated across the country.
- Of relevance is section 5 of the Act. This provides that any amendments to the National Law are enacted in the NT through regulation, rather than automatic adoption. To elaborate further, when a change to the National Law is proposed, a rigorous process of consultation is undertaken. This would see all jurisdictions agree to an amendment. Victoria is then tasked with passing the amendment through its parliamentary processes. Section 5 of the Act currently requires that the NT undertake a separate and additional process to that of Victoria, whereby the NT must make regulations to give effect to the nationally agreed amendments in the NT.
- For noting, there are only two other jurisdictions, South Australia and Western Australia, who do not currently automatically adopt amendments to the National Law – meaning that this Bill aligns the NT with the majority of states and territories.

A key benefit of the Bill is that it streamlines the administration of the Act

- The primary purpose of the Bill is to therefore streamline the administration of the Act by allowing for future nationally approved amendments to the National Law to be automatically adopted in the NT upon commencement in the host jurisdiction, Victoria. This means that the amendment would be passed in Victoria,

and upon commencement in Victoria, it would also automatically commence in the NT.

- The NT already applies automatic adoption as a mechanism for enacting a national law in its *Health Practitioner Regulation (National Uniform Legislation) Act 2010*.
- To confirm, this Bill does not propose to amend the National Law itself, only the mechanism, or the legislative process, that exists to adopt the National Law in the NT.
- The Bill will therefore remove the current duplication of effort associated with enacting amendments to the National Law by regulation, and eliminate administrative delay, ensuring our education and care sector has access to the National Law at the same time as Victoria, and the majority of other jurisdictions who have also implemented this model of adopting the National Law.
- During the process of enacting amendments to the National Law in late 2017 and early 2018, the Department of Education, in consultation with the Office of Parliamentary Council, identified that the approach to adopting nationally approved amendments to the National Law through regulations was cumbersome.
- The process also placed the NT at risk of not enacting the amendments within the nationally established timeline. Such a delay would place our regulatory authority, providers, services, educators, families and children at risk of not having the current National Law available to them in line with other jurisdictions and cause confusion with national communication to the sector and community.
- Furthermore, the NT process duplicates the national framework for making amendments to the National Law. The framework engages a rigorous process of consultation with the education and care service sector, peak bodies and training organisations, parents and community and all levels of government. It also ensures that no amendment is approved without the consent of all jurisdictions and the Council of Australian Governments Education Council, of which the NT Minister for Education is a member. A detailed summary of this national process is provided in the tabled supporting documentation.

Disallowing nationally approved amendments to the National Law and National Regulations

- A change to automatic adoption of amendments to the National Law does not prevent the NT Legislative Assembly from disallowing any future nationally agreed amendments, should it see fit to do so. In the unlikely event that this is seen as necessary (in that, the NT does not wish for an amendment to the National Law to apply in the NT), the process of 'opting out' of a change to the National Law through further amendment to the Act can be used.
- It is difficult to provide an example of a future amendment to the National Law that the NT Legislative Assembly may choose to override, particularly given the rigour of the national process that has been tested on a number of occasions through a review of the National Law resulting from the 2014 NQF Review and several amendments to the National Regulations.
- It is worth noting that a different process applies in the NT for disallowing an amendment to the National Regulations. Clause 5 of the Bill provides that section 303 subsection (4) of the National Law does not apply in the NT. This maintains the NT's current position, and means that if it deems necessary to disallow an amendment to the National Regulations, the Legislative Assembly can do so without requiring the majority of jurisdictions to also disallow the regulation. This policy position confirms that the Legislative Assembly has the flexibility and autonomous discretion to disallow a regulation should it be determined appropriate to do so. The matters contained in the National Regulations are more operational in nature, and should the NT consider that an amendment to the National Regulations is not suitable for the NT context, the ability exists for the Legislative Assembly to disallow the amendment to ensure it does not apply in the NT.

Technical amendments

- The Bill also contains a number of technical amendments that support the move to automatic adoption, including:
 - repealing the Appendix to the Act as the mechanism for setting out the National Law, and removing references to it within the Act;

- replacing the Appendix to the Act with the Schedule of the *Education and Care Services National Law Act 2011 (Vic)*, enacting the National Law in the NT and thereby referring to it as the Education and Care Services National Law (NT); and
- providing transitional matters that ensure the continuation of the application of the National Law and the National Regulations, as in force immediately prior to the commencement of the *Education and Care Services (National Uniform Legislation) Amendment Act 2019*, should this Bill be passed.

The Bill strengthens the Education (Infringement Notice) Regulations 2019

- Further to this, the Bill strengthens the Education (Infringement Notice) Regulations 2019 (which I will refer to as the Regulations). The Regulations facilitate the issuing of infringement notices in the NT for non-compliance with prescribed provisions within the National Law and the National Regulations.
- Although the Regulations are effective in their current form, for consistency with the National Law, the Bill amends the Regulations to replace reference to the Chief Executive Officer with the Regulatory Authority. This particular amendment was also identified by the Public Accounts Committee in their recent consideration of the Regulations. Although the Chief Executive Officer and the Regulatory Authority are currently the same person carrying out different roles, this amendment removes any ambiguity and strengthens the Regulations by ensuring operational efficiency should future machinery of government changes ever come to separate these roles.
- The Bill also provides operational efficiency by confirming that the Regulatory Authority may delegate any of its powers under any regulations made under the Act. The current purpose of this provision is to allow the Regulatory Authority to delegate the power to withdraw an infringement notice issued under the Education (Infringement Notice) Regulations.
- However, the Bill applies a broader provision to future proof the Act in the event that future amendments to the National Law provide for further regulations to be made under the Act, that also warrant a delegation of power.

- The Bill also amends the definition of infringements law within the Act so as to not specifically name regulations, instead providing the generic definition of 'regulations made under this Act'. This provision has also allowed for the Bill to amend the name of the Regulations to the Education and Care Services (National Uniform Legislation) (Infringement Notice) Regulations 2019. This provides greater alignment of the Regulations with the National Law and the Act.

2019 National Quality Framework Review

- This Bill is of an administrative and technical nature and does not make any amendments that affect the provision of education and care services in the NT. It stands only to provide efficiency and clarity of intent for the NT Government and the education and care service sector and its stakeholders.
- Throughout the process of developing the Bill, consideration has been given to the 2019 NQF Review that is currently underway and in the first phase of consultation.
- It is almost certain that this review will result in future amendments to the National Law and National Regulations. Therefore, the Bill is future focused and intentional in ensuring that the process of enacting these future amendments to the National Law will be administratively efficient and that the education and care service sector and stakeholders will have access to the contemporary National Law without administrative delay.
- Thank you.